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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	17 February 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 87 final - ANNEX 1
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and New Zealand

Delegations will find attached document COM(2023) 87 final - ANNEX 1.

Encl.: COM(2023) 87 final - ANNEX 1

EUROPEAN
COMMISSION

Brussels, 17.2.2023
COM(2023) 87 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision

on the conclusion of the Free Trade Agreement between the European Union and New Zealand

FREE TRADE AGREEMENT
BETWEEN THE EUROPEAN UNION
AND NEW ZEALAND

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PREAMBLE

The European Union, hereinafter referred to as "the Union",

and

New Zealand,

hereinafter individually referred to as a "Party" and jointly referred to as the "Parties",

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part, done at Brussels on 5 October 2016, and their important economic, trade and investment relationship;

RESOLVED to strengthen their economic relations, and expand bilateral trade and investment;

RECOGNISING the importance of global cooperation to address issues of shared interest;

RECOGNISING the importance of transparency in international trade and investment to the benefit of all stakeholders;

SEEKING to establish a stable and predictable environment with clear and mutually advantageous rules governing trade and investment between the Parties, and to reduce or eliminate barriers thereto;

ACKNOWLEDGING that te Tiriti o Waitangi/the Treaty of Waitangi is a foundational document of constitutional importance to New Zealand;

DESIRING to raise living standards, promote inclusive economic growth and stability, create new employment opportunities and improve the general welfare and, to this end, reaffirming their commitment to promote trade and investment liberalisation;

CONVINCED that this Agreement will create an expanded and secure market for goods and services, thus enhancing the competitiveness of their firms in global markets;

DETERMINED to strengthen their economic, trade, and investment relations in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote trade and investment consistent with the aims for high levels of environmental and labour protection and relevant internationally recognised standards and agreements to which they are a party;

DETERMINED to enhance consumer welfare through policies that ensure a high level of consumer protection, consumer choice and economic wellbeing;

AFFIRMING the Parties' right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health; social services; public education; safety; the environment, including climate change; public morals; social or consumer protection; animal welfare; privacy and data protection; the promotion and protection of cultural diversity; and, in the case of New Zealand, the promotion or protection of the rights, interests, duties, and responsibilities of Māori;

COMMITTED to communicate with all relevant stakeholders from civil society, including the private sector, trade unions and other non-governmental organisations;

RECOGNISING the importance of promoting inclusive participation in international trade, and of addressing barriers and other challenges that exist for domestic stakeholders in accessing international trade and economic opportunities, including in digital trade;

DETERMINED to address the particular challenges faced by small and medium-sized enterprises in contributing to the development of trade and foreign direct investment;

RECOGNISING the importance of international trade in enabling and advancing Māori wellbeing, and the challenges that exist for Māori, including wāhine Māori, in accessing trade and investment opportunities derived from international trade, including the opportunities and benefits created by this Agreement;

SEEKING to advance gender equality and the economic empowerment of women by promoting the importance of gender inclusive policies and practices in economic activities, including international trade, in an effort to eliminate all forms of gender-based discrimination;

REAFFIRMING their commitment to the Charter of the United Nations signed in San Francisco on 26 June 1945 and having regard to the principles articulated in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948;

BUILDING upon their respective rights and obligations under the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994, and other multilateral and bilateral instruments of cooperation to which both Parties are a party;

HAVE AGREED AS FOLLOWS:

CHAPTER 1

INITIAL PROVISIONS

ARTICLE 1.1

Objectives of this Agreement

The objectives of this Agreement are to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties.

ARTICLE 1.2

General definitions

For the purposes of this Agreement, the following definitions apply:

(a) "agricultural good" means a product listed in Annex 1 to the Agreement on Agriculture;

(b) "CCMAA" means the Agreement between the Union and New Zealand on cooperation and mutual administrative assistance in customs matters, done at Brussels on 3 July 2017;

(c) "customs authority " means:

(i) with respect to New Zealand, the New Zealand Customs Service; and

(ii) with respect to the Union, the services of the European Commission responsible for customs matters, or, as appropriate, the customs administrations and any other authorities empowered in the Member States to apply and enforce customs legislation;

(d) "customs duty" means any duty or charge of any kind imposed on, or in connection with, the importation of a good but does not include any:

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

(ii) anti-dumping or countervailing duty applied in conformity with GATT 1994, the Anti-dumping Agreement, and the Agreement on Subsidies and Countervailing Measures; and

(iii) fee or other charge imposed on or in connection with importation that is limited in amount to the approximate cost of the services rendered;

(e) "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(f) "day" means a calendar day;

(g) "enterprise" means a juridical person or a branch or a representative office of a juridical person;

(h) "EU" or "Union" means the European Union;

(i) "existing" means, unless otherwise specified in this Agreement, in effect on the date of entry into force of this Agreement;

(j) "good of a Party" means a domestic good as that is understood in GATT 1994, and includes goods originating in that Party;

(k) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System, including all legal notes and amendments thereto developed by the World Customs Organization;

(l) "heading" means the first four digits in the tariff classification number under the Harmonized System;

(m) "ILO" means the International Labour Organization;

(n) "juridical person" means any legal entity duly constituted or otherwise organised under a Party's law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(o) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement or practice, or any other form[1];

(p) "measures of a Party" means any measures adopted or maintained by:[2]

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

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

(q) "Member State" means a Member State of the Union;

(r) "natural person of a Party" means:

(i) for the Union, a national of one of the Member States according to its law[3]; and

(ii) for New Zealand, a national of New Zealand, according to its law[4];

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1 For greater certainty, the term "measure" includes the term "omission".

2 For greater certainty, "measures of a Party" includes measures that are adopted or maintained by instructing, directing or controlling the conduct of other entities.

3 The term "natural person of a Party" also includes persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the law of the Republic of Latvia, to receive a non-citizen's passport.

4 The Union reaffirms its obligations regarding permanent residents of New Zealand under GATS. To that effect, the term "natural person of a Party" also includes persons who have the right of permanent residence in New Zealand who are not nationals of New Zealand, to the extent that such natural persons are covered by the Union's commitments under GATS.

(s) "OECD" means the Organisation for Economic Co-operation and Development;

(t) "originating" means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of origin and origin procedures);

(u) "originating good" or "good originating in a Party" means a good qualifying under the rules of origin set out in Chapter 3 (Rules of origin and origin procedures);

(v) "person" means a natural person or a juridical person;

(w) "preferential tariff treatment" means the rate of customs duty applicable to an originating good pursuant to the tariff elimination schedules in Annex 2-A (Tariff elimination schedules);

(x) "Sanitary Agreement" means the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products, done at Brussels on 17 December 1996[1];

(y) "sanitary or phytosanitary measure" means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

(z) "SDR" means special drawing rights;

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1 OJ EU L 57, 26.2.1997, p. 5.

(aa) "service supplier" means a person that supplies or seeks to supply a service;

(bb) "SMEs" means small and medium-sized enterprises;

(cc) "territory" means with respect to each Party the area where this Agreement applies in accordance with Article 1.4 (Territorial application);

(dd) "TFEU" means the Treaty on the Functioning of the European Union;

(ee) "the Paris Agreement" means the Paris Agreement under the United Nations Framework Convention on Climate Change, done at Paris on 12 December 2015;

(ff) "the Partnership Agreement" means Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part, done at Brussels on 5 October 2016;

(gg) "third country" means a country or territory outside the territorial scope of application of this Agreement; and

(hh) "WTO" means the World Trade Organization.

ARTICLE 1.3

WTO Agreements

For the purposes of this Agreement, the following definitions apply:

(a) "Agreement on Agriculture" means the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;

(b) "Agreement on Safeguards" means the Agreement on Safeguards, contained in Annex 1A to the WTO Agreement;

(c) "Anti-dumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

(d) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

(e) "DSU" means the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement;

(f) "GATS" means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

(g) "GATT 1994" means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

(h) "GPA" means the Agreement on Government Procurement as amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012;

(i) "Import Licensing Agreement" means the Agreement on Import Licensing Procedures, contained in Annex 1A to the WTO Agreement;

(j) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement;

(k) "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;

(l) "TBT Agreement" means the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement;

(m) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement; and

(n) "WTO Agreement" means the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

ARTICLE 1.4

Territorial application

1. This Agreement applies:

(a) to the territories in which the Treaty on European Union and the TFEU are applied and under the conditions laid down in those Treaties; and

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

2. As regards the provisions of this Agreement concerning the tariff treatment of goods, including rules of origin and origin procedures, this Agreement also applies to those areas of the customs territory of the Union within the meaning of Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[1] that are not covered by point (a) of paragraph 1 of this Article.

3. References to "territory" in this Agreement shall be understood in the sense referred to in paragraphs 1 and 2, except as otherwise expressly provided.

[1] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ EU L 269, 10.10.2013, p. 1).

ARTICLE 1.5

Relation to other international agreements

1. Unless otherwise provided for in this Agreement, the existing international agreements between the Member States of the Union, the European Community or the Union on the one side and New Zealand on the other side, are not superseded or terminated by this Agreement.

2. This Agreement shall be an integral part of the overall bilateral relations as governed by the Partnership Agreement and shall form part of the common institutional framework.

3. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement. For greater certainty, nothing in this Agreement requires a Party to act in a manner inconsistent with its obligations under the WTO Agreement.

4. In the event of any inconsistency between this Agreement and any international agreement other than the WTO Agreement to which both Parties are a party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

5. Unless otherwise specified, where international agreements are referred to or incorporated into this Agreement, in whole or in part, they shall be understood to include amendments thereto or their successor agreements entering into force for both Parties on or after the date of entry into force of this Agreement.

6. If any matter arises regarding the implementation or application of this Agreement as a result of any amendments or successor agreements as referred to in paragraph 5, the Parties may, on request of either Party, consult with each other with a view to finding a mutually satisfactory solution to this matter as necessary.

ARTICLE 1.6

Establishment of a free trade area

The Parties hereby establish a free trade area, in conformity with Article XXIV of GATT 1994 and Article V of GATS.

CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1

Objective

The Parties shall progressively and reciprocally liberalise trade in goods in accordance with this Agreement.

ARTICLE 2.2

Scope

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

ARTICLE 2.3

Definitions

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

(a) "A.T.A. carnet" means the document reproduced in accordance with the Annex to the Customs Convention on the A.T.A. Carnet for the temporary admission of goods, done in Brussels on 6 December 1961;

(b) "consular transaction" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third country, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of the good;

(c) "export licensing procedure" 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 or bodies as a prior condition for exportation from the territory of the exporting Party;

(d) "import licensing procedure" 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 or bodies as a prior condition for importation into the territory of the importing Party;

(e) "remanufactured good" means a good classified in HS Chapters 84 to 90 or heading 94.02 that:

(i) is entirely or partially comprised of parts obtained from used goods;

(ii) has similar performance and working conditions compared to equivalent goods, when new; and

(iii) is given the same warranty as that applicable to equivalent goods, when new;

(f) "repair" or "alteration" means any processing operation undertaken on a good, regardless of any increase in the value of the good, to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended; repair or alteration of a good includes restoration and maintenance but does not include an operation or process that:

(i) destroys the essential characteristics of a good, or creates a new or commercially different good;

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

(iii) is used to substantially change the function of a good; and

(g) "staging category" means the timeframe for the elimination of customs duties ranging from zero to seven years, after which a good is free of customs duty, unless otherwise specified in Annex 2-A (Tariff elimination schedules).

ARTICLE 2.4

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 GATT 1994 including its interpretative Notes and Supplementary Provisions. To that end, Article III of GATT 1994 and its interpretative Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.5

Elimination of customs duties

1. Unless otherwise provided for in this Agreement, each Party shall reduce or eliminate its customs duties on goods originating in the other Party in accordance with Annex 2-A (Tariff elimination schedules).

2. For the purposes of paragraph 1, the base rate of customs duties shall be the base rate specified for each good in Annex 2-A (Tariff elimination schedules).

3. If a Party reduces its applied most-favoured-nation customs duty rate, that duty rate shall apply to goods originating in the other Party for as long as it is lower than the customs duty rate determined pursuant to Annex 2-A (Tariff elimination schedules).

4. Two years after the date of entry into force of this Agreement, on the request of a Party, the Parties shall consult to consider accelerating the reduction or elimination of customs duties set out in Annex 2-A (Tariff elimination schedules). The Trade Committee may adopt a decision to amend Annex 2-A (Tariff elimination schedules) to accelerate the tariff reduction or elimination.

5. A Party may at any time autonomously accelerate the elimination of customs duties set out in Annex 2-A (Tariff elimination schedules) on goods originating in the other Party. That Party shall inform the other Party as early as practicable before the new customs duty rate takes effect.

6. If a Party autonomously accelerates the elimination of customs duties in accordance with paragraph 5, that Party may raise a customs duty to the level set out in Annex 2-A (Tariff elimination schedules) for the respective year following any autonomous reduction.

ARTICLE 2.6

Standstill

Unless otherwise provided in this Agreement, a Party shall not increase any customs duty set as the base rate in Annex 2-A (Tariff elimination schedules) or adopt any new customs duty on a good originating in the other Party.

ARTICLE 2.7

Export duties, taxes or other charges

1. A Party shall not adopt or maintain:

(a) any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party; or

(b) any internal tax or other charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. Nothing in this Article shall prevent a Party from imposing on the exportation of a good a fee or charge that is permitted under Article 2.8 (Fees and formalities).

ARTICLE 2.8

Fees and formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 including its interpretative Notes and Supplementary Provisions, that all fees and other charges of whatever character imposed by a Party on or in connection with importation or exportation of goods 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. A Party shall not levy the fees and other charges of whatever character referred to in paragraph 1 on an *ad valorem* basis.

3. Each Party shall promptly publish all fees and other charges of whatever character it imposes in connection with importation or exportation of goods in such a manner as to enable governments, traders and other interested parties to become acquainted with them.

4. A Party shall not require a consular transaction, including related to fees and other charges of whatever character, in connection with the importation of any good of the other Party.

5. For the purposes of this Article, fees or other charges of whatever character do not include export taxes, customs duties, charges equivalent to an internal tax, or other internal charges applied consistently with Article III:2 of GATT 1994, or antidumping or countervailing duties.

ARTICLE 2.9

Repaired or altered goods

1. A Party shall not 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 its 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.

2. Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair or alteration and is not re-imported in bond, into free trade zones, or in similar status.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

ARTICLE 2.10

Remanufactured goods

1. A Party shall not accord to remanufactured goods of the other Party treatment that is less favourable than the Party accords to equivalent goods in new condition.

2. For greater certainty, Article 2.11 (Import and export restrictions) applies to import or export prohibitions or restrictions on the importation or exportation of remanufactured goods. If a Party adopts or maintains import or export prohibitions or restrictions on the importation or exportation of used goods, it shall not apply such measures to remanufactured goods.

3. A Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that the goods meet all applicable technical requirements that apply to equivalent goods in new condition.

ARTICLE 2.11

Import and export restrictions

1. A Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its interpretative Notes and Supplementary Provisions. To that end, Article XI of GATT 1994 and its interpretative Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. A Party shall not adopt or maintain:

(a) export and import price requirements[1], except as permitted in enforcement of countervailing and antidumping duty orders and undertakings; or

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

ARTICLE 2.12

Origin marking

1. If New Zealand requires a mark of origin on the importation of goods from the Union, New Zealand shall accept the origin mark "Made in the EU" under conditions that are no less favourable than those applied to marks of origin of a Member State.

2. For the purposes of the origin mark "Made in the EU", New Zealand shall treat the Union as a single territory.

[1] For greater certainty, this provision is not meant to prevent a Party from relying on the price of imports in order to determine the applicable rate of a customs duty in accordance with this Agreement.

ARTICLE 2.13

Import licensing procedures

1. Each Party shall adopt and administer any import licensing procedures in accordance with Articles 1 to 3 of the Import Licensing Agreement. To that end, Articles 1 to 3 of the Import Licensing Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. A Party that adopts a new import licensing procedure or modifies an existing import licensing procedure, shall notify the other Party of such adoption or modification without delay and in any event no later than 60 days after the date of the publication of the relevant procedure. The notification shall include the information specified in Article 5(2) of the Import Licensing Agreement. 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 4 of the Import Licensing Agreement, including the information specified in Article 5(2) of that Agreement.

3. Upon request of a Party, the other Party shall promptly provide any relevant information, including the information specified in Article 5(2) of the Import Licensing Agreement, regarding any import licensing procedure that it intends to adopt or that it maintains as well as any modification to an existing import licensing procedure.

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

ARTICLE 2.14

Export licensing procedures

1. Each Party shall publish any new export licensing procedure, or any modification of an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, whenever practicable, 45 days before the new export licensing procedure or modification of an existing export licensing procedure takes effect, and in any event no later than the date on which the new export licensing procedure or modification takes effect.

2. Each Party shall ensure that it includes the following information in its publication of export licensing procedures:

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

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

(c) for each export licensing procedure, a description of the process for applying for a license and any criteria an applicant must meet to be eligible to apply for a license, such as possessing an activity license, establishing or maintaining an investment, or operating through a particular form of establishment in the territory of a Party;

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

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

(f) a description of any measure or measures being implemented through the export licensing procedure;

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

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

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

3. Within 30 days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party that adopts new export licensing procedures, or modifications of existing licensing procedures, shall notify the other Party of such adoption or modification within 60 days after the publication of any new export licensing procedure or any modification of an existing licensing procedure. The notification shall include the reference to the source or sources where the information required in paragraph 2 is published and include, if appropriate, the address of the relevant government website or websites.

4. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from implementing its commitments under United Nations Security Council Resolutions, as well as under multilateral non-proliferation regimes and export control arrangements, including:

(a) the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies done at the Hague on 19 December 1995;

(b) the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction done at Paris on 13 January 1993;

(c) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction done at London, Moscow and Washington on 10 April 1972;

(d) the Treaty on the Non-Proliferation of Nuclear Weapons done at London, Moscow and Washington on 1 July 1968; and

(e) the Australia Group, the Nuclear Suppliers Group, and the Missile Technology Control Regime.

ARTICLE 2.15

Preference utilisation

1. For the purposes of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange comprehensive import statistics for a period starting one year after the date of entry into force of this Agreement until 10 years after the tariff elimination is completed for all goods in accordance with Annex 2-A (Tariff elimination schedules). Unless the Trade Committee decides otherwise, that period shall be automatically extended for five years, and thereafter the Trade Committee may decide to extend it further.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, if applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and for the import of those goods that received non-preferential treatment including under the different regimes used by the Parties upon importation. Such statistics as well as preference utilisation rates may be presented for an exchange of views to the Trade Committee.

ARTICLE 2.16

Temporary admission

1. For the purposes of this Article, the term "temporary admission" means the customs procedure under which certain goods, including means of transport, can be brought into the territory of a Party with conditional relief from the payment of import duties and taxes and without the application of import prohibitions or restrictions of an economic character, on the condition that the goods are imported for a specific purpose and are intended for re-exportation within a specified period without having undergone any change except normal depreciation due to the use made of those goods.

2. Each Party shall grant temporary admission in accordance with its laws, regulations or procedures, to the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person visiting the territory of the other Party to perform a specified task;

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

(c) commercial samples and advertising films and recordings (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 established or resident in the territory of a Party provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public); and

(d) goods imported for sports purposes, including contests, demonstrations, training, racing or similar events.

3. For the temporary admission of the goods referred to in paragraph 2 and regardless of their origin, each Party shall accept A.T.A. carnets issued in the other Party, endorsed there and guaranteed by an association forming part of the international guarantee chain, certified by the competent authorities and valid in the territory of the importing Party.

4. Each Party shall determine the period during which goods may remain under the temporary admissions procedure. The initial period may be extended autonomously by a Party.

5. Each Party may require that the goods benefiting from temporary admission in accordance with paragraph 1:

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

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

(c) be accompanied by a security that is consistent with the importing Party's obligations under the relevant international customs conventions to which it has acceded;

(d) be identified when imported and exported;

(e) be exported on or before the departure of the national or resident referred to in point (a), or within a period 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 its intended use; or

(g) be otherwise admissible into the territory of the Party under its law.

6. If any condition that a Party may impose under paragraph 5 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good as well as any other charges or penalties provided for under its law.

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

8. A Party shall relieve the importer or other person responsible for a good admitted under this Article of liability for failure to export a temporarily admitted good on presentation of satisfactory proof to the importing Party that the good has been destroyed or irretrievably lost, in accordance with the customs legislation of that Party.

ARTICLE 2.17

Duty-free entry of commercial samples of negligible value
and printed advertising material

1. Each Party shall, in accordance with its laws, regulations or procedures, grant duty-free entry to commercial samples of negligible value and printed advertising material imported from the other Party, regardless of their origin.

2. A Party may define commercial samples of negligible value as:

(a) having a value, individually or in the aggregate as shipped, of not more than the amount specified in the law of a Party; or

(b) being so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples.

3. Printed advertising materials are defined as goods classified in HS Chapter 49, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicise, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

ARTICLE 2.18

Specific measures concerning the management of preferential treatment

1. The Parties shall cooperate in preventing, detecting and combating breaches of customs legislation related to the preferential treatment granted under this Chapter in accordance with Chapter 3 (Rules of origin and origin procedures) and Titles I, III, IV and V of the CCMAA.

2. A Party may temporarily suspend the relevant preferential treatment of goods in accordance with the procedure laid down in paragraphs 3 to 5, if:

(a) it has made a finding, on the basis of objective, compelling and verifiable information, that systematic and sectoral breaches of customs legislation related to the preferential treatment granted under this Chapter, which results in a significant loss of revenue to that Party, have been committed; and

(b) the other Party repeatedly and unjustifiably refuses or otherwise fails to cooperate with respect to the breaches of customs legislation referred to in point (a).

3. The Party that has made a finding as referred to in point (a) of paragraph 2 shall, without undue delay, notify the Trade Committee and enter into consultations with the other Party within the Trade Committee with a view to reaching a mutually acceptable solution.

4. If the Parties fail to agree on an acceptable solution within three months after the notification as referred to in paragraph 3, the Party that made the finding may decide to temporarily suspend the relevant preferential treatment of the goods concerned. The temporary suspension shall apply to only those traders that both Parties during the consultations referred to in paragraph 3 identified and agreed were involved in the breaches of customs legislation. This temporary suspension shall be notified to the Trade Committee without undue delay.

5. If a Party has made a finding as referred to in point (a) of paragraph 2, and within three months following the notification referred to in paragraph 4, has established that the temporary suspension referred to in paragraph 4 has been ineffective in combatting breaches of customs legislation related to the preferential treatment granted under this Chapter, the Party may decide to temporarily suspend the relevant preferential treatment of the goods concerned. The Party may also decide to suspend temporarily the relevant preferential treatment of the goods concerned if, during the consultations referred to in paragraph 3, the Parties were unable to identify and to agree on the traders involved in the breaches of customs legislation. This temporary suspension shall be notified to the Trade Committee without undue delay.

6. The temporary suspensions referred to in this Article shall apply only for the period necessary to protect the financial interests of the Party concerned, and in any case they shall not apply longer than six months. If the conditions that gave rise to the initial temporary suspension persist at the expiry of the six month period, the Party concerned may decide to renew the temporary suspension after notifying the other Party. Any such suspension shall be subject to periodic consultations within the Trade Committee.

7. Each Party shall publish, in accordance with its internal procedures, notices to importers about any decision concerning temporary suspensions referred to in this Article.

8. Notwithstanding paragraph 5, if an importer is able to satisfy the customs authority of the importing Party that the goods concerned are fully compliant with the customs law of the importing Party, the requirements of this Agreement, and any other conditions related to the temporary suspension established by the importing Party in accordance with its law, the importing Party shall allow the importer to apply for preferential treatment and recover any duties paid in excess of the applicable preferential tariff rates when the goods concerned were imported.

ARTICLE 2.19

Committee on Trade in Goods

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The functions of the Committee on Trade in Goods, with respect to this Chapter, shall include:

(a) promoting trade in goods between the Parties, including through consultation on accelerating tariff elimination under this Agreement

(b) promptly addressing barriers to trade in goods between the Parties;

(c) without prejudice to Chapter 26 (Dispute settlement), consulting on and endeavouring to resolve any issues relating to this Chapter, including differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2-A (Tariff elimination schedules), or amendment to the Harmonized System Code Structure or each Party's respective nomenclatures, to ensure that the obligations of each Party pursuant to Annex 2-A (Tariff elimination schedules) are not altered;

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

(e) working with any Specialised Committee or other subsidiary body established or granted authority to act under this Agreement on issues that may be relevant to that Specialised Committee or body, as appropriate.

ARTICLE 2.20

Contact points

Within 90 days after the date of entry into force of this Agreement each Party shall designate a contact point responsible for facilitating communication between the Parties on matters covered by this Chapter and notify the other Party of the contact details for the contact point. Each Party shall notify the other Party promptly in the event of any change of those contact details.

CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

SECTION A

RULES OF ORIGIN

ARTICLE 3.1

Definitions

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

(a) "consignment" means a product that is either sent simultaneously from a consignor to a consignee or covered by a single transport document covering a shipment from the consignor to the consignee or, in the absence of such a document, by a single invoice;

(b) "exporter" means a person, located in a Party, who, in accordance with the requirements laid down in the law of that Party, exports or produces the originating product and makes out a statement on origin;

(c) "importer" means a person who imports the originating product and claims preferential tariff treatment for it;

(d) "material" means any substance used in the production of a product, including any ingredient, raw material, component or part;

(e) "non-originating material" means a material that does not qualify as originating under this Chapter, including a material whose originating status cannot be determined;

(f) "product" means the result of production, even if it is intended for use as a material in the production of another product; and

(g) "production" means any kind of working or processing, including assembly.

ARTICLE 3.2

General requirements for originating products

1. For the purposes of applying preferential tariff treatment by a Party to an originating good of the other Party in accordance with this Agreement, provided that a product satisfies all other applicable requirements of this Chapter, a product shall be considered as originating in the other Party if it is:

(a) wholly obtained in that Party within the meaning of Article 3.4 (Wholly obtained products);

(b) produced in that Party exclusively from originating materials; or

(c) produced in that Party incorporating non-originating materials provided that the product satisfies the requirements set out in Annex 3-B (Product-specific rules of origin).

2. If a product has acquired originating status, the non-originating materials used in the production of that product shall not be considered non-originating materials when that product is incorporated as a material in another product.

3. The acquisition of originating status shall be fulfilled without interruption in New Zealand or the Union.

ARTICLE 3.3

Cumulation of origin

1. A product originating in a Party shall be considered as originating in the other Party if that product is used as a material in the production of another product in that other Party.

2. Production carried out in a Party on a non-originating material may be taken into account for the purpose of determining whether a product is originating in the other Party.

3. Paragraphs 1 and 2 do not apply if the production carried out in the other Party does not go beyond one or more of the operations referred to in Article 3.6 (Insufficient working or processing).

4. In order for an exporter to complete the statement on origin referred to in point (a) of Article 3.16(2) (Claim for preferential tariff treatment) for a non-originating material referred to in paragraph 2, the exporter shall obtain from its supplier a supplier's declaration as provided for in Annex 3-D (Supplier's declaration referred to in Article 3.3(4) (Cumulation of origin)) or an equivalent document that contains the same information describing the non-originating materials concerned in sufficient detail to enable them to be identified.

ARTICLE 3.4

Wholly obtained products

1. The following shall be considered as wholly obtained in a Party:

(a) a mineral or naturally occurring substance extracted or taken from the soil or the seabed of a Party;

(b) a plant or vegetable grown or harvested in a Party;

(c) a live animal born and raised in a Party;

(d) a product obtained from a live animal raised in a Party;

(e) a product obtained from a slaughtered animal born and raised in a Party;

(f) a product obtained by hunting or fishing conducted in a Party, but not beyond the outer limits of the Party's territorial sea;

(g) a product obtained from aquaculture in a Party, if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants are born or raised from seed stock such as eggs, roes, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

(h) a product of sea fishing and other product taken in accordance with international law from the sea outside any territorial sea by a vessel of a Party;

(i) a product made aboard a factory ship of a Party exclusively from a product referred to in point (h);

(j) a product taken or extracted by a Party or a person of a Party from the seabed or subsoil, outside any territorial sea, provided that Party or person of that Party has the right to work that seabed or subsoil in accordance with international law;

(k) waste or scrap resulting from manufacturing operations conducted in a Party;

(l) a used product collected in a Party and which is fit only for the recovery of raw materials, including such raw materials; and

(m) a product produced in a Party exclusively from the products referred to in points (a) to (l).

2. The terms "vessel of a Party" and "factory ship of a Party" in points (h) and (i) of paragraph 1 refer only to a vessel or a factory ship which:

(a) is registered in a Member State or in New Zealand;

(b) sails under the flag of a Member State or of New Zealand; and

(c) meets one of the following conditions:

(i) it is at least 50 % owned by nationals of a Member State or of New Zealand; or

(ii) it is owned by one or more juridical persons each of which:

(A) has its head office and main place of business in a Member State or in New Zealand; and

(B) is at least 50 % owned by public entities or persons of a Member State or of New Zealand.

ARTICLE 3.5

Tolerances

1. If non-originating materials used in the production of a product do not satisfy the requirements set out in Annex 3-B (Product-specific rules of origin), the product shall be considered as originating in a Party, provided that:

(a) for all products, except for a product classified under HS Chapters 50 to 63, the value of those non-originating materials used in the production of those products does not exceed 10 % of the ex-works price of the product;

(b) for a product classified under HS Chapters 50 to 63, the tolerances set out in Notes 7 and 8 of Annex 3-A (Introductory notes to product-specific rules of origin) apply.

2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in the requirements set out in Annex 3-B (Product-specific rules of origin).

3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 3.4 (Wholly obtained products). If Annex 3-B (Product-specific rules of origin) requires that the materials used in the production of a product are wholly obtained, paragraphs 1 and 2 apply.

ARTICLE 3.6

Insufficient working or processing

1. Notwithstanding point (c) of Article 3.2(1) (General requirements for originating products), a product shall not be considered as originating in a Party if the production of the product in a Party consists only of one or more of the following operations conducted on non-originating materials:

(a) preserving operations such as drying, freezing, keeping in brine and other similar operations when their sole purpose is to ensure that the products remain in good condition during transport and storage[1];

(b) breaking-up or assembly of packages;

(c) washing or cleaning, removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles and textile articles;

(e) simple painting and polishing operations;

(f) husking and partial or total milling of rice; polishing and glazing of cereals and rice;

[1] Within the context of point (a), preserving operations such as chilling, freezing or ventilating are considered insufficient, whereas operations such as pickling, drying or smoking that are intended to give a product special or different characteristics are not considered insufficient.

(g) operations to colour or flavour sugar or form sugar lumps, partial or total milling of crystal sugar;

(h) peeling, stoning and shelling of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading, matching, including the making-up of sets of articles;

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;

(n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the products, or dehydration or denaturation of products;

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

(p) slaughter of animals.

2. For the purposes of paragraph 1, operations shall be considered simple if neither special skills nor especially produced or installed machines, apparatus or equipment are needed for carrying out those operations.

ARTICLE 3.7

Unit of qualification

1. For the purposes of this Chapter, the unit of qualification shall be the particular product that is considered as the basic unit when classifying the product under the HS.

2. If a consignment consists of a number of identical products classified under the same heading of the HS, each individual product shall be taken into account when applying this Chapter.

ARTICLE 3.8

Packing materials and containers for shipment

Packing materials and containers for shipment that are used to protect a product during transportation shall be disregarded in determining whether a product has originating status.

ARTICLE 3.9

Packaging materials and containers for retail sale

1. Packaging materials and containers in which a product is packaged for retail sale, if classified with the product, shall be disregarded in determining whether the non-originating materials used in the production of the product have undergone the applicable change in tariff classification or a specific manufacturing or processing operation as set out in Annex 3-B (Product-specific rules of origin) or whether the product is wholly obtained.

2. When a product is subject to a value requirement as set out in Annex 3-B (Product-specific rules of origin), the value of the packaging materials and containers in which the product is packaged for retail sale, if classified with the product, shall be taken into account as originating or non-originating, as the case may be, in the calculation for the purpose of application of the value requirement to the product.

ARTICLE 3.10

Accessories, spare parts and tools

1. For the purposes of this Article, accessories, spare parts, tool and instructional or other information materials are covered if they are:

(a) classified, delivered and invoiced with the product; and

(b) of the type, quantity and value that are customary for the product concerned.

2. In determining whether a product:

(a) is wholly obtained, or satisfies a production process or change in tariff classification requirement as set out in Annex 3-B (Product-specific rules of origin), accessories, spare parts, tools and instructional or other information materials of that product shall be disregarded; and

(b) meets a value requirement as set out in Annex 3-B (Product-specific rules of origin), the value of accessories, spare parts, tools and instructional or other information materials of that product shall be taken into account as originating or non-originating materials, as the case may be, in the calculation for the purpose of the application of the value requirement to the product.

ARTICLE 3.11

Sets

Sets, as defined in General Rule 3 (b) and (c) for Interpretation of the HS, shall be considered as originating in a Party if all of their components have originating status. When a set is composed of originating and non-originating components, the set as a whole shall be considered as originating in a Party, if the value of the non-originating components does not exceed 15 % of the ex-works price of the set.

ARTICLE 3.12

Neutral elements

In order to determine whether a product is originating in a Party, it shall not be necessary to determine the originating status of the following neutral elements:

(a) energy and fuel;

(b) plant and equipment, including products used for their maintenance;

(c) machines, tools, dies and moulds;

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

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

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

(g) equipment, devices and supplies used for testing or inspecting the product;

(h) catalysts and solvents; and

(i) other materials that are neither incorporated nor intended to be incorporated into the final composition of the product.

ARTICLE 3.13

Accounting segregation for fungible materials and products

1. For the purposes of this Article, "fungible materials" or "fungible products" means materials or products that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes.

2. Originating and non-originating fungible materials or fungible products shall be physically segregated during storage in order to maintain their originating and non-originating status.

3. Notwithstanding paragraph 2, originating and non-originating fungible materials may be used in the production of a product without being physically segregated during storage if an accounting segregation method is used.

4. Notwithstanding paragraph 2, originating and non-originating fungible products classified under Chapters 10, 15, 27, 28, 29, headings 32.01 to 32.07, or headings 39.01 to 39.14 of the HS may be stored in a Party before exportation to the other Party without being physically segregated, if an accounting segregation method is used.

5. The accounting segregation method referred to in paragraphs 3 and 4 shall be applied in conformity with a stock management method under accounting principles that are generally accepted in the Party where the method is used.

6. The accounting segregation method shall be any method that ensures that at any time no more products receive originating status than that would be the case if the materials or the products had been physically segregated.

ARTICLE 3.14

Returned products

If an originating product of a Party exported from that Party to a third country returns to that Party, it shall be considered as a non-originating product unless the returned product:

(a) is the same as that exported; and

(b) has not undergone any operation other than what was necessary to preserve it in good condition while in the third country to which it has been exported or while being exported.

ARTICLE 3.15

Non-alteration

1. An originating product declared for home use in the importing Party shall not, after exportation and prior to being declared for home use, have been altered, transformed in any way or subjected to operations other than to preserve it in good condition or than adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific requirements of the importing Party.

2. The storage or exhibition of an originating product may take place in a third country if that originating product is not cleared for home use in that third country.

3. Without prejudice to Section B (Origin procedures), the splitting of consignments may take place in a third country if the consignments are not cleared for home use in that third country.

4. In case of doubt as to whether the requirements provided for in paragraphs 1 to 3 are complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance with those requirements, which may be given by any means, including contractual transport documents, such as bills of lading, factual or concrete evidence based on marking or numbering of packages or any evidence related to the product itself.

SECTION B

ORIGIN PROCEDURES

ARTICLE 3.16

Claim for preferential tariff treatment

1. The importing Party shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirements set out in this Chapter.

2. A claim for preferential tariff treatment shall be based on either:

(a) a statement on origin that the product is originating made out by the exporter; or

(b) the importer's knowledge that the product is originating.

3. A claim for preferential tariff treatment and its basis as referred to in points (a) and (b) of paragraph 2 shall be included in the customs import declaration in accordance with the law of the importing Party.

4. The importer making a claim for preferential tariff treatment based on a statement on origin referred to in point (a) of paragraph 2 shall keep the statement on origin and, when required by the customs authority of the importing Party, shall provide a copy thereof to that customs authority.

ARTICLE 3.17

Claim for preferential tariff treatment after importation

1. If the importer did not make a claim for preferential tariff treatment at the time of importation, and the product would have qualified for preferential tariff treatment at the time of importation, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid.

2. The importing Party may require as a condition for granting preferential tariff treatment under paragraph 1 that the importer makes a claim for preferential tariff treatment and provides the basis for the claim as referred to in paragraph 2 of Article 3.16 (Claim for preferential tariff treatment). Such a claim shall be made no later than three years after the date of importation or within a longer period if specified in the law of the importing Party.

ARTICLE 3.18

Statement on origin

1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including, when applicable, information on the originating status of materials used in the production of that product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.

2. A statement on origin shall be made out in one of the language versions included in Annex 3-C (Text of the statement on origin) on an invoice or on any other document that describes the originating product in sufficient detail to enable its identification[1]. The importing Party shall not require the importer to submit a translation of the statement on origin.

3. A statement on origin shall be valid for one year from the date it was made out.

4. A statement on origin may apply to:

(a) a single shipment of one or more products imported into a Party; or

[1] For greater certainty, while the statement on origin must be made out by the exporter and the exporter shall be responsible for providing sufficient detail to identify the originating product, there shall be no requirement regarding either the identity or the place of establishment of the person completing the invoice or any other document, if that document allows for clear identification of the exporter.

(b) multiple shipments of identical products imported into a Party within the period specified in the statement on origin not exceeding 12 months.

5. The importing Party shall, upon the request of the importer and subject to requirements that the importing Party may provide, allow a single statement on origin for unassembled or disassembled products within the meaning of General Rule 2(a) of the HS falling within Sections XV to XXI of the HS when imported by instalments.

ARTICLE 3.19

Minor errors or minor discrepancies

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or minor discrepancies in the statement on origin.

ARTICLE 3.20

Importer's knowledge

The importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements of this Chapter.

ARTICLE 3.21

Record keeping requirements

1. For a minimum of three years after the date on which the claim for preferential tariff treatment was made as referred to in paragraph 1 of Article 3.16 (Claim for preferential tariff treatment) or in Article 3.17 (Claim for preferential tariff treatment after importation) or for a longer period that may be specified in the law of the importing Party, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep:

(a) the statement on origin made out by the exporter, if the claim was based on a statement on origin; or

(b) all records demonstrating that the product satisfies the requirements to obtain originating status, if the claim was based on the importer's knowledge.

2. An exporter who has made out a statement on origin shall, for a minimum of four years after that statement was made out or within a longer period provided for in the law of the exporting Party, keep a copy of that statement and other records demonstrating that the product satisfies the requirements to obtain originating status.

3. If an exporter is not the producer of the products, and has relied on information from a supplier as to the originating status of the products, the exporter shall be required to keep the information provided by that supplier.

4. The records to be kept in accordance with this Article may be held in electronic format.

ARTICLE 3.22

Waiver of procedural requirements

1. Notwithstanding Articles 3.16 to 3.21, the importing Party shall grant preferential tariff treatment to:

(a) a product sent in a small package from private persons to private persons; or

(b) a product forming part of a traveller's personal luggage.

2. Paragraph 1 applies only to products that have been subject to a customs declaration declaring conformity with the requirements of this Chapter, and for which the customs authority of the importing Party has no doubts as to the veracity of such declaration.

3. The following products are excluded from the application of paragraph 1:

(a) products imported by way of trade, except for imports that are occasional and consist solely of products for the personal use of the recipients or travellers or their families if it is evident from the nature and quantity of the products that the imports have no commercial purpose;

(b) products whose importation forms part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirements of Article 3.16 (Claim for preferential tariff treatment);

(c) products for which the total value exceeds:

(i) for the Union, EUR 500 in the case of products sent in small packages, or EUR 1 200 in the case of products forming part of a traveller's personal luggage. The amounts to be used in a given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The exchange rate amounts shall be those published for that day by the European Central Bank, unless a different amount is communicated to the European Commission by 15 October, and shall apply from 1 January the following year. The European Commission shall notify New Zealand of the relevant amounts;

(ii) for New Zealand, NZD 1 000 both in the case of products sent in small packages and in the case of products forming part of a traveller's personal luggage.

4. The importer shall be responsible for the correctness of the declaration as referred to in paragraph 2. The record-keeping requirements set out in Article 3.21 (Record keeping requirements) do not apply to the importer when this Article is being applied.

ARTICLE 3.23

Verification

1. The customs authority of the importing Party may conduct a verification as to whether a product is originating or the other requirements of this Chapter are met, on the basis of risk assessment methods, which may include random selection. Such verification may be conducted by means of a request for information to the importer who made the claim referred to in Article 3.16 (Claim for preferential tariff treatment), at the time the import declaration is submitted, either before or after the release of the products.

2. The information requested pursuant to paragraph 1 shall cover no more than the following elements:

(a) if the claim was based on a statement on origin as referred to in point (a) of Article 3.16(2) (Claim for preferential tariff treatment), that statement on origin;

(b) if the origin criterion is:

(i) "wholly obtained", the applicable category (such as harvesting, mining, fishing) and the place of production;

(ii) based on change in tariff classification, a list of all the non-originating materials, including their tariff classification (in 2, 4 or 6 digit format, depending on the origin criterion);

(iii) based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production of that final product;

(iv) based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the production of that final product;

(v) based on a specific production process, a specific description of that production process.

3. When providing the requested information, the importer may add any other information considered relevant for the purposes of verification.

4. If the claim for preferential tariff treatment is based on a statement on origin, the importer shall inform the customs authority of the importing Party if the importer does not have the requested information referred to in point (a) of Article 3.16(2) (Claim for preferential tariff treatment). In that case, the importer may inform the customs authority that the requested information will be provided by the exporter directly.

5. If the claim for preferential tariff treatment is based on the importer's knowledge referred to in point (b) of Article 3.16(2) (Claim for preferential tariff treatment), after having first requested information in accordance with paragraph 1 of this Article the customs authority of the importing Party conducting the verification may send a request for information to the importer if it considers that additional information is required in order to verify whether a product has originating status or whether the other requirements of this Chapter are met. The customs authority of the importing Party may request the importer for specific documentation and information, if appropriate.

6. During verification, the importing Party shall allow the release of the products concerned. The importing Party may condition such release on the importer providing a guarantee or implementing other appropriate precautionary measures required by the customs authorities. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the customs authority of the importing Party has ascertained that the products concerned have originating status, and that the other requirements of this Chapter are fulfilled.

ARTICLE 3.24

Administrative cooperation

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate, through the customs authority of each Party, in verifying whether a product is originating and is in compliance with the other requirements provided for in this Chapter.

2. If the claim for preferential tariff treatment is based on a statement on origin and after having first requested information in accordance with Article 3.23(1) (Verification), the customs authority of the importing Party conducting the verification may also request information from the customs authority of the exporting Party within a period of two years after the date on which the claim for preferential tariff treatment was made pursuant to point (a) of Article 3.16(2) (Claim for preferential tariff treatment) or Article 3.17(2) (Claim for preferential tariff treatment after importation), if the customs authority of the importing Party considers that it requires additional information in order to verify the originating status of the product or whether the other requirements provided for in this Chapter are complied with. The customs authority of the importing Party may request specific documentation and information from the customs authority of the exporting Party, if appropriate.

3. The request for information referred to in paragraph 2 shall include the following elements:

(a) the statement on origin;

(b) the identity of the customs authority issuing the request;

(c) the name of the exporter;

(d) the subject and scope of the verification; and

(e) where applicable, any relevant documentation.

4. The customs authority of the exporting Party may, in accordance with its law, request documentation or examination by calling for any evidence, or by visiting the premises of the exporter, to review records and observe the facilities used in the production of the product.

5. Without prejudice to paragraph 6, the customs authority of the exporting Party receiving the request referred to in paragraph 2 shall provide the customs authority of the importing Party with the following information:

(a) the requested documentation, where available;

(b) an opinion on the originating status of the product;

(c) the description of the product subject to examination and the tariff classification relevant to the application of this Chapter;

(d) a description and explanation of the production process to support the originating status of the product;

(e) information on the manner in which the examination was conducted; and

(f) supporting documentation, where appropriate.

6. The customs authority of the exporting Party shall not provide to the customs authority of the importing Party information referred to in paragraph 5 without the consent of the exporter.

7. Each Party shall notify the other Party of the contact details of its customs authorities and shall notify the other Party of any modification thereof within thirty days after the date of such modification. For the Union, the European Commission shall be responsible for the notifications referred to in this paragraph.

ARTICLE 3.25

Denial of preferential tariff treatment

1. Without prejudice to the requirements in paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if:

(a) within three months after the date of a request for information referred to in Article 3.23(1) (Verification):

(i) no reply is provided by the importer;

(ii) if the claim for preferential tariff treatment is based on a statement on origin, no statement on origin has been provided; or

(iii) if the claim for preferential tariff treatment is based on the importer's knowledge, the information provided by the importer is inadequate to confirm that the product has originating status;

(b) within three months after the date of a request for additional information pursuant to Article 3.23(5) (Verification):

(i) no reply has been provided by the importer; or

(ii) the information provided by the importer is inadequate to confirm that the product has originating status;

(c) within ten months after the date of delivery of a request for information pursuant to Article 3.24(2) (Administrative cooperation):

(i) no reply has been provided by the customs authority of the exporting Party; or

(ii) the information provided by the customs authority of the exporting Party is inadequate to confirm that the product has originating status.

2. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment if the importer fails to comply with requirements of this Chapter other than those relating to the originating status of the products.

3. If the customs authority of the importing Party has sufficient justification to deny preferential tariff treatment under paragraph 1 of this Article, in cases where the customs authority of the exporting Party has provided an opinion pursuant to point (b) of Article 3.24(5) (Administrative cooperation) confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party of its reasons and intention to deny the preferential tariff treatment within two months after the date of receipt of that opinion.

4. If the notification referred to in paragraph 3 has been made, consultations shall be held at the request of either Party, within three months after the date of that notification. The period for consultations may be extended on a case by case basis by mutual agreement between the customs authorities of the Parties. The consultations shall take place in accordance with the procedure set by the Joint Customs Cooperation Committee, unless otherwise agreed between the customs authorities of the Parties.

5. Upon expiry of the period for consultations, if the customs authority of the importing Party cannot confirm that the product is originating, it may deny the preferential tariff treatment if it has sufficient justification for doing so and after having granted the importer the right to be heard. However, when the customs authority of the exporting Party confirms the originating status of the products and provides justification for such conclusion, the customs authority of the importing Party shall not deny preferential tariff treatment to a product on the sole ground that Article 3.24(6) (Administrative cooperation) has been applied.

6. Within two months after the date of its final decision on the originating status of the product, the customs authority of the importing Party shall notify the customs authority of the exporting Party that provided an opinion pursuant to point (b) of Article 3.24(5) (Administrative cooperation) of that final decision.

ARTICLE 3.26

Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of information provided by the other Party or a person of that Party, pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the authorities of the importing Party may only be used for the purposes of this Chapter. A Party may use information collected pursuant to this Chapter in any administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with the requirements set out in this Chapter. A Party shall notify the person or Party that provided the information in advance of such use.

3. Each Party shall ensure that confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of decisions and determinations relating to origin and to customs matters, except with the permission of the person or Party who provided the confidential information. If confidential information is requested for judicial proceedings not relating to origin and customs matters to comply with the law of a Party, and provided that Party notifies the person or Party who provided the information in advance and states the legal requirement for such use, permission of the person or Party who provided the confidential information shall not be required.

ARTICLE 3.27

Administrative measures and sanctions

Each Party shall ensure the effective enforcement of this Chapter. Each Party shall ensure that the competent authorities are able to impose administrative measures, and where appropriate, sanctions, for violations of the obligations under this Chapter in accordance with its law.

SECTION C

FINAL PROVISIONS

ARTICLE 3.28

Ceuta and Melilla

1. For the purposes of this Chapter, the term "Party" does not include Ceuta and Melilla.

2. Products originating in New Zealand, when imported into Ceuta and Melilla, shall in all respects be subject to the same customs regime, including preferential tariff treatment, as that which is applied to products originating in the customs territory of the Union under Protocol 2 of the 1985 Act of Accession[1]. New Zealand shall apply to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime, including preferential tariff treatment, as that which is applied to products imported from and originating in the Union.

3. The rules of origin and origin procedures applicable to New Zealand under this Chapter shall apply in determining the origin of products exported from New Zealand to Ceuta and Melilla. The rules of origin and origin procedures applicable to the Union under this Chapter shall apply in determining the origin of products exported from Ceuta and Melilla to New Zealand.

4. Ceuta and Melilla shall be considered as a single territory.

5. The Spanish customs authorities shall be responsible for the application of this Chapter in Ceuta and Melilla.

[1] OJ EC L 302, 15.11.1985, p. 9.

ARTICLE 3.29

Transitional provisions for products in transit or storage

This Agreement may be applied to products that comply with this Chapter and on the date of entry into force of this Agreement, are either in transit from the exporting Party to the importing Party or under customs control in the importing Party without payment of import duties and taxes, subject to the making of a claim for preferential tariff treatment referred to in Article 3.16 (Claim for preferential tariff treatment) to the customs authority of the importing Party, within 12 months after that date.

ARTICLE 3.30

Joint Customs Cooperation Committee

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The Joint Customs Cooperation Committee, established under the Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters, done at Brussels on 3 July 2017, shall, with respect to this Chapter, have the following functions:

(a) considering possible amendments to this Chapter, including those arising from the review of the Harmonized System;

(b) adopting, by decisions, explanatory notes to facilitate the implementation of this Chapter; and

(c) adopt a decision to establish the consultation procedure referred to in Article 3.25(4) (Denial of preferential tariff treatment).

CHAPTER 4

CUSTOMS AND TRADE FACILITATION

ARTICLE 4.1

Objectives

The objectives of this Chapter are to:

(a) promote trade facilitation for goods traded between the Parties while ensuring effective customs controls, taking into account the evolution of trade practices;

(b) ensure transparency of each Party's laws and regulations relating to the requirements for the import, export and transit of goods and consistency thereof with applicable international standards;

(c) ensure predictable, consistent and non-discriminatory application by each Party of its customs laws and regulations relating to the requirements for the import, export and transit of goods;

(d) promote simplification and modernisation of each Party's customs procedures and practices;

(e) further develop risk management techniques to facilitate legitimate trade while securing the international trade supply chain; and

(f) enhance cooperation between the Parties in the field of customs matters and trade facilitation.

ARTICLE 4.2

Customs cooperation and mutual administrative assistance

1. The competent authorities of the Parties shall cooperate on customs matters in order to ensure that the objectives set out in Article 4.1 (Objectives) are attained.

2. In addition to the CCMAA, the Parties shall develop cooperation, including in the following areas:

(a) exchanging information concerning customs laws and regulations, their implementation, and customs procedures, particularly in the following areas:

(i) the enforcement of intellectual property rights by the customs authorities;

(ii) the facilitation of transit movements and transhipment; and

(iii) relations with the business community;

(b) strengthening their cooperation in the field of customs in international organisations such as the WTO and the World Customs Organization (hereinafter referred to as "WCO");

(c) endeavouring to harmonise their data requirements for import, export and other customs procedures by implementing common standards and data elements in accordance with the WCO Data Model;

(d) exchanging, where relevant and appropriate, through a structured and recurrent communication between customs authorities of the Parties, certain categories of customs-related information for the purposes of improving risk management and the effectiveness of customs controls, targeting high-risk goods and facilitating legitimate trade. Exchanges under this point shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the mutual administrative assistance provisions of the CCMAA;

(e) strengthening their cooperation on risk management techniques, including sharing best practices, and where appropriate, risk information and control results; and

(f) establishing, where relevant and appropriate, mutual recognition of Authorised Economic Operator programmes and customs controls including equivalent trade facilitation measures.

3. Without prejudice to other forms of cooperation envisaged under this Agreement, the customs authorities of the Parties shall cooperate, including through exchange of information, and provide each other with mutual administrative assistance in the matters covered by this Chapter in accordance with the provisions of the CCMAA. Any exchange of information between the Parties under this Chapter shall be *mutatis mutandis* subject to the confidentiality and protection of information set out in Article 17 on mutual administrative assistance in customs matters in the CCMAA as well as any confidentiality and privacy requirements to be agreed by the Parties.

ARTICLE 4.3

Customs provisions and procedures

1. Each Party shall ensure that its customs provisions and procedures are based on:

(a) the international instruments and standards applicable in the area of customs and trade, which each Party has accepted, including the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System, as well as the Framework of Standards to Secure and Facilitate Global Trade and the Customs Data Model of the WCO;

(b) the protection and facilitation of legitimate trade through effective enforcement and compliance with the applicable requirements provided under its law;

(c) customs laws and regulations that are proportionate and non-discriminatory, avoiding unnecessary burdens on economic operators, providing for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensuring safeguards against fraud and illicit or damageable activities; and

(d) rules that ensure that any penalty imposed for breaches of customs laws and regulations is proportionate and non-discriminatory and that the imposition of such penalties does not unduly delay the release of the goods.

2. Each Party should periodically review its customs laws, regulations and procedures. Customs procedures shall also be applied in a manner that is predictable, consistent and transparent.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

(a) simplify and review requirements and formalities wherever possible with a view to ensuring the rapid release and clearance of goods; and

(b) work towards further simplification and standardisation of data and documentation required by customs and other agencies.

ARTICLE 4.4

Release of goods

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

(a) provide for the prompt release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations and, to the extent possible, upon arrival of the goods;

(b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods upon arrival;

(c) allow for the release of goods prior to the final determination of the applicable customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required; and

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

2. Each Party shall, to the extent possible, minimise the documentation required for the release of goods.

3. Each Party shall endeavour to allow for the expeditious release of goods in need of urgent clearance, including outside normal business hours of customs and other relevant authorities.

4. Each Party shall, to the extent possible, adopt or maintain customs procedures that provide for expedited release of certain consignments while maintaining appropriate customs control, including allowing the submission of a single document covering all of the goods in the shipment by, if possible, electronic means.

ARTICLE 4.5

Perishable goods

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

2. To prevent avoidable loss or deterioration of perishable goods, each Party shall give appropriate priority to perishable goods when scheduling and performing any examinations that may be required.

3. In addition to point (a) of Article 4.4(1) (Release of goods), and at the request of the economic operator, each Party shall, where practicable and in accordance with its laws and regulations:

(a) provide for the clearance of a consignment of perishable goods outside the business hours of customs and other relevant authorities; and

(b) allow consignments of perishable goods to be moved to and cleared at the premises of the economic operator.

ARTICLE 4.6

Simplified customs procedures

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

(a) customs declarations containing a reduced set of data or supporting documents; or

(b) periodical customs declarations for the determination and payment of customs duties and taxes covering multiple imports within a given period, after the release of those imported goods.

ARTICLE 4.7

Transit and transhipment

1. Each Party shall ensure the facilitation and effective control of transhipment operations and transit movements through its respective territory.

2. Each Party shall ensure cooperation and coordination between all authorities and agencies concerned in its respective territory to facilitate traffic in transit.

3. Provided all regulatory requirements are met, each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 4.8

Risk management

1. Each Party shall adopt or maintain a risk management system for customs control.

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

3. Each Party shall concentrate customs control and other relevant border controls on high-risk consignments and shall expedite the release of low-risk consignments. Each Party may also select consignments for such controls on a random basis as part of its risk management.

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

ARTICLE 4.9

Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audits to ensure compliance with customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for a post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct a post-clearance audit in a transparent manner. Where a person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

3. The information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

4. The Parties shall, wherever practicable, use the result of a post-clearance audit in applying risk management.

ARTICLE 4.10

Authorised Economic Operators

1. Each Party shall establish or maintain a partnership programme for operators who meet specified criteria (hereinafter referred to as "Authorised Economic Operators").

2. The specified criteria to qualify as an Authorised Economic Operator shall be published and they shall relate to compliance with requirements specified in the Parties' respective laws and regulations or procedures. These criteria may include:

(a) an appropriate record of compliance with customs and other related laws and regulations;

(b) a system of managing records to allow for necessary internal controls;

(c) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(d) supply chain security.

3. The specified criteria to qualify as an Authorised Economic Operator shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and shall allow the participation of SMEs.

4. The Authorised Economic Operator programme shall include specific benefits for an Authorised Economic Operator, such as:

(a) low rate of physical inspections and examinations as appropriate;

(b) priority treatment if selected for control;

(c) rapid release time as appropriate;

(d) deferred payment of duties, taxes, fees and charges;

(e) use of comprehensive guarantees or reduced guarantees;

(f) a single customs declaration for all imports or exports in a given period; and

(g) clearance of goods at the premises of the Authorised Economic Operator or another place authorised by the customs authorities.

5. Notwithstanding paragraphs 1 to 4, a Party may offer the benefits referred to in paragraph 4 through customs procedures generally available to all operators, in which case that Party is not required to establish a separate scheme for Authorised Economic Operators.

6. The Parties may foster cooperation between customs and other government authorities or agencies within a Party in relation to Authorised Economic Operator programmes. This cooperation may be achieved, *inter alia*, by aligning requirements, facilitating access to benefits and minimising unnecessary duplication.

ARTICLE 4.11

Publication and availability of information

1. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner, and as far as possible through the internet, laws, regulations and customs procedures, relating to the requirements for the import, export and transit of goods. This shall include:

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

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

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

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

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

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

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

(h) appeal procedures;

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

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

(k) hours of operation for customs offices; and

(l) relevant notices of an administrative nature.

2. Each Party shall endeavour to make public new laws, regulations and customs procedures, relating to the requirements for the import, export and transit of goods prior to their application, as well as changes to and interpretations thereof.

3. Each Party shall, to the extent possible, ensure there is a reasonable time period between the publication of new or amended laws, regulations and customs procedures, fees or charges and their entry into force.

4. Each Party shall make available, and update as appropriate, the following through the internet:

(a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed to import and export, and for transit;

(b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and

(c) contact information of enquiry points.

5. Each Party shall, subject to its available resources, establish or maintain enquiry points to answer within a reasonable time enquiries of governments, traders and other interested parties on matters covered by paragraph 1. A Party shall not require the payment of a fee for answering enquiries from the other Party.

ARTICLE 4.12

Advance rulings

1. The customs authority of each Party shall issue advance rulings to an applicant setting out the treatment to be accorded to the goods concerned, in accordance with its laws and regulations. Such rulings shall be issued in writing or in electronic format in a time bound manner and shall contain all necessary information. Each Party shall ensure that an advance ruling can be issued to, and used in that Party by, an applicant of the other Party.

2. Advance rulings shall be issued with regard to:

(a) the tariff classification of goods;

(b) the 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, if permitted by a Party's laws and regulations.

3. Advance rulings shall be valid for a period of at least three years from the date of their issuance or some other date if specified in the ruling. The issuing Party may modify or revoke, invalidate or annul an advance ruling if the ruling was based on incorrect, incomplete, false or misleading information, an administrative error or if there is a change in the law, the material facts or the circumstances on which the ruling is based.

4. A Party may refuse to issue an advance ruling if the question raised in the application is the subject of an administrative or judicial review, or if the application does not relate to any intended use of the advance ruling or any intended use of a customs procedure. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. Each Party shall publish, at least:

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

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

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

6. If a Party revokes, modifies, invalidates or annuls an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. A Party may only revoke, modify, invalidate or annul an advance ruling with retroactive effect if the ruling was based on incomplete, incorrect, false or misleading information.

7. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it. The Party may provide that the advance ruling be binding on the applicant.

8. Each Party shall provide, upon written request from the holder, a review of an advance ruling or of a decision to amend, revoke or invalidate it.

9. Each Party shall endeavour to make publicly available information on advance rulings, taking into account the need to protect personal and commercially confidential information.

10. Each Party shall issue an advance ruling without delay, and normally within 150 days after the date of receipt of all necessary information. This period may be extended, in accordance with a Party's laws and regulations, if additional time is needed to ensure that the advance rulings are issued in a correct and uniform manner. In that event, the Party shall inform the applicant of the reason for, and the duration of, the extension.

ARTICLE 4.13

Customs brokers

The customs provisions and procedures of a Party shall not require the mandatory use of customs brokers. Each Party shall notify and publish its measures on the use of customs brokers. Each Party shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

ARTICLE 4.14

Customs valuation

1. Each Party shall determine the customs value of goods in accordance with Part I of the Customs Valuation Agreement. To that end, Part 1 of the Customs Valuation Agreement is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

ARTICLE 4.15

Pre-shipment inspections

A Party shall not require the mandatory use of pre-shipment inspections as defined in the WTO Agreement on Pre-shipment Inspection.

ARTICLE 4.16

Review and appeal

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against administrative actions, rulings and decisions of customs or other competent authorities that affect the import or export of goods or goods in transit.

2. Each Party shall ensure that any person to whom it issues such a ruling or decision or with respect to whom it takes administrative action has access to:

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

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

3. Each Party shall ensure that, in cases where the decision on appeal or review under point (a) of paragraph 2 is not given within the period of time provided for in its laws and regulations or is not given without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to a judicial authority in accordance with that Party's laws and regulations.

4. Each Party shall ensure that the petitioner is provided in writing, including electronically, with the reasons for the administrative decision, so as to enable the petitioner to have recourse to appeal or review procedures where necessary.

ARTICLE 4.17

Engagement with the business community

1. Considering the need for timely and regular consultations with trade representatives on legislative proposals and general procedures related to customs and trade facilitation issues, each Party's customs administration shall hold consultations with that Party's business community.

2. Each Party shall ensure, where possible, that its customs and related requirements and procedures continue to meet the needs of the business community, follow internationally accepted best practices, and remain as least trade-restrictive as possible.

ARTICLE 4.18

Joint Customs Cooperation Committee

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The Joint Customs Cooperation Committee shall, with respect to the Chapters and provisions that fall within its competences pursuant to Article 24.4(1) (Specialised committees) except for Chapter 3 (Rules of origin and origin procedures), have the following functions:

(a) identifying areas for improvement in their implementation and operation; and

(b) seeking appropriate ways and methods to reach mutually agreed solutions with regard to any matters that may arise.

3. The Joint Customs Cooperation Committee may adopt decisions in relation to the areas referred to in Article 4.2(2) (Customs cooperation and mutual administrative assistance), including, where it considers it necessary, for the purposes of implementing points (d) and (f) of paragraph 2 of that Article.

CHAPTER 5

TRADE REMEDIES

SECTION A

GENERAL PROVISIONS

ARTICLE 5.1

Non-application of preferential rules of origin

For the purposes of Sections B (Anti-dumping and countervailing duties) and C (Global safeguard measures), the preferential rules of origin under Chapter 3 (Rules of origin and origin procedures) do not apply.

ARTICLE 5.2

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to Sections B (Anti-dumping and countervailing duties) and C (Global safeguard measures) of this Chapter.

SECTION B

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 5.3

Transparency

1. Trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.

2. Without prejudice to Article 6.5 of the Anti-dumping Agreement and Article 12.4 of the SCM Agreement, each Party shall ensure as soon as possible after any imposition of provisional measures and before a final determination is made, full and meaningful disclosure of all essential facts and considerations on which a decision to apply definitive measures is based. Disclosures shall be made in writing and allow interested parties sufficient time to make their comments.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party shall be granted the possibility to be heard in order to express their views during trade remedy investigations.

ARTICLE 5.4

Consideration of public interest

1. A Party may refrain from applying anti-dumping or countervailing measures on the goods of the other Party if, on the basis of the information made available during the investigation pursuant to the requirements under that Party's laws and regulations, it can be concluded that it is not in the public interest to apply such measures.

2. When making a final determination on the imposition of duties, each Party shall, in accordance with its laws and regulations, take into account information provided by relevant interested parties, which may include the domestic industry, importers and their representative associations, representative users and representative consumer organisations.

ARTICLE 5.5

Lesser duty rule

If a Party imposes an anti-dumping duty on the goods of the other Party, the amount of such duty shall not exceed the margin of dumping. If a duty less than the margin of dumping is adequate to remove the injury to the domestic industry, the Party shall adopt such lesser duty in accordance with its laws and regulations.

SECTION C

GLOBAL SAFEGUARD MEASURES

ARTICLE 5.6

Transparency

1. At the request of the other Party, the Party initiating a global safeguard investigation or intending to apply global safeguard measures shall provide immediately a written notification of all pertinent information leading to the initiation of a global safeguard investigation or the imposition of global safeguard measures, including on provisional findings, if relevant. This is without prejudice to Article 3.2 of the Agreement on Safeguards.

2. Each Party shall endeavour to impose global safeguard measures in a way that least affects trade between the Parties.

3. For the purposes of paragraph 2, if a Party considers that the legal requirements are met for the imposition of definitive safeguard measures, the Party intending to apply such measures shall notify the other Party and shall endeavour to provide adequate opportunity for prior consultations with that Party, with a view to reviewing the information provided under paragraph 1 and exchanging views on the proposed measures before a final decision is adopted.

SECTION D

BILATERAL SAFEGUARD MEASURES

ARTICLE 5.7

Definitions

For the purposes of this Section, the following definitions apply:

(a) "bilateral safeguard measure" means a measure described in Article 5.8 (Application of a bilateral safeguard measure);

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

(c) "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive products;

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

(e) "threat of serious deterioration" means serious deterioration that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent;

(f) "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

(g) "transition period" means a period of seven years starting from the date of entry into force of this Agreement.

ARTICLE 5.8

Application of a bilateral safeguard measure

1. Without prejudice to the Parties' rights and obligations under Section C (Global safeguard measures), if, as a result of the reduction or elimination of a customs duty under this Agreement, a good originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the other Party, that other Party may, during the transition period and only in accordance with the conditions and procedures laid down in this Section, apply a bilateral safeguard measure.

2. Bilateral safeguard measures applied pursuant to paragraph 1 may only consist of:

(a) the suspension of any further reduction of the rate of customs duty on the good concerned in accordance with Chapter 2 (National treatment and market access for goods); or

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

(i) the most-favoured-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied; or

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

ARTICLE 5.9

Standards for a bilateral safeguard measure

1. A bilateral safeguard measure shall not be applied:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy the serious injury, or threat thereof, to the domestic industry or the serious deterioration, or threat thereof, in the economic situation of the outermost region or regions;

(b) for a period exceeding two years; and

(c) beyond the expiration of the transition period.

2. The period referred to in point (b) of paragraph 1 may be extended by one year provided that:

(a) the competent investigating authorities of the importing Party determine, in conformity with the procedures specified in Sub-Section 1 (Procedural rules applicable to bilateral safeguard measures), that the measure continues to be necessary to prevent or remedy the serious injury, or threat thereof, to the domestic industry or the serious deterioration, or threat thereof, in the economic situation of the outermost region or regions; and

(b) there is evidence that the domestic industry is adjusting and the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed three years.

3. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good concerned, in accordance with Annex 2-A (Tariff elimination schedules).

4. A bilateral safeguard measure shall not be applied to the import of a particular good of a Party which has already been subject to such a bilateral safeguard measure for a period of time equal to half of the duration of the previous bilateral safeguard measure.

5. A Party shall not apply on the same good and at the same time:

(a) a bilateral safeguard measure, a provisional bilateral safeguard measure or an outermost regions safeguard measure pursuant to this Agreement; and

(b) a safeguard measure pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards.

ARTICLE 5.10

Provisional bilateral safeguard measures

1. In critical circumstances, where delay would cause damage that would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, pursuant to a preliminary determination that there is clear evidence that imports of a good originating in the other Party have increased as a result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause serious injury, or threat thereof, to the domestic industry or serious deterioration, or threat thereof, in the economic situation of the outermost region or regions.

2. The duration of any provisional bilateral safeguard measure shall not exceed 200 days. During this period, the Party shall comply with the relevant procedural rules laid down in Sub-Section 1 (Procedural rules applicable to bilateral safeguard measures).

3. The customs duty imposed as a result of the provisional bilateral safeguard measure shall promptly be refunded if the subsequent investigation referred to in Sub-Section 1 (Procedural rules applicable to bilateral safeguard measures) does not determine that the increased imports of the good subject to the provisional bilateral safeguard measure cause serious injury, or threat thereof, to the domestic industry or serious deterioration, or threat thereof, in the economic situation of the outermost region or regions.

4. The duration of any provisional bilateral safeguard measure shall be counted as part of the period laid down in point (b) of Article 5.9(1) (Standards for a bilateral safeguard measures).

5. The Party applying a provisional bilateral safeguard measure shall inform the other Party immediately upon applying such provisional bilateral safeguard measures.

6. At the request of the other Party, consultations shall be held immediately after the application of the provisional bilateral safeguard measure.

ARTICLE 5.11

Outermost regions

1. Where any product originating in New Zealand is being directly imported into the territory of one or several outermost regions[1] of the Union in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region or regions concerned, the Union, after having examined alternative solutions, may exceptionally apply bilateral safeguard measures limited to the territory of the region or regions concerned.

[1] On the date of entry into force of this Agreement, the outermost regions of the Union are Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, St. Martin, the Azores, Madeira and the Canary Islands. This Article shall also apply to a country or an overseas territory that changes its status to an outermost region by a decision of the European Council in accordance with the procedure set out in Article 355(6) of the TFEU from the date of adoption of that decision. In the event that an outermost region of the Union changes its status as such by the same procedure, this Article shall cease to be applicable from the European Council's decision accordingly. The Union shall notify New Zealand of any change as to the territories considered as outermost regions of the Union.

2. For the purposes of paragraph 1, the determination of serious deterioration shall be based on objective factors, including the following elements:

(a) the increase in the volume of imports in absolute or relative terms to the domestic production and to the imports from other sources; and

(b) the effect of such imports on the situation of the relevant industry or the economic sector concerned, including on the levels of sales, production, financial situation and employment;

3. Without prejudice to paragraph 1, this Section applies to any safeguard measure adopted under this Article, *mutatis mutandis*.

ARTICLE 5.12

Compensation and suspension of concessions

1. No later than 30 days after the date of the application of the bilateral safeguard measure, the Party applying that measure shall provide an opportunity for consultations with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the first day of the consultations, the Party to whose originating good the safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

3. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall apply only as long as the bilateral safeguard measure is maintained.

4. Notwithstanding paragraph 3, the right of suspension referred to in that paragraph shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and provided that the safeguard measure conforms to this Agreement.

SUB-SECTION 1

PROCEDURAL RULES APPLICABLE TO BILATERAL SAFEGUARD MEASURES

ARTICLE 5.13

Applicable law

This Sub-Section applies to bilateral safeguard measures covered by Section D (Bilateral safeguard measures) and applied by the competent investigating authority of a Party. In cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under its domestic legislation provided that those rules are in conformity with the provisions of this Section.

ARTICLE 5.14

Investigation procedures

1. A Party shall apply a bilateral safeguard measure only after an investigation has been carried out by its competent investigating authorities in accordance with Article 3 and points (a) and (c) of Article 4.2 of the Agreement on Safeguards. To that end, Article 3 and points (a) and (c) of Article 4.2 of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In order to apply a bilateral safeguard measure, the competent investigating authority shall demonstrate on the basis of objective evidence, the existence of a causal link between the increased imports of the product concerned and the serious injury or threat thereof. The competent investigating authority shall also examine known factors other than the increased imports to ensure that the injury caused by these other factors is not attributed to the increased imports.

3. The investigation shall in all cases be completed within one year after the date of its initiation.

ARTICLE 5.15

Notification and consultation

1. A Party shall promptly notify the other Party in writing if it:

(a) initiates a bilateral safeguard investigation under this Chapter;

(b) determines that the increased imports cause serious injury, or threat thereof, or serious deterioration, or threat thereof, in the economic situation of the outermost regions;

(c) decides to apply a provisional bilateral safeguard measure, or to apply or extend a bilateral safeguard measure; or

(d) decides to modify a bilateral safeguard measure previously adopted.

2. A Party shall provide to the other Party a copy of the public version of the complaint and the report of its competent investigating authorities that is required under Article 3 of the Agreement on Safeguards.

3. When a Party notifies the other Party pursuant to point (c) of paragraph 1 that it is applying or extending a bilateral safeguard measure, that Party shall include in its notification all pertinent information, such as:

(a) evidence that, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, the increased imports of the good of the other Party are causing serious injury, or threat thereof, to the domestic industry or serious deterioration, or threat thereof, in the economic situation of the outermost region or regions;

(b) a precise description of the good subject to the bilateral safeguard measure including its heading or subheading under the HS, on which Annex 2-A (Tariff elimination schedules) is based;

(c) a precise description of the bilateral safeguard measure;

(d) the date of application of the bilateral safeguard measure, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and

(e) in the case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of the Party whose good is subject to a bilateral safeguard proceeding under this Chapter, the Party that conducts that proceeding shall provide adequate opportunity for consultations with the requesting Party before a final decision to apply safeguard measures is taken, with a view to reviewing a notification provided under paragraph 1 or any public notice or report that the competent investigating authority issued in connection with the proceeding, and exchanging views on the proposed measure and reaching an understanding on compensations provided for in Article 5.12 (Compensation and suspension of concessions).

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Objectives and general provisions

1. The objectives of this Chapter are to:

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

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

(c) facilitate implementation of the SPS Agreement, international standards and related texts, and in particular, regionalisation and equivalence;

(d) maintain cooperation in international standard-setting bodies;

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

(f) enhance cooperation between and recognise the common objectives of the Parties to combat antimicrobial resistance (hereinafter referred to as "AMR"); and

(g) enhance communication, cooperation and resolution of sanitary and phytosanitary issues that may affect trade between the Parties.

2. In respect of the SPS Agreement, the Parties recall in particular:

(a) the principle that a Party's SPS measures are based on a risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement; and

(b) the concept of provisional SPS measures.

ARTICLE 6.2

Scope

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

2. Subject to paragraph 3, this Chapter applies:

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

(b) to cooperation on AMR.

3. This Chapter does not apply to any measure of a Party or matters covered by the Sanitary Agreement.

ARTICLE 6.3

Definitions

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

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

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

(c) the definitions adopted under the auspices of the World Organisation for Animal Health (hereinafter referred to as the "WOAH");

(d) the definitions adopted under the auspices of the International Plant Protection Convention (hereinafter referred to as the "IPPC");

(e) "competent authority" means a governmental body listed in Annex 6-A (Competent authorities) and includes the relevant national plant protection organisations; and

(f) "import check" means an assessment that may include inspection, examination, sampling, review of documentation, tests or procedures, including laboratory, organoleptic or identity, conducted at the border of an importing Party by the competent authority of the importing Party to determine if a consignment complies with the SPS requirements of the importing Party.

ARTICLE 6.4

Specific plant health related conditions

1. In accordance with applicable standards agreed under the IPPC, the Parties shall exchange information on their pest status in their respective territories. At the request of a Party, the other Party shall provide the justification for the pest categorisation and related phytosanitary measures.

2. In relation to pest categorisation, each Party shall establish and update a list of regulated pests for plants and plant products for which a phytosanitary concern exists. The list shall contain:

(a) the quarantine pests not present within any part of its territory;

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

(c) protected zone quarantine pests; and

(d) where applicable, regulated non-quarantine pests.

3. Each Party shall limit its import requirements for plants or plant products to those needed to mitigate against the risks of the introduction of regulated pests. Import requirements to mitigate the risk from protected zone quarantine pests shall not apply unless the destination of any plants or plant products is known to be within a protected zone.

4. Pre-export inspection by the importing Party's national plant protection organisation should not be a requirement by the importing Party, where inspection of plants or plant products is within the scope of the exporting Party's national plant protection organisation.

ARTICLE 6.5

Recognition of pest freedom

Where regionalisation is defined with respect to a pest free area, pest free place of production, pest free production site, or a protected zone in the plants and plant products sector:

(a) the Parties recognise the concepts of pest free areas, pest free places of production and pest free production sites as specified in relevant IPPC International Standards for Phytosanitary Measures ("ISPMs");

(b) the Parties shall accept each other's:

(i) pest free areas, pest free places of production and pest free production sites; and

(ii) official controls in the establishment and maintenance of pest free areas, pest free places of production and pest free production sites;

(c) New Zealand shall recognise the concept of protected zones within the territory of the Union as equivalent to a pest free area as specified in IPPC ISPM 4 ("Requirements for the establishment of pest free areas");

(d) the exporting Party, if requested by the importing Party, shall identify pest free areas, pest free places of production, pest free production sites and protected zones, and, if requested by the importing Party, provide a full explanation and supporting data as provided for in the relevant ISPMs or as otherwise deemed appropriate; and

(e) the Trade Committee may adopt a decision to amend Annex 6-B (Regional conditions for plants and plant products) to set out any other matter that may pertain to regionalisation or to specify any appropriate risk-based special conditions.

ARTICLE 6.6

Equivalence

1. The Parties acknowledge that recognition of equivalence is an important means to facilitate trade.

2. In determining the equivalence of a specific SPS measure, group of measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as "WTO SPS Committee") and international standards, guidelines and recommendations. The Trade Committee may adopt a decision to set out further guidance and procedures to determine, recognise and maintain equivalence in Annex 6-C (Equivalence recognition of SPS measures).

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

4. The importing Party shall recognise the equivalence of an SPS measure if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection (hereinafter referred to as "ALOP") in relation to human, animal or plant health.

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

6. Without prejudice to Article 6.8(6) (Certification), the Trade Committee may adopt a decision to amend Annex 6-C (Equivalence recognition of SPS measures) in order to:

(a) set out the exporting Party's commodity types which the importing Party recognises as being covered by an SPS measure equivalent to its own or set out the exporting Party's official controls which the importing Party recognises as equivalent to its own; and

(b) specify any appropriate risk-based special conditions or any agreed pest or disease status.

7. If a Party amends an SPS measure in a way that it considers does not affect an equivalence determination specified in this Chapter, the determination shall be applicable to the most recent version of the relevant law or regulation amending the SPS measure.

8. If a Party considers that a previous equivalence determination is affected, it shall notify the other Party of that.

9. If an importing Party amends an SPS measure and considers an equivalence determination specified in this Chapter may be affected it shall:

(a) objectively consider whether the previous determination is no longer sufficient to meet its ALOP; and

(b) consult with the exporting Party and then decide whether the determination may continue with or without any special conditions.

ARTICLE 6.7

Trade conditions and approval procedures

1. The importing Party shall make publicly available its phytosanitary import health requirements and the procedures used to establish those requirements.

2. If the Parties jointly identify a specific plant or plant product as a priority, the importing Party shall establish specific import requirements for that product without undue delay other than in duly justified circumstances.

3. Where an import request is received in relation to a specific plant or plant product which has previously been approved for import from the exporting Party, the importing Party shall assess the risk profile and, if determined to be the same, complete the approval procedure without undue delay, other than in duly justified circumstances.

4. Each Party shall ensure that procedures used to approve imports from the other Party are undertaken and completed without undue delay including, if needed, audits and the necessary legislative or administrative measures to complete the approval procedure. Each Party shall in particular avoid unnecessary or unduly burdensome information requests, which shall be limited to what is necessary and take into account information already available to the importing Party, such as information on the applicable laws and regulations and audit reports of the exporting Party.

5. Except as provided for in Article 6.5 (Recognition of pest freedom), each Party shall apply its phytosanitary import conditions to the entire territory of the other Party where the same pest status prevails.

6. Without prejudice to Article 6.10 (Emergency measures), each Party shall recognise as equivalent the official controls applied by the other Party for trade provided that from the date of entry into force of this Agreement, there are no significant changes in the official control systems of the exporting Party that would lower the level of assurance to the importing Party.

7. Without prejudice to Article 6.10 (Emergency measures), the importing Party shall not refuse or stop the importation of a good of the exporting Party solely for the reason that the importing Party is undertaking a review of its SPS measures, if the importing Party permitted the importation of that good from the other Party when the review was initiated.

8. The Parties shall, without any subsequent approval processes, accept each other's lists of establishments that are subject to SPS measures for trade.

9. Each Party shall make the lists of establishments referred to in paragraph 8 available to one another on request.

ARTICLE 6.8

Certification

1. In respect of health certification for plants and plant products the competent authorities shall apply the principles laid down in the IPPC ISPM 7 ("Export Certification System") and ISPM 12 ("Guidelines for Phytosanitary Certificates").

2. Each Party shall promote the implementation of electronic certification and other technologies to facilitate trade.

3. Without prejudice to Article 6.2 (Scope) and 6.10 (Emergency measures), food safety certification shall not be required for processed foods covered by this Chapter unless supported by a risk analysis.

4. The Trade Committee may adopt a decision to amend Annex 6-E (Certification) in order to specify further guidance, procedures and requirements in relation to certification.

5. If the importing Party has accepted a commodity SPS measure of the exporting Party as equivalent to its own, the exporting Party may include the model health attestation set out in Section 1 of Annex 6-E (Certification) on the official health certificate.

6. If an importing Party has, in accordance with Article 6.6(7) or Article 6.6(8) (Equivalence), determined that equivalence is maintained, the import health certificate provided for in Annex 6-E (Certification) shall, where practicable and if applicable, state the importing Party's parent laws or regulations.

7. If an importing Party determines that a special condition included in Annex 6-C (Equivalence recognition of SPS measures) is no longer necessary, guarantees to that special condition shall no longer be required and the Trade Committee shall adopt a decision to amend Annex 6-C (Equivalence recognition of SPS measures) accordingly within a reasonable period of time.

ARTICLE 6.9

Transparency, information exchange and technical consultation

1. The Parties shall promptly inform each other of any significant:

(a) findings of epidemiological importance that may relate to a product being traded between the Parties;

(b) food safety matters related to a product being traded between the Parties; or

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

2. If the information referred to in paragraph 1 has been made available through a notification to the WTO or to the relevant international standard-setting body in accordance with their rules, or on a publicly accessible website of a Party, the requirement in paragraph 1 shall be deemed to have been fulfilled.

3. If either Party has a serious concern with respect to a SPS risk, technical consultations regarding that situation shall, on request, take place as soon as possible and in any case within 14 days after the date of delivery of the request.

4. If a Party has a significant concern with a SPS measure that the other Party has proposed or implemented, that Party may request technical consultations with the other Party. The Party to which the request is addressed shall respond within 30 days after the date of delivery of the request.

5. With respect to paragraphs 3 and 4, each Party shall endeavour to provide all the information necessary to avoid a disruption in trade and to enable the Parties to reach a mutually acceptable solution that effectively manages any SPS risk.

6. The Parties shall seek to resolve any concerns arising from the implementation of this Chapter through technical consultations[1] pursuant to this Article prior to initiating dispute settlement pursuant to Chapter 26 (Dispute settlement).

ARTICLE 6.10

Emergency measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, the competent authority of the Party shall notify the competent authority of the other Party within 24 hours. If a Party requests technical consultations to address the emergency SPS measure, the technical consultations shall be held within 14 days after the date of delivery of the notification of the emergency SPS measure. The Parties shall consider any information provided through the technical consultations.

2. The Party applying the emergency measure shall consider any information provided in a timely manner by the exporting Party when it makes its decision with respect to any consignment that, at the time of adoption of the emergency SPS measure, is being transported between the Parties.

[1] For greater certainty, technical consultations under this Article shall not replace consultations under Article 26.3 (Consultations) unless the Parties agree otherwise.

3. Where an emergency measure seriously disrupts or suspends trade, the importing Party shall as soon as practically possible revoke that measure or provide relevant scientific and technical justification for its continuation.

ARTICLE 6.11

Audits

1. For the purpose of maintaining confidence in the implementation of this Chapter, each Party has the right to carry out a systems-based audit of all, or part of, the control system of the competent authority of the other Party to determine that it is functioning as intended.

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

3. Any decision or action taken by the auditing Party that may adversely affect trade as a result of the audit shall take into account and be proportionate to:

(a) the risk assessed, supported by objective evidence and data that can be verified; and

(b) the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party.

4. The auditing Party shall provide objective evidence and data to the audited Party on request.

5. The auditing Party shall bear its own costs associated with the audits.

6. Each Party shall ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during an audit of the other Party's competent authorities, including procedures to remove any confidential information from a final audit report that is made publicly available.

7. The auditing Party shall consider any comments on the report by the audited Party and shall determine whether the report or part of it is made publicly available or is made available in a more limited way.

8. The Trade Committee may adopt a decision to amend Annex 6-D (Guidelines and procedures for an audit or verification) in order to establish or specify audit guidelines and procedures.

ARTICLE 6.12

Import checks and fees

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

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

3. The competent authority of the importing Party shall notify the competent authority of the exporting Party when any non-compliance constitutes a serious risk to human, animal or plant health.

4. The competent authority of the importing Party shall notify the importer or its representative of a non-compliant consignment including the reason for non-compliance, and provide them with an opportunity for a review of the decision. The competent authority of the importing Party shall consider any relevant information submitted to assist in the review.

5. Any fees imposed for procedures on imported products shall not be higher than any fees charged for comparable checks of like domestic products and not higher than the actual cost of the service.

6. The Trade Committee may adopt a decision to amend Annex 6-F (Import checks and fees) in order to set out frequency rates and fees for import checks for certain commodities within the scope of this Chapter.

ARTICLE 6.13

Scientific robustness and transparency in specified authorisation[1] processes

1. The Parties recognise that authorisation processes shall be based on robust science and conducted in a transparent manner so as to build and maintain public trust and confidence. The Parties shall cooperate on increasing the robustness and transparency of these processes.

2. The Parties acknowledge that their respective authorisation processes are intended to provide comparable outcomes and that cooperation in this area is desirable.

3. If a person responsible for ensuring that the requirements for obtaining marketing authorisation are met by the business under its control commissions scientific studies in a scientific institution[2] located in a Party with a view to support an application for authorisation in the context of certain specified authorisation processes in the other Party, and this is brought to the attention of the Party in which the scientific institution is located, both Parties shall endeavour to share such information with each other.

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1 Authorisation processes under this Article cover all pre-market authorisations in the area of the food chain: i.e. cultivation of genetically modified organisms/genetically modified food and feed, feed additives, food additives/enzymes/flavourings, smoke flavourings, plant protection products, novel foods, food contact materials, health claims, and addition of vitamins and minerals and other substances to foods.

2 For the purposes of this Article, "scientific institution" includes institutions which carry out scientific studies for a fee, for example, universities, laboratories, and testing or research facilities.

4. The Parties may also exchange information on their authorisation processes.

5. A Party may request a fact-finding visit under this Article to a scientific institution located in the other Party to collect information concerning the application of relevant standards by the scientific institution when it conducts a scientific study for the purposes of certain specified authorisation processes in the Party which requests a fact-finding visit.

6. If a Party seeks to conduct a fact-finding visit, it shall notify the other Party no later than 60 days before such visit.

7. If a Party seeks to conduct a fact-finding visit and the scientific institution agrees to such visit, officials of the other Party may accompany the officials of the visiting Party during the visit.

8. The final report of any fact-finding visit shall be made available to the competent authorities of both Parties. The relevant portions of the final report shall also be made available to the scientific institution that was visited.

9. The costs of any such fact-finding visit shall be borne by the Party that requests a fact-finding visit.

10. The Trade Committee may adopt a decision to establish detailed implementing rules and any necessary guidance with respect to paragraphs 3 to 9.

ARTICLE 6.14

Antimicrobial resistance

1. The Parties recognise that AMR is a serious threat to human and animal health.

2. The Parties shall, in accordance with the One Health approach, cooperate and facilitate the exchange of information, including with respect to regulations, guidelines, national plans, standards, expertise and experiences in the field of AMR, and identify common views, interests, priorities and policies in that area.

3. The Parties acknowledge that:

(a) their respective antimicrobial regulatory standards, guidelines and surveillance systems deliver comparable controls and health outcomes;

(b) antimicrobial agents that are critical to human and animal treatment and health are a core focus of their respective AMR strategies; and

(c) initiatives are taken on both sides, within their respective strategies and policies, to promote the phasing out of the use of antibiotic agents as growth promoters, in particular those of medical importance, and to reduce the use of antimicrobial agents in animal production.

4. Furthermore, the Parties shall:

(a) cooperate in relevant international fora on the development of future codes, guidelines, standards, recommendations and initiatives;

(b) cooperate on international action plans, especially with regard to responsible and prudent use of antimicrobial agents in order to combat AMR more effectively; and

(c) within the context of their respective strategies and policies support the implementation of agreed international action plans and strategies on AMR.

5. Any regulations, guidelines, strategic plans, standards and other initiatives on AMR shall not be used to create or implement measures affecting trade unless those measures are consistent with the SPS Agreement and relevant provisions of this Chapter.

6. The SPS Committee may establish a technical Working Group on AMR.

ARTICLE 6.15

Fraud in traded commodities

1. The Parties recognise that fraudulent activities by commercial operators engaged in international trade may:

(a) affect the health of humans, animals, plants and consequentially the environment; and

(b) undermine fair commercial practice and consumer confidence.

2. The Parties shall exchange relevant information and cooperate to deter practices that are, or appear to be, non-compliant with their respective SPS measures or that mislead consumers and other relevant stakeholders.

ARTICLE 6.16

Implementation and resources

Each Party shall ensure that its competent authorities have the necessary resources to effectively implement this Chapter.

ARTICLE 6.17

Committee on Sanitary and Phytosanitary Measures

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The Committee on Sanitary and Phytosanitary Measures shall, with respect to this Chapter, have the following functions:

(a) provide a forum to exchange information on each Party's regulatory system including the scientific and risk assessment basis for its SPS measures;

(b) identify opportunities for cooperation, including trade facilitation initiatives and further work on eliminating unnecessary barriers to trade between the Parties;

(c) promote cooperation in multilateral fora, including in the WTO SPS Committee and international standard-setting bodies, as appropriate;

(d) establish ad hoc working groups;

(e) provide a forum for the Parties to update each other at an early stage on regulatory considerations related to SPS measures;

(f) without prejudice to Chapter 26 (Dispute settlement), serve as a forum to resolve specific trade concerns where the Parties have been unable to reach a mutually acceptable solution through technical consultations pursuant to Article 6.9 (Transparency, Information Exchange and Technical Consultation);

(g) take any other action in the exercise of its functions as the Parties may agree; and

(h) consider any other matter related to this Chapter.

3. Unless the Parties decide otherwise, the Committee shall meet and establish its work programme no later than one year after the date of entry into force of this Agreement.

CHAPTER 7

SUSTAINABLE FOOD SYSTEMS

ARTICLE 7.1

Objectives

1. The Parties, recognising the importance of strengthening policies and defining programmes that contribute to the development of sustainable, inclusive, healthy, and resilient food systems, agree to establish close cooperation to jointly engage in the transition towards sustainable food systems.

2. This Chapter applies in addition to, and without prejudice to, the other Chapters of this Agreement related to food systems or to sustainability, in particular Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 9 (Technical Barriers to Trade) and Chapter 19 (Trade and Sustainable Development).

ARTICLE 7.2

Scope

1. This Chapter applies to the cooperation between the Parties to improve the sustainability of their respective food systems.

2. This Chapter sets out provisions for cooperation in areas which can achieve more sustainable food systems ("SFS"). Indicative areas for cooperation are listed in Article 7.4 (Cooperation to improve the sustainability of food systems).

3. The Parties recognise that priorities for cooperation may change over time as their respective understandings and the international understanding and treatment of food systems develop.

ARTICLE 7.3

Definition

1. The Parties recognise that food systems are diverse and context-specific, encompassing a range of actors and their interlinked activities across all areas of the food system, including the production, harvesting, processing, manufacturing, transport, storage, distribution, sale, consumption and disposal of food products.

2. For the purposes of this Chapter, and acknowledging that definitions of SFS can evolve over time, the Parties consider SFS to be food systems which ensure access to safe, nutritious and sufficient food all year round in such a way that the economic, social, cultural and environmental bases to generate food security and nutrition for future generations are not compromised.

ARTICLE 7.4

Cooperation to improve the sustainability of food systems

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter as they strengthen their trade and investment relations.

2. Taking account of their respective priorities and circumstances, the Parties shall cooperate to address matters of common interest related to the implementation of this Chapter. Such cooperation may take place bilaterally as well as in international fora.

3. Cooperation may include exchange of information, expertise and experiences, as well as cooperation in research and innovation.

4. The Parties shall cooperate on topics which may include:

(a) food production methods and practices which aim to improve sustainability, including organic farming and regenerative agriculture, amongst others;

(b) the efficient use of natural resources and agricultural inputs, including reducing the use and risk of chemical pesticides and fertilisers, where appropriate;

(c) the environmental and climate impacts of food production, including on agricultural greenhouse gas emissions, carbon sinks and biodiversity loss;

(d) contingency plans to ensure the security and resilience of food supply chains and trade in times of international crisis;

(e) sustainable food processing, transport, wholesale, retail and food services;

(f) healthy, sustainable and nutritious diets;

(g) the carbon footprint of consumption;

(h) food loss and waste, in line with the Sustainable Development Goals Target 12.3;

(i) reduction of the adverse environmental effects of policies and measures linked to the food system; and

(j) indigenous knowledge, participation and leadership in food systems, in line with the Parties' respective circumstances.

ARTICLE 7.5

Additional provisions

1. The cooperation activities under this Chapter shall not affect the independence of each Party's agencies, including a Party's regional agencies.

2. Fully respecting each Party's right to regulate, nothing in this Chapter shall be construed to oblige a Party to:

(a) modify its import requirements;

(b) deviate from its procedures for preparing or adopting regulatory measures;

(c) take action that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(d) adopt any particular regulatory measure.

ARTICLE 7.6

The Committee on Sustainable Food Systems

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The Committee on Sustainable Food Systems shall, with respect to this Chapter, have the following functions:

(a) establishing priorities for cooperation and work plans to implement those priorities;

(b) promoting cooperation in multilateral fora; and

(c) performing any other functions relating to the implementation or operation of this Chapter.

3. In pursuing the objectives of this Chapter, and to monitor the results obtained from its implementation, the Committee on Sustainable Food Systems shall establish each year an annual work plan including actions with objectives and milestones for those actions.

4. When appropriate, the Committee on Sustainable Food Systems may establish working groups consisting of expert-level representatives of each Party.

5. The Committee on Sustainable Food Systems shall meet within one year after the date of entry into force of this Agreement and thereafter as mutually agreed.

6. The Committee on Sustainable Food Systems may establish rules mitigating potential conflicts of interest for the experts that may participate in its meetings and those of any working group reporting to it.

ARTICLE 7.7

Contact points

Within 90 days after the date of entry into force of this Agreement, each Party shall designate a contact point to facilitate the communication between the Parties and notify the other Party of the contact details for the contact point. Each Party shall notify the other Party promptly in the event of any change of those contact details.

CHAPTER 8

ANIMAL WELFARE

ARTICLE 8.1

Objective

The objective of this Chapter is to enhance cooperation between the Parties on animal welfare of farmed animals with a view to facilitating trade between the Parties.

ARTICLE 8.2

General provisions and cooperation

1. The Parties recognise that animals are sentient beings.[1]

2. The Parties acknowledge that their farming practices are substantively different but recognise that their respective animal welfare standards and associated systems provide comparable animal welfare outcomes.

3. The Parties shall make best endeavours to cooperate in international fora to promote the development and implementation of science-based animal welfare standards. In particular, the Parties shall cooperate to reinforce and broaden the scope of the World Organisation for Animal Health animal welfare standards, as well as their implementation, with a focus on farmed animals.

4. The Parties shall exchange information, expertise and experiences in the field of animal welfare related to the treatment of animals on the farm, during transport and at slaughter or killing.

5. The Parties shall continue to cooperate on research in the area of animal welfare to facilitate the development of science-based animal welfare standards related to the treatment of animals on the farm, during transport and at slaughter or killing.

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

ARTICLE 8.3

Technical working group on animal welfare

The Parties hereby establish a technical working group on animal welfare. The working group shall report to and undertake activities specified by the Committee on Sanitary and Phytosanitary Measures.

CHAPTER 9

TECHNICAL BARRIERS TO TRADE

ARTICLE 9.1

Objectives

The objectives of this Chapter are to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade, and to enhance cooperation between the Parties in matters covered by this Chapter.

ARTICLE 9.2

Scope

1. This Chapter applies to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures as defined in Annex 1 to the TBT Agreement that may affect trade in goods between the Parties.

2. This Chapter does not apply to:

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of bodies to which Chapter 14 (Public procurement) applies; or

(b) SPS measures as defined in Annex A to the SPS Agreement to which Chapter 6 (Sanitary and phytosanitary measures) applies.

ARTICLE 9.3

Relation to the TBT Agreement

1. Articles 2 to 9 of and Annexes 1 and 3 to the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Terms referred to in this Chapter, including in the Annexes to this Chapter, shall have the same meaning as they have in the TBT Agreement.

ARTICLE 9.4

Technical regulations

1. Further to Article 22.8 (Impact assessment), each Party shall endeavour to carry out an impact assessment of planned technical regulations falling within the scope of regulatory measures as defined in Article 22.2 (Definitions), that may have a significant impact on trade, in accordance with its rules and procedures. For greater certainty, this paragraph also applies to conformity assessment procedures that are part of such technical regulations.

2. If an impact assessment is carried out pursuant to paragraph 1, then, further to point (b) of Article 22.8(2) (Impact Assessment), each Party shall assess the feasible and appropriate regulatory and non-regulatory options for the proposed technical regulation that may fulfil the Party's legitimate objectives in accordance with Article 2.2 of the TBT Agreement. For greater certainty, this obligation also applies to conformity assessment procedures that are part of such technical regulations.

3. Further to Articles 2.3 and 2.4 of the TBT Agreement, each Party shall review its technical regulations from time to time. In undertaking this review, each Party shall, *inter alia*, give positive consideration to increasing convergence with relevant international standards, taking into account any new development as regards the relevant international standards and whether previous circumstances that gave rise to divergences from any relevant international standard continue to exist.

4. Without prejudice to Chapter 22 (Good regulatory practices and regulatory cooperation), when developing major technical regulations that may have a significant effect on trade, each Party shall, as required by its rules and procedures, allow persons of the Parties to provide input through a public consultation process, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Each Party shall allow persons of the other Party to participate in such consultations on terms no less favourable than those accorded to its own persons, and shall make the results of that consultation process public.

ARTICLE 9.5

International standards

1. International standards developed by the International Organization for Standardization ("ISO"), the International Electrotechnical Commission ("IEC"), the International Telecommunication Union ("ITU"), and the Codex Alimentarius Commission ("Codex") shall be considered as the relevant international standards within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement provided that they comply with the conditions set out in paragraph 2.

2. A standard developed by an international organisation, other than those referred to in paragraph 1, may also be considered a relevant international standard within the meaning of Article 2, Article 5 and Annex 3 to the TBT Agreement, provided that:

(a) it has been developed by a standardisation body which seeks to establish consensus either:

(i) among national delegations of the participating WTO Members representing all the national standards bodies in their territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardisation activity relates; or

(ii) among governmental bodies of participating WTO Members; and

(b) it has been developed in accordance with the Decision of the Committee on Technical Barriers to Trade established by Article 13 of the TBT Agreement on Principles for the Development of International Standards, Guides and Recommendations in relation to Article 2, Article 5 and Annex 3 of the TBT Agreement.

3. If a Party has not used international standards as a basis for its technical regulations and related conformity assessment procedures, a Party shall, on request from the other Party, identify any substantial deviation from the relevant international standard and explain the reasons why such standards have been judged inappropriate or ineffective for the aim pursued, and provide the evidence on which that assessment is based, where available.

ARTICLE 9.6

Standards

1. With a view to harmonising standards on as wide a basis as possible, and in addition to Article 4.1 of the TBT Agreement, each Party shall encourage the standardising bodies within its territory, as well as the regional standardising bodies of which a Party or the standardising bodies within its territory are members, to:

(a) review national and regional standards that are not based on relevant international standards at regular intervals, with a view to increasing the convergence of those standards with relevant international standards, among other considerations;

(b) cooperate with the relevant standardisation bodies of the other Party in international standardisation activities, including through cooperation in the international standardisation bodies or at regional level; and

(c) foster bilateral cooperation with the standardisation bodies of the other Party.

2. The Parties should exchange information on:

(a) their respective use of standards in support of technical regulations; and

(b) their respective standardisation processes, and the extent of use of international standards, regional or sub-regional standards as a base for their national standards.

3. If standards are made mandatory through incorporation or by reference in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 9.8 (Transparency) of this Chapter and in Article 2 or Article 5 of the TBT Agreement shall apply, to the extent permitted by applicable copyright.

ARTICLE 9.7

Conformity assessment

1. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

(a) select conformity assessment procedures proportionate to the risks involved;

(b) accept the use of a Supplier's Declaration of Conformity (hereinafter referred to as "SDoC"), where appropriate; and

(c) if requested by the other Party, explain the rationale for selecting particular conformity assessment procedures for specific products.

2. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures. Such mechanisms may include:

(a) SDoC;

(b) recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;

(c) cooperative and voluntary arrangements between conformity assessment bodies located in the territories of the Parties;

(d) mutual recognition agreements for the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;

(e) use of accreditation to qualify conformity assessment bodies; and

(f) government designation of conformity assessment bodies.

3. If a Party requires third-party conformity assessment as a positive assurance that a product conforms with a technical regulation, and it has not reserved this task to a governmental authority as specified in paragraph 4, it shall:

(a) give preference to the use of accreditation to qualify conformity assessment bodies;

(b) use international standards for accreditation and conformity assessment;

(c) where practicable, use international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation ("ILAC") and the International Accreditation Forum ("IAF");

(d) encourage the use of functioning international agreements or arrangements for harmonisation, or facilitation of acceptance of conformity assessment results;

(e) ensure that its rules and procedures do not unnecessarily restrict choice for economic operators amongst the conformity assessment bodies designated by its authorities for a particular product or set of products;

(f) ensure that the activities of its accreditation bodies are consistent with international standards for accreditation and, in that respect, that there are no conflicts of interest between accreditation bodies and conformity assessment bodies in relation to their conformance activities, including personnel;

(g) ensure that conformity assessment bodies carry out their activities in a manner that prevents conflicts of interests affecting the outcome of the assessment;

(h) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party. Nothing in this point shall be construed as to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted is required to meet in order to perform the contracted tests or inspection itself; and

(i) ensure that the details, including the scope of the designation, of the bodies that have been designated to perform such conformity assessment, are published online.

4. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products is performed by specified governmental authorities of the Party. If a Party requires conformity assessment to be performed by its specified governmental authorities, that Party shall:

(a) limit the conformity assessment fees to the approximate cost of the services rendered and, upon the request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited to the approximate cost of services rendered; and

(b) ensure that the conformity assessment fees are available on request, if they are not published.

5. Notwithstanding paragraphs 1, 3 and 4, in the fields listed in Annex 9-A (Acceptance of conformity assessment (Documents)) in respect of which the Union accepts SDoC, New Zealand shall, if it considers non-first-party conformity assessment necessary as an assurance that a product conforms with the requirements of New Zealand's technical regulations, accept:

(a) certificates and test reports issued by conformity assessment bodies that are located in the territory of the Union and that have been accredited by an accreditation body member of the international arrangements for mutual recognition of the ILAC or the IAF, or their successors, or that are otherwise recognised pursuant to New Zealand technical regulations; or

(b) in relation to electrical safety and electromagnetic compatibility aspects, certificates and test reports that have been issued by conformity assessment bodies that are located in the territory of the Union and under the IECEE CB Scheme[1].

[1] The IEC System for Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) Certification Body (CB) Scheme.

6. SDoC is a first-party attestation of conformity issued by the manufacturer or other authorised first-party[1] on their sole responsibility based on the results of an appropriate type of conformity assessment activity and excluding mandatory third-party assessment.

7. The Parties shall cooperate in the field of mutual recognition in accordance with the Agreement on Mutual Recognition between the European Community and New Zealand, done at Wellington on 25 June 1998. The Parties may also decide, in accordance with the relevant provisions of that Agreement, to extend its scope as regards to the products, the applicable regulatory requirements or the recognised conformity assessment bodies.

ARTICLE 9.8

Transparency

1. Except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, each Party shall allow the other Party to provide written comments on notified proposed technical regulations and conformity assessment procedures within a period of at least 60 days after the date of transmission of the notification of such regulations or procedures to the WTO Central Registry of Notifications. A Party shall give positive consideration to a reasonable request to extend that comment period.

[1] Pursuant to each Party's technical regulations.

2. In the event that the notified text is not in one of the official WTO languages, each Party shall provide a detailed and comprehensive description of the content of the proposed technical regulation or conformity assessment procedure in the WTO notification format.

3. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:

(a) if requested by the other Party, discuss the written comments with the participation of its competent regulatory authority, whenever possible, at a time when the comments can be taken into account; and

(b) reply in writing to significant or substantive issues presented in the comments no later than the date of publication of the technical regulation or conformity assessment procedure.

4. Each Party shall make publicly available, preferably by publishing on a website, its responses to significant or substantive issues presented in comments received from other WTO Members on its TBT notification of the proposal for the technical regulation or conformity assessment procedure.

5. If requested by the other Party, a Party shall provide information regarding the objectives of, and rationale for, any technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

6. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are published online and are accessible free of charge.

7. Each Party shall provide information on the adoption and the entry into force of the technical regulation or conformity assessment procedure and the adopted final text through an addendum to the original notification to the WTO.

8. Further to Article 2.12 of the TBT Agreement, the phrase "reasonable interval" shall be understood to mean normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

9. A Party shall consider a reasonable request from the other Party, received prior to the end of the comment period referred to in paragraph 1 following the transmission to the WTO Central Registry of Notifications to extend the period of time between the adoption of the technical regulation and its entry into force, except where the delay would be ineffective in fulfilling the legitimate objectives pursued.

ARTICLE 9.9

Marking and labelling

1. A technical regulation of a Party may include or deal exclusively with marking or labelling requirements. In such cases, the relevant principles of Article 2.2 of the TBT Agreement apply to these technical regulations.

2. If a Party requires mandatory marking or labelling of products, it shall:

(a) to the extent possible, only require information that is relevant for consumers or users of the product or that indicates that the product conforms with mandatory technical requirements;

(b) not require any prior approval, registration or certification of the markings or labels of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements unless it is necessary in view of the risk of the products or the risk of the claims made on the markings and labels to human, animal or plant health or life, the environment or national safety;

(c) if it requires the use of a unique identification number by economic operators, issue such a number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;

(d) provided the marking and labelling of a product is compliant with and not misleading, contradictory or confusing in relation to the importing Party's regulatory requirements, permit[1] the following:

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

(ii) internationally accepted nomenclatures, pictograms, symbols or graphics; and

(iii) additional information to that required in the importing Party;

[1] For greater certainty, this point refers to the importing Party.

(e) accept that labelling, including supplementary labelling or corrections to labelling, take place in the territory of the importing Party, in accordance with its relevant regulations and procedures as an alternative to labelling in the exporting Party, unless such labelling is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement; and

(f) if it considers that legitimate objectives under the TBT Agreement are not compromised, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation, rather than requiring marking or labelling to be physically attached to the product.

3. Paragraph 2 of this Article does not apply to marking or labelling of medicinal products and medical devices, as defined by a Party's laws and regulations.

ARTICLE 9.10

Cooperation on market surveillance, safety and compliance of non-food products

1. For the purposes of this Article, "market surveillance" means activities conducted and measures taken by public authorities, including those taken in cooperation with economic operators, on the basis of procedures of a Party, to enable that Party to monitor or address safety of products or their compliance with the requirements set out in its laws and regulations.

2. The Parties recognise the importance of cooperation on market surveillance, safety and compliance of non-food products for the facilitation of trade and for the protection of consumers and other users, and the importance of building mutual trust based on shared information.

3. Each Party shall ensure:

(a) impartial and independent conduct of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest;[1] and

(b) the absence of any interest that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.

4. The Parties may cooperate and exchange information in the area of market surveillance, safety and compliance of non-food products, in particular with respect to the following:

(a) market surveillance and enforcement activities and measures;

(b) risk assessment methods and product testing;

(c) coordinated product recalls or other similar actions;

[1] Each Party shall ensure that safeguards are put in place to ensure the impartiality and absence of conflicts of interest if a single entity is entrusted with both responsibilities.

(d) scientific, technical and regulatory matters, aiming to improve non-food product safety and compliance;

(e) emerging issues of significant health and safety relevance;

(f) standardisation-related activities; and

(g) exchange of officials.

5. The Union may provide New Zealand with selected information from its Rapid Alert System with respect to consumer products as referred to in Directive 2001/95/EC[1] or its successor, and New Zealand may provide the Union with selected information on the safety of non-food consumer products and on preventive, restrictive and corrective measures taken, with respect to consumer products as referred to in the relevant legislation of New Zealand. The information exchange may take the form of:

(a) ad-hoc exchange, in duly justified cases; or

(b) systematic exchange, based on an arrangement established by decision of the Trade Committee pursuant to Annex 9-C (Arrangement referred to in Article 9.10(5)(b) for the regular exchange of information in relation to the safety of non-food products and related preventive, restrictive and corrective measures).

[1] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ EU L 11, 15.1.2002, p. 4).

6. The Trade Committee may adopt a decision to establish pursuant to Annex 9-D (Arrangement referred to in Article 9.10(6) for the regular exchange of information regarding measures taken on non-compliant non-food products, other than those covered by Article 9.10(5(b)) an arrangement on the regular exchange of information, including by electronic means, on measures taken with respect to non-compliant non-food products, other than those covered by paragraph 5.

7. Each Party shall use the information obtained pursuant to paragraphs 4, 5 and 6 for the sole purpose of protection of consumers, health, safety or the environment.

8. Each Party shall treat the information obtained pursuant to paragraphs 4, 5 and 6 as confidential.

9. The arrangements set out in point (b) of paragraph 5 and in paragraph 6 shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

10. The Trade Committee shall have the power to adopt decisions in order to determine or amend arrangements set out in Annexes 9-C (Arrangement referred to in Article 9.10(5)(b) for the regular exchange of information in relation to the safety of non-food products and related preventive, restrictive and corrective measures) and 9-D (Arrangement referred to in Article 9.10(6) for the regular exchange of information regarding measures taken on non-compliant non-food products, other than those covered by Article 9.10(5)(b)).

ARTICLE 9.11

Technical discussions and consultations

1. If a Party considers that a draft or proposed technical regulation or conformity assessment procedure of the other Party might significantly adversely affect trade between the Parties, it may request to hold discussions on the matter. The request shall be made in writing and identify:

(a) the measure at issue;

(b) the provisions of this Chapter to which the concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the TBT Chapter Coordinator of the other Party designated pursuant to Article 9.14 (TBT Chapter coordinator).

3. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person, or via any means of communication, including telephone, video conference or other electronic means of communication, within 60 days after the date of delivery of the request and shall endeavour to resolve the matter as expeditiously as possible. If a requesting Party believes that the matter is urgent, it may request that any meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to that request.

4. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the TBT Chapter coordinator of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of such matter.

5. For greater certainty, this Article is without prejudice to Chapter 26 (Dispute settlement).

ARTICLE 9.12

Cooperation

1. The Parties may cooperate in respect of particular areas of mutual interest, with a view to eliminating, reducing or avoiding the creation of technical barriers to trade, and facilitating trade between the Parties, including via digital solutions.

2. The Parties may cooperate and exchange information on any issues relevant to or for Annex 9-A (Acceptance of conformity assessment (Documents)), including its implementation.

ARTICLE 9.13

Prohibition on animal testing

1. Each Party shall continue to actively support and promote the research, development, validation and regulatory acceptance of alternative methods to animal testing.

2. Each Party shall accept, for the purpose of the safety assessment of products falling under the definition of the term "cosmetic product" in their jurisdiction, test results generated from validated alternatives to animal testing.

3. A Party shall not require that a product falling under the definition of the term cosmetic product in their jurisdiction be tested on animals to determine the safety of that product.

ARTICLE 9.14

TBT chapter coordinator

1. Each Party shall designate a TBT Chapter coordinator and notify the other Party of its contact details. Each Party shall notify the other Party promptly in the event of any change to those contact details.

2. The TBT Chapter coordinators shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties in all TBT matters. To that end and subject to each Party's internal procedures, the TBT Chapter coordinators shall, in particular, have the following responsibilities:

(a) monitoring the implementation and administration of this Chapter, promptly addressing any issue that either Party raises related to the development, adoption, application or enforcement of technical regulations, standards or conformity assessment procedures, and upon either Party's request, consulting on any matter arising under this Chapter;

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

(c) arranging the technical discussions or consultations referred to in Article 9.11 (Technical discussions and consultations);

(d) arranging the establishment of working groups[1], where relevant; and

(e) exchanging information on developments in non-governmental, regional and multilateral fora related to technical regulations, standards and conformity assessment procedures.

3. The TBT Chapter coordinators shall communicate with one another by any agreed method that is appropriate to carry out their responsibilities.

[1] For greater certainty, the establishment of working groups as such may only be decided by the Trade Committee pursuant to point (a) of Article 24.2(2) (Functions of the Trade Committee).

CHAPTER 10

INVESTMENT LIBERALISATION AND TRADE IN SERVICES

SECTION A

GENERAL PROVISIONS

ARTICLE 10.1

Objectives

1. The Parties, affirming their commitment to create a better climate for the development of trade and investment between them, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and investment.

2. The Parties reaffirm each Party's right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment, including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, the promotion and protection of cultural diversity and, in the case of New Zealand, the promotion or protection of the rights, interests, duties and responsibilities of Māori.

ARTICLE 10.2

Scope

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

2. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across them, provided that those measures are not applied in such a manner as to nullify or impair the benefits[1] accruing to the other Party under this Chapter.

3. This Chapter does not apply to:

(a) air services or related services in support of air services[2], other than the following:

(i) aircraft repair and maintenance services;

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1 The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

2 For greater certainty, air services or related services in support of air services include the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; rental of aircraft with crew; and airport operation services.

(ii) computer reservation system ("CRS") services;

(iii) ground handling services;

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

(v) the following services provided using a manned aircraft, whose primary purpose is not the transportation of goods or passengers: aerial fire-fighting; flight training; spraying; surveying; mapping; photography; aviation adventure services[1]; and other airborne agricultural, industrial and inspection services;

(b) audio-visual services; and

(c) national maritime cabotage[2].

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1 For greater certainty, aviation adventure services are services provided using a manned aircraft where users engage in an aerial operation for the purpose of sports or recreation, such as a ride in an ex-military, replica or historic aircraft, hot air balloon rides, or aerobatic rides.

2 Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers:

(i) For the Union, transportation of passengers or goods between a port or point located in a Member State and another port or point located in that same Member State, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in a Member State;

(ii) For New Zealand, the carriage by sea of passengers or cargo between a port or point located in New Zealand and another port or point located in New Zealand, and traffic originating and terminating in the same port or point located in New Zealand. For greater certainty, feeder services, as defined in point (d) of Article 10.70(2) (Scope and definitions), and repositioning of empty containers, which are not being carried as cargo against payment, shall not be considered as national maritime cabotage for the purposes of this Chapter.

ARTICLE 10.3

Definitions

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

(a) "an activity performed in the exercise of governmental authority" means any activity which is performed, including any service that is supplied, neither on a commercial basis nor in competition with one or more economic operators;

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

(c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(d) "covered enterprise" means an enterprise in the territory of a Party established in accordance with point (g), directly or indirectly, by an investor of the other Party, in accordance with the applicable law, existing on the date of entry into force of this Agreement or established thereafter;

(e) "cross-border trade in services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party; or

(ii) in the territory of a Party to the service consumer of the other Party;

(f) "economic activity" means any activity of an industrial, commercial or professional character or activities of craftspeople, including the supply of services, except for activities performed in the exercise of governmental authority;

(g) "establishment" means the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office, in a Party, with a view to creating or maintaining lasting economic links;

(h) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation; administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra airport transport systems;

(i) "investor of a Party" means a natural person of a Party or a juridical person of a Party including a Party, that seeks to establish, is establishing or has established an enterprise in accordance with point (g), in the territory of the other Party;

(j) "juridical person of a Party" means:[1]

(i) for the Union:

(A) a juridical person constituted or organised under the law of the Union or of at least one of its Member States and engaged in substantive business operations[2] in the Union; and

(B) shipping companies established outside the Union, and controlled by natural persons of a Member State, whose vessels are registered in, and fly the flag of, a Member State;

(ii) for New Zealand:

(A) a juridical person constituted or organised under the law of New Zealand and engaged in substantive business operations in New Zealand; and

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[1] For greater certainty, the shipping companies mentioned in this point are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

[2] In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the Union understands that the concept of "effective and continuous link" with the economy of a Member State of the Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

(B) shipping companies established outside New Zealand, and controlled by natural persons of New Zealand, whose vessels are registered in, and fly the flag of, New Zealand;

(k) "operation" means the conduct, management, maintenance, use, enjoyment, or sale or other form of disposal of an enterprise;

(l) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but not including the pricing of air transport services nor the applicable conditions;

(m) "service" means any service in any sector except services supplied in the exercise of governmental authority; and

(n) "service supplier" means any natural or juridical person that seeks to supply or supplies a service.

SECTION B

INVESTMENT LIBERALISATION

ARTICLE 10.4

Scope

1. This Section applies to measures of a Party affecting establishment or operation to perform economic activities by:

(a) investors of the other Party;

(b) covered enterprises; and

(c) for the purposes of Article 10.9 (Performance requirements), any enterprise in the territory of the Party which adopts or maintains the measure.

2. This Section does not apply to any measure of a Party with respect to public procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 14.1 (Incorporation of certain provisions of the GPA).

3. Articles 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment) and 10.8 (Senior management and boards of directors) do not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees and insurance.

ARTICLE 10.5

Market access

A Party shall not adopt or maintain, with regard to market access through establishment or operation by an investor of the other Party or by a covered enterprise, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that:

(a) impose limitations on[1]:

(i) the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

[1] Points (a)(i), (a)(ii) and (a)(iii) do not cover measures taken in order to limit the production of an agricultural or fishery product.

(iii) the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

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

(v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of an economic activity, in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which an investor of the other Party may perform an economic activity.

ARTICLE 10.6

National treatment

Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own investors and to their enterprises, with respect to establishment and operation in its territory.

ARTICLE 10.7

Most-favoured-nation treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a third country and to their enterprises, with respect to establishment and operation in its territory.

2. Paragraph 1 shall not be construed as obliging a Party to extend to investors of the other Party or to covered enterprises the benefit of any treatment resulting from existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of GATS or paragraph 3 of the GATS Annex on Financial Services.

3. For greater certainty, the "treatment" referred to in paragraph 1 does not include dispute settlement procedures provided for in other international agreements.

4. For greater certainty, substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute the "treatment" referred to in paragraph 1. Measures of a Party pursuant to those provisions[1] may constitute such treatment and thus give rise to a breach of this Article.

[1] For greater certainty, the mere transposition of those provisions into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as the "treatment" referred to in paragraph 1.

ARTICLE 10.8

Senior management and boards of directors

A Party shall not require a covered enterprise to appoint natural persons of any particular nationality to senior management positions or as members of the board of directors.

ARTICLE 10.9

Performance requirements

1. A Party shall not impose or enforce any requirement, or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory[1]:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural or juridical persons or any other entities in its territory;

[1] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purpose of paragraph 1.

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the enterprise;

(e) to restrict sales of goods or services in its territory that the enterprise produces or supplies, by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;

(f) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its territory;

(g) to supply exclusively from the territory of that Party a good produced or a service supplied by the enterprise to a specific regional market or to the world market;

(h) to locate the headquarters for a specific region or the world market in its territory;

(i) to employ a given number or percentage of natural persons of that Party;

(j) to achieve a given level or value of research and development in its territory;

(k) to restrict the exportation or sale for export; or

(l) with regard to any licence contract[1] in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or juridical person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party[2], to adopt:

(i) a given rate or amount of royalty under a licence contract; or

(ii) a given duration of the term of a licence contract.

2. A Party shall not condition the receipt, or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entity in its territory;

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1 A "licence contract" referred to in this point means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

2 For greater certainty, point (l) does not apply when the licence contract is concluded between the enterprise and the Party.

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the enterprise;

(d) to restrict sales of goods or services in its territory that the enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or

(e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Points (f) and (l) of paragraph 1 do not apply when:

(a) the requirement is imposed or enforced, or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, pursuant to the Party's competition law, to prevent or remedy a distortion of competition; or

(b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or other proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement.

5. Points (a), (b) and (c) of paragraph 1 and points (a) and (b) of paragraph 2 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

6. Points (a) and (b) of paragraph 2 do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

7. Point (l) of paragraph 1 does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.

8. This Article is without prejudice to the obligations of a Party under the WTO Agreement.

9. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.[1]

10. This Article does not apply to the establishment or operation of a financial service supplier.

11. With regard to performance requirements relating to financial service suppliers, the Parties shall negotiate disciplines on performance requirements with respect to the establishment or operation of a financial service supplier.

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[1] For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis if that Party adopts or maintains restrictions or prohibitions on the provision of that service which are consistent with its reservations in Annex 10-A (Existing Measures) or Annex 10-B (Future Measures).

12. Within 180 days of the date of the successful negotiation by the Parties of the performance requirement disciplines pursuant to paragraph 11, the Trade Committee shall modify paragraph 1 by a decision to integrate those disciplines into this Article and may modify, as appropriate, the non-conforming measures of each Party in Annex 10-A (Existing measures) and Annex 10-B (Future measures). This Article shall then apply to the establishment and operation of a financial service supplier.

ARTICLE 10.10

Non-conforming measures

1. Articles 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.8 (Senior management and boards of directors) and 10.9 (Performance requirements), do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the Union:

(A) the Union, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(B) the central government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(C) a regional government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures); or

(D) a local government, other than that referred to in point (C); and

(ii) for New Zealand:

(A) the central government, as specified in the Schedule of New Zealand in Annex 10-A (Existing measures); or

(B) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification of, or amendment to, any non-conforming measure referred to in points (a) and (b), to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification or amendment, with Article 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.8 (Senior management and boards of directors) or 10.9 (Performance requirements).

2. Articles 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.8 (Senior management and boards of directors) and 10.9 (Performance requirements) do not apply to a measure of a Party with respect to sectors, subsectors or activities specified in its Schedule in Annex 10-B (Future measures).

3. A Party shall not, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 10-B (Future measures), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.6 (National treatment) and 10.7 (Most-favoured-nation treatment) do not apply to any measure that constitutes an exception to, or a derogation from, Article 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of that Agreement.

ARTICLE 10.11

Information requirements

Notwithstanding Articles 10.6 (National treatment) and 10.7 (Most-favoured-nation treatment), a Party may require an investor of the other Party or its covered enterprise to provide information concerning that covered enterprise solely for information 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 enterprise. Nothing in this Article 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 10.12

Denial of benefits

A Party may deny the benefits of this Section to an investor of the other Party or to a covered enterprise if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

(a) prohibit transactions with that investor or covered enterprise; or

(b) would be violated or circumvented if the benefits of this Section were accorded to that investor or covered enterprise, including where the measures prohibit transactions with a natural or juridical person who owns or controls the investor or the covered enterprise.

SECTION C

CROSS-BORDER TRADE IN SERVICES

ARTICLE 10.13

Scope

1. This Section applies to measures of a Party affecting the cross-border trade in services by service suppliers of the other Party.

2. This Section does not apply to:

(a) any measure of a Party with respect to public procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 14.1 (Incorporation of certain provisions of the GPA); or

(b) subsidies or grants provided by the Parties, including government-supported loans, guarantees and insurance.

ARTICLE 10.14

Market access

A Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a territorial sub-division, a measure that:

(a) imposes limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

(iii) the total number of service operations or 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; or

(b) restricts or requires specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 10.15

Local presence

A Party shall not require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for cross-border trade in services.

ARTICLE 10.16

National treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to its own services and services suppliers.[1]

[1] Nothing in this Article shall be construed as requiring either Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own services and service suppliers.

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

ARTICLE 10.17

Most-favoured-nation treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to services and service suppliers of a third country.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of GATS or paragraph 3 of its Annex on Financial Services.

3. For greater certainty, substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute the "treatment" referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

ARTICLE 10.18

Non-conforming measures

1. Articles 10.14 (Market access), 10.15 (Local presence), 10.16 (National treatment) and 10.17 (Most-favoured-nation treatment) do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the Union:

(A) the Union, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(B) the central government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(C) a regional government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures); or

(D) a local government, other than that referred to in point (C); and

(ii) for New Zealand:

(A) the central government, as specified in the Schedule of New Zealand in Annex 10-A (Existing measures); or

(B) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification of, or amendment to, any non-conforming measure referred to in points (a) and (b), to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification or amendment, with Article 10.14 (Market access), 10.15 (Local presence), 10.16 (National treatment) or 10.17 (Most-favoured-nation treatment).

2. Articles 10.14 (Market access), 10.15 (Local presence), 10.16 (National treatment) and 10.17 (Most-favoured-nation treatment) do not apply to a measure of a Party with respect to sectors, sub-sectors, or activities specified in its Schedule in Annex 10-B (Future measures).

ARTICLE 10.19

Denial of benefits

A Party may deny the benefits of this Section to a service supplier of the other Party if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

(a) prohibit transactions with that service supplier; or

(b) would be violated or circumvented if the benefits of this Section were accorded to that service supplier, including where the measures prohibit transactions with a natural or juridical person who owns or controls that service supplier.

SECTION D

ENTRY AND TEMPORARY STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 10.20

Scope and definitions

1. Subject to paragraphs 1 and 2 of Article 10.2 (Scope), this Section applies to measures of a Party affecting the entry and temporary stay in its territory of natural persons of the other Party for business purposes, who fall within the scope of the following categories: short-term business visitors, business visitors for establishment purposes, contractual service suppliers, independent professionals and intra-corporate transferees.

2. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with, or otherwise affect, the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

3. For the purposes of this Section, the following definitions apply:

(a) "a business visitor for establishment purposes" means a natural person, working in a senior position within a juridical person of a Party, who:

(i) is responsible for setting up or winding down an enterprise of such juridical person in the territory of the other Party;

(ii) does not offer or provide services or engage in any economic activity other than that which is required for the purposes of the establishment of that enterprise; and

(iii) does not receive remuneration from a source located within the other Party;

(b) "a contractual service supplier" means a natural person employed by a juridical person of a Party, other than through an agency for placement and supply services of personnel, which is not established in the territory of the other Party and has concluded a bona fide contract to supply services to a final consumer in the other Party requiring the temporary presence of its employee[1] who:

(i) has offered those services as an employee of the juridical person for a period of not less than one year immediately preceding the date of their application for entry and temporary stay;

[1] The service contract referred to in point (b) shall comply with the requirements of the law of the Party where the contract is executed.

(ii) possesses, on that date, the required level of professional experience in the sector of activity that is the object of the contract[1], a degree or a qualification demonstrating knowledge of an equivalent level[2] and the professional qualification legally required to exercise that activity in the other Party; and

(iii) does not receive remuneration from a source located within the other Party;

(c) "independent professional" means a natural person engaged in the supply of a service and established as self-employed in the territory of a Party who:

(i) has not established in the territory of the other Party;

(ii) has concluded a bona fide contract, other than through an agency for placement and supply services of personnel, for a period not exceeding 12 months to supply services to a final consumer in the other Party, requiring their presence on a temporary basis[3]; and

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1 The professional experience required by each Party is set out in Annex 10-E (Contractual service suppliers and independent professionals).

2 The level of the degree required by each Party is set out in Annex 10-E (Contractual service suppliers and independent professionals). Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

3 The service contract referred to in point (c)(ii) shall comply with the requirements of the law of the Party where the contract is executed.

(iii) possesses, on the date of their application for entry and temporary stay, at least six years professional experience in the relevant sector of activity that is the object of the contract, a university degree or a qualification demonstrating knowledge of an equivalent level[1] and the professional qualification legally required to exercise that activity in the other Party;

(d) "intra-corporate transferee" means a natural person who:

(i) has been employed by a juridical person of a Party, or has been a partner in that person, for a period of not less than one year immediately preceding the date of their application for the entry and temporary stay in the other Party[2];

(ii) at the time of application resides outside the territory of the other Party;

(iii) is temporarily transferred to an enterprise of the juridical person in the territory of the other Party that is a member of the group of the originating juridical person, including its representative office, subsidiary, branch or head company; and

(iv) belongs to one of the following categories:

(A) manager or executive; or

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1 If the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

2 For greater certainty, a manager or specialist may be required to demonstrate that they possess the professional qualifications and experience needed in the juridical person to which they are transferred.

(B) specialist;

(e) "manager" or "executive" means a natural person working in a senior position, who primarily directs the management of the enterprise or a substantial part of it in the other Party, receiving general supervision or direction principally from higher level executives or the board of directors or from stockholders of the business or their equivalent, and whose responsibilities include:

(i) directing the enterprise or a department or subdivision thereof;

(ii) supervising and controlling the work of other supervisory, professional or managerial employees. This does not include a first-line supervisor unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment; and

(iii) having the authority to recommend hiring, dismissing or other personnel-related actions; and

(f) "specialist" means a natural person possessing specialised knowledge at an advanced level of technical expertise, essential to the enterprise's areas of activity, techniques or management, which shall be assessed taking into account not only knowledge specific to the enterprise, but also whether the person has a high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession.

ARTICLE 10.21

Intra-corporate transferees and business visitors for establishment purposes

1. Subject to the relevant conditions and qualifications specified in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors):

(a) a Party shall allow:

(i) the entry and temporary stay of intra-corporate transferees and business visitors for establishment purposes; and

(ii) the employment in its territory of intra-corporate transferees of the other Party;

(b) a Party shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes, or that an investor may employ as intra-corporate transferees either on the basis of a territorial subdivision or on the basis of its entire territory; and

(c) each Party shall accord to intra-corporate transferees and business visitors for establishment purposes of the other Party, with regard to measures affecting their business activities during their temporary stay in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

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2. The permissible length of stay for managers or executives and specialists shall be for a period of up to three years.

3. The permissible length of stay for business visitors for establishment purposes shall be up to 90 days in any six month period for the Union and up to 90 days in any 12 month period for New Zealand.

ARTICLE 10.22

Short-term business visitors

1. Subject to the relevant conditions and qualifications specified in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), a Party shall allow the entry and temporary stay of short-term business visitors of the other Party for the purposes of carrying out the activities listed in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), subject to the following conditions:

(a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;

(b) the short-term business visitors do not receive remuneration from an entity in the territory of the Party where they are staying temporarily; and

(c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has not established in the territory of the Party where they are staying temporarily, and a consumer there, except as provided for in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors).

2. Unless otherwise specified in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), a Party shall allow entry of short-term business visitors without the requirement of an economic needs test or other prior approval procedures of similar intent.

3. The permissible length of stay shall be for a period of up to 90 days in any 12 month period.

ARTICLE 10.23

Contractual service suppliers and independent professionals

1. In the sectors, subsectors and activities listed in Annex 10-E (Contractual service suppliers and independent professionals), and subject to the relevant conditions and qualifications specified therein, each Party shall:

(a) allow the entry and temporary stay of contractual service suppliers and independent professionals in its territory;

(b) not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party allowed temporary entry, in the form of numerical quotas or an economic needs test, either on the basis of a territorial subdivision or on the basis of its entire territory; and

(c) accord to contractual service suppliers and independent professionals of the other Party, with regard to measures affecting the supply of services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

2. For greater certainty, access accorded under the provisions of this Article relates only to the service that is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided.

3. The permissible length of stay shall be for a cumulative period of 12 months, or for the duration of the contract, whichever is less.

ARTICLE 10.24

Non-conforming measures

1. Articles 10.21 (b) and (c) (Intra-corporate transferees and business visitors for establishment purposes) and 10.23 (b) and (c) (Contractual service suppliers and independent professionals) shall not apply to:

(a) any existing non-conforming measure that affects the temporary stay of natural persons for business purposes and that is maintained at the level of:

(i) for the Union:

(A) the Union, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(B) the central government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(C) a regional government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures); or

(D) a local government, other than that referred to in point (C); and

(ii) for New Zealand:

(A) the central government, as specified in the Schedule of New Zealand in Annex 10-A (Existing measures); or

(B) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification of, or amendment to, any non-conforming measure referred to in points (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification or amendment, with points (b) and (c) of Article 10.21(1) (Intra-corporate transferees and business visitors for establishment purposes) or points (b) and (c) of Article 10.23(1) (Contractual service suppliers and independent professionals);

2. Points (b) and (c) of Article 10.21(1) (Intra-corporate transferees and business visitors for establishment purposes) or points (b) and (c) of Article 10.23(1) (Contractual service suppliers and independent professionals) shall not apply to any measure that a Party adopts or maintains that affects the temporary stay of natural persons for business purposes with respect to sectors, sub-sectors or activities as set out by that Party in its Schedule in Annex 10-B (Future measures).

ARTICLE 10.25

Transparency

1. Each Party shall make publicly available, online if possible, information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party as referred to in Article 10.20(1) (Scope and definitions).

2. The information referred to in paragraph 1 shall include the following information relevant to the entry and temporary stay of natural persons, where it exists:

(a) entry conditions;

(b) an indicative list of documentation that may be required in order to verify fulfilment of the conditions;

(c) indicative processing time;

(d) applicable fees;

(e) appeal procedures; and

(f) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

SECTION E

REGULATORY FRAMEWORK

SUB-SECTION 1

DOMESTIC REGULATION

ARTICLE 10.26

Scope and definitions

1. This Sub-Section applies to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards[1] that affect:

(a) cross-border trade in services;

(b) establishment or operation; or

(c) the supply of services through the presence of a natural person of a Party in the territory of the other Party of categories of natural persons as defined in Article 10.20 (Scope and definitions);

[1] As far as measures relating to technical standards are concerned, this Section only applies to such measures affecting trade in services. Technical standards do not include regulatory or implementing technical standards for financial services.

2. This Sub-Section does not apply to licensing requirements and procedures, qualification requirements and procedures, and technical standards pursuant to a measure that does not conform with Article 10.5 (Market access), 10.6 (National treatment), 10.14 (Market access) or 10.16 (National treatment), and is referred to in Article 10.10(1) or (2) (Non-conforming measures), or in Article 10.18(1) or (2) (Non-conforming measures).

3. For the purposes of this Sub-Section, the following definitions apply:

(a) "authorisation" means the permission to carry out any of the activities referred to in points (a), (b) and (c) of paragraph 1 resulting from a procedure which a natural or juridical person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards; and

(b) "competent authority" means a central, regional or local government or authority or non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation.

ARTICLE 10.27

Submission of applications

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

ARTICLE 10.28

Application timeframes

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. If a specific time period for applying for authorisation exists, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

ARTICLE 10.29

Electronic applications and acceptance of copies

If a Party requires authorisation, it shall ensure that its competent authorities:

(a) endeavour to accept applications in electronic format; and

(b) accept copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

ARTICLE 10.30

Processing of applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent practicable, provide an indicative timeframe for the processing of an application;

(b) at the request of the applicant, provide without undue delay information concerning the status of the application;

(c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's laws and regulations;

(d) if they consider an application complete for processing under the Party's laws and regulations[1], within a reasonable period of time after the submission of the application, ensure that:

(i) the processing of the application is completed; and

[1] Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

(ii) the applicant is informed of the decision concerning the application,[1] to the extent possible in writing[2];

(e) if they consider an application incomplete for processing under the Party's laws and regulations, within a reasonable period of time of the date on which the relevant competent authority determined that the application was incomplete, and to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and

(iii) provide the applicant with the opportunity[3] to provide the additional information that is required to complete the application;

if the steps in points (i) to (iii) are not practicable, and the application is rejected due to incompleteness, ensure that they inform the applicant within a reasonable period of time; and

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1 Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application.

2 For greater certainty, the reference to "in writing" should be understood as including in electronic form.

3 Such opportunity does not require a competent authority to provide extensions of deadlines.

(f) if they reject an application, either on their own initiative or on request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application solely on the basis of a previously rejected application.

2. Each Party shall ensure that its competent authorities grant an authorisation as soon as it is established, in the light of an appropriate examination, that an applicant meets the conditions for obtaining it.

3. Each Party shall ensure that its competent authorities ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

ARTICLE 10.31

Fees

1. For all economic activities covered by this Sub-Section other than financial services, each Party shall ensure that the authorisation fees[1] charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity.

[1] Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

ARTICLE 10.32

Assessment of qualifications

If a Party requires an examination for authorisation, it shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. To the extent practicable, each Party shall consider accepting requests in electronic format to take such examinations and the use of electronic means in other aspects of the examination processes.

ARTICLE 10.33

Objectivity, impartiality and independence

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that its competent authorities process applications, reach and administer decisions objectively and impartially and in a manner independent from any person carrying out the economic activity for which authorisation is required.

ARTICLE 10.34

Publication and information available

If a Party requires authorisation, the Party shall promptly publish[1] the information necessary for service suppliers including those seeking to supply a service, and persons carrying out or seeking to carry out the economic activity for which the licence or authorisation is required, to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, where it exists:

(a) the requirements and procedures;

(b) contact information of relevant competent authorities;

(c) authorisation fees;

(d) applicable technical standards;

(e) procedures for appeal or review of decisions concerning applications;

(f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;

[1] For the purposes of this Sub-Section, "publish" means to include in an official publication, such as an official journal, or on an official website. Parties are encouraged to consolidate electronic publications into a single portal.

(g) opportunities for public involvement, such as through hearings or comments; and

(h) indicative timeframes for the processing of an application.

ARTICLE 10.35

Technical standards

A Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organisations, designated to develop technical standards, to do so through open and transparent processes.

ARTICLE 10.36

Development of measures

If a Party adopts or maintains measures relating to authorisation, it shall ensure that:

(a) those measures are based on clear, objective and transparent criteria;[1]

[1] Such criteria may include competence and the ability to supply a service or carry out any other economic activity, including to do so in a manner consistent with a Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

(b) the procedures are impartial, easily accessible to all applicants and are adequate for applicants to demonstrate whether they meet the requirements, where those requirements exist; and

(c) the procedures do not in themselves unjustifiably prevent fulfilment of requirements.

ARTICLE 10.37

Limited numbers of licences

If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall, in accordance with its laws and regulations, apply a selection procedure to potential candidates that provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure. In establishing the rules for the selection procedure, a Party may take into account legitimate policy objectives, including considerations of health, safety, protection of the environment and preservation of cultural heritage.

ARTICLE 10.38

Review procedures for administrative decisions

A Party shall maintain judicial, arbitral or administrative tribunals or procedures that provide, at the request of an affected investor or service supplier of the other Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions that affect establishment or operation, cross-border trade in services or the supply of a service through the presence of a natural person of a Party in the territory of the other Party. If such procedures are not independent of the authority entrusted with the administrative decision concerned, a Party shall ensure that the procedures provide for an objective and impartial review in fact.

SUB-SECTION 2

PROVISIONS OF GENERAL APPLICATION

ARTICLE 10.39

Mutual recognition of professional qualifications

1. For the purposes of this Article, "professional qualifications" means formal qualifications, professional experience, professional registration or other attestation of competence.

2. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary professional qualifications specified in the territory where the service is supplied, for the sector of activity concerned.

3. Where appropriate, the Parties shall encourage the establishment of dialogue between their relevant experts, regulators and industry bodies to share and facilitate understanding of their respective qualifications, registration requirements and processes, and cooperate with a view to achieving mutual recognition of professional qualifications.

4. The Parties shall encourage the relevant professional bodies or authorities in their respective territories to develop and provide a joint recommendation on mutual recognition of professional qualifications to the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications established pursuant to Article 24.4 (Specialised Committees). Such a joint recommendation shall be supported by evidence of:

(a) the economic value of an envisaged instrument on mutual recognition of professional qualifications (hereinafter referred to as "Mutual recognition instrument"); and

(b) the compatibility of the respective regimes, being the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of professionals are compatible.

5. On receipt of a joint recommendation, the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications shall review the joint recommendation's consistency with this Chapter within a reasonable period of time. Following such review, the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications may develop a Mutual recognition instrument and the Trade Committee may adopt it by decision as an annex to this Agreement[1].

SUB-SECTION 3

DELIVERY SERVICES

ARTICLE 10.40

Scope and definitions

1. This Sub-Section sets out principles of the regulatory framework for the supply of delivery services and applies to measures of a Party affecting trade in delivery services.

[1] For greater certainty, such instruments shall not lead to the automatic recognition of qualifications but shall set, in the mutual interest of both Parties, the conditions for the competent authorities granting recognition.

2. For the purposes of this Sub-Section, the following definitions apply:

(a) "delivery services" means postal, courier, express delivery or express mail services, which include the collection, sorting, transport and delivery of postal items;

(b) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit, or confirmation of receipt;

(c) "express mail services" means international express delivery services supplied through the EMS Cooperative, the voluntary association of designated postal operators under the Universal Postal Union;

(d) "licence" means an authorisation that a regulatory authority of a Party may require of an individual supplier in order for that supplier to offer postal and courier services;

(e) "postal item" means an item up to 31,5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private, and may include items such as a letter, parcel, newspaper or catalogue;

(f) "postal monopoly" means the exclusive right to supply specified delivery services within a Party's territory or a subdivision thereof pursuant to a legislative measure; and

(g) "universal service" means the permanent supply of a delivery service of specified quality at all points in the territory of a Party or a subdivision of a Party at an affordable price for all users.

ARTICLE 10.41

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on the scope and implementation of the obligation. Each Party shall administer any universal service obligation in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.

2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to these services over other international express delivery services.

ARTICLE 10.42

Universal service funding

A Party shall not impose fees or other charges on the supply of a delivery service that is not a universal delivery service for the purpose of funding the supply of a universal service.[1]

[1] This Article does not apply to generally applicable taxation measures or administrative fees.

ARTICLE 10.43

Prevention of market distortive practices

Each Party shall ensure that suppliers of delivery services subject to a universal service obligation or postal monopoly do not engage in market distortive practices such as:

(a) using revenues derived from the supply of the service subject to a universal service obligation or from the monopoly to cross-subsidise the supply of an express delivery service or any delivery service that is not subject to a universal service obligation; or

(b) unjustifiably differentiating among customers with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

ARTICLE 10.44

Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:

(a) all the licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of licences.

2. Each Party shall ensure that the procedures, obligations and requirements of a license are transparent, non-discriminatory and based on objective criteria.

3. Each Party shall ensure, if a licence application is rejected by a competent authority, that the competent authority informs the applicant of the reasons for the rejection in writing. Each Party shall establish an appeal procedure through an independent body to be available to applicants whose application for a licence has been rejected. This body may be a court.

ARTICLE 10.45

Independence of the regulatory body

1. Each Party shall establish or maintain a regulatory body that shall be legally distinct and functionally independent from any supplier of delivery services. If a Party owns or controls a supplier of delivery services, it shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that the regulatory body or bodies performs its tasks in a transparent and timely manner and has adequate financial and human resources to carry out the task assigned to it, and that the regulatory body's decisions are impartial with respect to all market participants.

SUB-SECTION 4

TELECOMMUNICATIONS SERVICES

ARTICLE 10.46

Scope

1. This Sub-Section sets out principles of the regulatory framework affecting telecommunications networks and services and applies to measures of a Party affecting trade in telecommunications services.

2. This Sub-Section does not apply to measures affecting:

(a) broadcasting services as defined in the laws and regulations of each Party; and

(b) services providing, or exercising editorial control over, content transmitted using telecommunications networks and services.

3. Notwithstanding point (a) of paragraph 2, a supplier of broadcasting services shall be considered as a supplier of public telecommunications services and its networks as public telecommunications networks, when and to the extent that those networks are also used for providing public telecommunications services.

4. Nothing in this Sub-Section shall be construed as requiring a Party:

(a) to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications networks or services other than as provided for in this Agreement; or

(b) to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally, or to oblige a service supplier under its jurisdiction to do so.

ARTICLE 10.47

Definitions

For the purposes of this Sub-Section, the following definitions apply:

(a) "associated facilities" means services, physical infrastructure and other facilities associated with a telecommunications network or service that enable or support the supply of services via that network or service or have the potential to do so;

(b) "essential facilities" means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;

(d) "leased circuit" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points;

(e) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

(f) "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

(g) "number portability" means the ability of subscribers who so request to retain the same telephone numbers, at the same location in the case of a fixed line, without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;

(h) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;

(i) "public telecommunications service" means any telecommunications service that is offered to the public generally;

(j) "subscriber" means any natural or juridical person party to a contract with a supplier of public telecommunications services for the supply of those services;

(k) "telecommunications" means the transmission and reception of signals by any electromagnetic means;

(l) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements that are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;

(m) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this Sub-Section;

(n) "telecommunications service" means a service that consists wholly or mainly in the transmission and reception of signals, including broadcasting signals, over telecommunications networks, including those used for broadcasting, but not a service providing or exercising editorial control over, content transmitted using telecommunications networks and services;

(o) "universal service" means the minimum set of services of specified quality that must be made available to all users, or to a set of users, in the territory of a Party, or in a subdivision of a Party, regardless of their geographical location and at an affordable price; and

(p) "user" means any person using a public telecommunications service.

ARTICLE 10.48

Approaches to regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective and sustainable competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that a Party may determine how to implement its obligations under this Sub-Section.

2. In that respect, the Parties recognise that each Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

(b) rely on the role of market forces, particularly with respect to market segments that are competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities; or

(c) rely on market structure rules that restrict the activities of some suppliers of telecommunications services that own network facilities, for example by requiring provision of wholesale services on a non-discriminatory basis or prohibiting participation in a retail market, with a view to ensuring market behaviour equivalent to that of participants in a competitive market.

3. For greater certainty, a Party that refrains from engaging in regulation in accordance with point (b) of paragraph 2 remains subject to the obligations under this Sub-Section. Nothing in this Article shall prevent a Party from regulating telecommunications services.

ARTICLE 10.49

Telecommunications regulatory authority

1. Each Party shall establish or maintain a telecommunications regulatory authority that:

(a) is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment;

(b) uses procedures and issues decisions that are impartial with respect to all market participants;

(c) acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it by law to enforce the obligations set out in Articles 10.51 (Interconnection), 10.52 (Access and use), 10.53 (Resolution of telecommunications disputes), 10.55 (Interconnection with major suppliers) and 10.56 (Access to major suppliers' essential facilities);

(d) is sufficiently empowered to carry out those tasks referred to in point (c);

(e) has the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information[1], including financial information, necessary to carry out those tasks referred to in point (c); and

(f) exercises its powers transparently and in a timely manner.

2. Each Party shall ensure that the tasks to be undertaken by its telecommunications regulatory authority are made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

3. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

[1] Each Party shall ensure that its telecommunications regulatory authority treats information requested in accordance with the requirements of confidentiality.

4. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of its telecommunications regulatory authority has a right of appeal before an appeal body that is independent of both the regulatory authority and other affected parties. Pending the outcome of the appeal, the decision shall stand, unless interim measures are granted in accordance with the Party's law.

ARTICLE 10.50

Authorisation to provide telecommunications networks or services

1. If a Party requires authorisation for the provision of telecommunications networks or services, it shall make publicly available the types of services requiring authorisation, together with all authorisation criteria, applicable procedures, and terms and conditions generally associated with the authorisation.

2. Each Party shall endeavour to authorise the provision of telecommunications networks or services without a formal procedure and permit the supplier to start providing its networks or services without having to wait for a decision by its telecommunications regulatory authority. If a Party requires a formal authorisation decision, it shall state a reasonable period of time normally required to obtain such a decision and communicate this in a transparent manner. The Party shall endeavour to ensure that the decision is taken within the stated period of time.

3. Each Party shall ensure that any authorisation criteria or applicable procedure, and any obligation or condition imposed on or associated with an authorisation, is objective, transparent, non-discriminatory, related to the service provided and not more burdensome than necessary for the kind of service provided.

4. Each Party shall ensure that an applicant receives in writing the reasons for the denial or revocation of an authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall have a right of appeal before an appeal body.

5. Each Party shall ensure that administrative fees imposed on suppliers are objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this section.[1]

ARTICLE 10.51

Interconnection

1. The Parties recognise that interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications networks or services concerned.

[1] Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

2. To this end each Party shall ensure that a supplier of public telecommunications networks or services in its territory has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

ARTICLE 10.52

Access and use

1. Each Party shall ensure that any covered enterprise or service supplier of the other Party is accorded access to and use of public telecommunications networks or services on reasonable and non-discriminatory[1] terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 to 5 of this Article.

2. Each Party shall ensure that covered enterprises or service suppliers of the other Party have access to and use of any public telecommunications network or service offered within or across its border, including private leased circuits, and to that end shall ensure, subject to paragraph 5, that such enterprises and suppliers are permitted:

(a) to purchase or lease and attach terminal or other equipment that interfaces with the network and that is necessary to conduct their operations;

[1] For the purposes of this Article, "non-discriminatory" means most-favoured-nation and national treatment as defined in Articles 10.6 (National treatment), 10.16 (National treatment), 10.7 (Most-favoured-nation treatment) and 10.17 (Most-favoured-nation treatment), as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

(b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another covered enterprise or service supplier; and

(c) to use operating protocols of their choice in their operations, other than as necessary to ensure the availability of telecommunications services to the public generally.

3. Each Party shall ensure that covered enterprises or service suppliers of the other Party may use public telecommunications networks and services for the movement of information within and across borders, including for their intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner that would constitute either a disguised restriction on trade in services or on the pursuit of any other economic activity covered by this Chapter or a means of arbitrary or unjustifiable discrimination.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary:

(a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally; or

(b) to protect the technical integrity of public telecommunications networks or services.

ARTICLE 10.53

Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this Sub-Section, and at the request of either party involved in the dispute, its telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.

2. Each Party shall ensure that a decision by its telecommunications regulatory authority is made available to the public, having regard to the requirements of business confidentiality, and that the parties concerned are given a full statement of the reasons on which the decision is based and have the right of appeal referred to in Article 10.49(4) (Telecommunications regulatory authority).

3. Each Party shall ensure that the procedure referred to in paragraphs 1 and 2 does not preclude either party concerned from bringing an action before a judicial authority, in accordance with the laws and regulations of the Party.

ARTICLE 10.54

Competitive safeguards on major suppliers

Each Party shall adopt or maintain appropriate measures that prevent suppliers of telecommunications networks or services who, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices. These anti-competitive practices may include:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information that is necessary for them to provide services.

ARTICLE 10.55

Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms and conditions, including as regards rates, and technical standards and specifications including quality and maintenance, and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of its subsidiaries or other affiliates;

(b) in a timely fashion, on terms and conditions, including as regards rates, and technical standards and specifications including quality and maintenance, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network elements or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

3. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or its reference interconnection offers as appropriate.

ARTICLE 10.56

Access to major suppliers' essential facilities

Each Party shall ensure that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or services on reasonable and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority.

ARTICLE 10.57

Scarce resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio frequency spectrum, numbers and rights of way, is carried out using procedures that are objective, timely, transparent, non-discriminatory and that do not create a disincentive for the application for the use of such scarce resources.

2. Each Party shall endeavour to take into account the public interest, including the promotion of competition, and to rely on market-based approaches, including mechanisms such as auctions, when allocating and granting rights of use of radio frequency spectrum for public telecommunication services.

3. Each Party shall ensure that the current use of allocated frequency bands is made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.

4. Measures of a Party allocating and assigning spectrum and managing frequency are not per se inconsistent with Articles 10.5 (Market access) and 10.14 (Market access). Each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

ARTICLE 10.58

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Each Party shall administer the universal service obligations in a transparent, objective and non-discriminatory way, which is neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the Party.

3. If a Party designates a universal service supplier, it shall do so in a manner that is efficient, transparent, non-discriminatory and open to all suppliers of public telecommunication networks or services.

4. If a Party decides to compensate a universal service supplier, it shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

ARTICLE 10.59

Number portability

Each Party shall ensure that a supplier of public telecommunications services provides number portability on reasonable terms and conditions.

ARTICLE 10.60

Confidentiality of information

1. Each Party shall ensure that a supplier that acquires information from another supplier in the process of negotiating an arrangement pursuant to Article 10.51(Interconnection), 10.52 (Access and use), 10.55 (Interconnection with major suppliers) or 10.56 (Access to major suppliers' essential facilities) uses that information solely for the purpose for which it was supplied and respects at all times the confidentiality of information transmitted or stored.[1]

2. Each Party shall adopt or maintain measures to protect the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or services, in a manner that is non-discriminatory and that does not unduly restrict the supply of telecommunication services.

ARTICLE 10.61

Telecommunications connectivity

The Parties recognise the importance of the availability and take-up of very high capacity networks and of high quality telecommunications services, including in rural and remote areas, as a means of enabling persons and businesses to access the benefits of trade.

[1] For greater certainty, a Party may meet this obligation by enabling the enforcement of non-disclosure agreements between suppliers.

SUB-SECTION 5

FINANCIAL SERVICES

ARTICLE 10.62

Scope

1. This Sub-Section applies to measures of a Party affecting the supply of financial services. This Sub-Section does not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 10.10 (Non-conforming measures) or 10.18 (Non-conforming measures).

2. For the purposes of this Sub-Section, "an activity performed in the exercise of governmental authority" referred to in point (a) of Article 10.3 (Definitions) means the following:

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

(b) an activity forming part of a statutory system of social security or public retirement plans; and

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party or its public entities.

3. For the purposes of the application of point (m) of Article 10.3 (Definitions), if a Party allows any of the activities referred to in point (b) or (c) of paragraph 2 to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "service" shall include those activities.

4. Point (a) of Article 10.3 (Definitions) does not apply to services covered by this Sub-Section.

ARTICLE 10.63

Definitions

For the purposes of this Sub-Section and of Sections B (Investment liberalisation), C (Cross-border trade in services), D (Entry and temporary stay of natural persons for business purposes) and Sub-Section 1 (Domestic regulation) of Section E (Regulatory framework) of this Chapter, the following definitions apply:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(i) insurance and insurance-related services:

(A) direct insurance (including co-insurance):

(1) life; and

(2) non-life;

(B) reinsurance and retrocession;

(C) insurance intermediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(1) money market instruments (including cheques, bills and certificates of deposits);

(2) foreign exchange;

(3) derivative products including futures and options;

(4) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;

(5) transferable securities; and

(6) other negotiable instruments and financial assets, including bullion;

(G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(H) money broking;

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software; and

(L) advisory, intermediation and other auxiliary financial services in respect of the activities listed in points (A) to (K), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and corporate restructuring and strategy;

(b) "financial service supplier" means any natural or juridical person of a Party that seeks to supply or supplies financial services and does not include a public entity;

(c) "public entity" means:

(i) a government, a central bank or 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;

(d) "new financial service" 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 a Party but that is supplied in the territory of the other Party; and

(e) "self-regulatory organisation" means any non-governmental body, including a securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central, regional or local governments or authorities, where applicable.

ARTICLE 10.64

Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

(b) ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

ARTICLE 10.65

Disclosure of information

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

ARTICLE 10.66

International standards

1. Each Party shall give due consideration to ensuring that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance in the financial services sector are implemented and applied in its territory. Such internationally agreed standards include those adopted by the G20, the Financial Stability Board, the Basel Committee on Banking Supervision, in particular its "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors, in particular its "Insurance Core Principles", the International Organisation of Securities Commissions, in particular its "Objectives and Principles of Securities Regulation", the Financial Action Task Force, and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

2. The Parties shall aim to cooperate and exchange information regarding the development of international standards.

ARTICLE 10.67

Financial services new to the territory of a Party

1. Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law in like situations, provided that the introduction of the new financial service does not require the adoption of a new law or amendment of an existing law. This does not apply to branches of financial service suppliers of the other Party established within the territory of a Party.

2. A Party may determine the institutional and legal form through which the service may be supplied and require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and authorisation may only be refused for prudential reasons.

ARTICLE 10.68

Self-regulatory organisations

If a Party requires membership of, participation in, or access to, any self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services in or into the territory of the first Party, the Party shall ensure observance by that self-regulatory organisation of the obligations under Articles 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.16 (National treatment) and 10.17 (Most-favoured-nation treatment).

ARTICLE 10.69

Clearing and payment systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article shall not confer access to the Party's lender of last resort facilities.

SUB-SECTION 6

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 10.70

Scope and definitions

1. This Sub-Section sets out principles of the regulatory framework for the provision of international maritime transport services pursuant to Sections B (Investment liberalisation), C (Cross-border trade in services) and D (Entry and temporary stay of natural persons for business purposes) of this Chapter and applies to measures of a Party affecting trade in international maritime transport services. This Sub-Section does not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 10.10 (Non-conforming measures) or 10.18 (Non-conforming measures).

2. For the purposes of this Sub-Section and Sections B (Investment liberalisation), C (Cross-border trade in services) and D (Entry and temporary stay of natural persons for business purposes) of this Chapter, the following definitions apply:

(a) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(b) "customs clearance" means activities consisting in carrying out, on behalf of another party, customs formalities concerning import, export or through transport of cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;

(c) "door-to-door or multimodal transport operations" means transporting cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "feeder services" means the pre- and onward transportation by sea of international cargo, including containerised, break bulk and dry or liquid bulk cargo, between ports located in the territory of a Party, international cargo en route directed to a destination, or coming from a port of shipment, outside the territory of that Party;

(e) "freight forwarding services" means the activity consisting in organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(f) "international cargo" means cargo transported between a port of one Party and a port of the other Party or of a third country, or between ports of different Member States;

(g) "international maritime transport services" means transporting passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country, including the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide those other transport services;

(h) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;

(ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(i) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services; and

(j) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

(ii) the lashing or unlashing of cargo; and

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge.

ARTICLE 10.71

Obligations

1. Each Party shall implement unrestricted access to international maritime markets and trades on a commercial and non-discriminatory basis by:

(a) according to ships flying the flag of the other Party, or operated by service suppliers of the other Party, treatment no less favourable than that accorded to its own ships, including with regard to:

(i) access to ports;

(ii) the use of infrastructure and services of ports;

(iii) the use of maritime auxiliary services;

(iv) related fees and charges; and

(v) customs facilities and the assignment of berths and facilities for loading and unloading;

(b) permitting international maritime service suppliers of the other Party to establish and operate an enterprise in its territory under conditions no less favourable than it accords to its own service suppliers;

(c) making available to international maritime transport service suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at its ports: pilotage; towing and tug assistance; provisioning; fuelling and watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; berth and berthing services; and shore-based operational services essential to ship operations, including communications, water and electrical supplies;

(d) permitting international maritime transport service suppliers of the other Party, subject to authorisation by the competent authority where applicable, to re-position owned or leased empty containers, which are not being carried as cargo against payment, between ports of New Zealand or between ports of a Member State; and

(e) permitting international maritime transport service suppliers of the other Party to provide feeder services between the ports of New Zealand or between ports of a Member State, subject to authorisation by the competent authority where applicable.

2. In applying points (a) and (b) of paragraph 1, the Parties shall:

(a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including in respect of dry and liquid bulk and liner trade;

(b) terminate, within a reasonable period of time, existing cargo-sharing arrangements as referred to in point (a) that exist in previous agreements; and

(c) not adopt or maintain any administrative, technical or other measures which could constitute a disguised restriction, or have arbitrary or unjustifiable discriminatory effects where like conditions prevail, on the free supply of services in international maritime transport.

CHAPTER 11

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS

ARTICLE 11.1

Payments and transfers

Each Party shall allow, in freely convertible currency and in accordance with the relevant provisions of the Articles of Agreement of the International Monetary Fund, any payments or transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

ARTICLE 11.2

Capital movements

Each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purposes of investment liberalisation and other transactions as provided for under Chapter 10 (Investment liberalisation and trade in services).

ARTICLE 11.3

Application of laws and regulations relating to capital movements, payments and transfers

1. Nothing in Articles 11.1(Payments and transfers) and 11.2 (Capital movements) shall be construed to prevent a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, derivatives such as futures or options, or in other financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers, where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, deceptive or fraudulent practices;

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

(f) social security, public retirement or compulsory savings schemes.

2. A Party shall not apply the laws and regulations referred to in paragraph 1 in an arbitrary or discriminatory manner, or in a manner that would constitute a disguised restriction on capital movements, payments or transfers.

CHAPTER 12

DIGITAL TRADE

SECTION A

GENERAL PROVISIONS

ARTICLE 12.1

Scope

1. This Chapter applies to measures of a Party affecting trade enabled by electronic means.

2. This Chapter does not apply to:

(a) audio-visual services;

(b) information held or processed by or on behalf of a Party, or measures relating to such information, including measures related to its collection; and

(c) measures adopted or maintained by New Zealand that it deems necessary to protect or promote Māori rights, interests, duties and responsibilities[1] in respect of matters covered by this Chapter, including in fulfilment of New Zealand's obligations under te Tiriti o Waitangi/the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or a disguised restriction on trade enabled by electronic means. Chapter 26 (Dispute settlement) does not apply to the interpretation of te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it.

ARTICLE 12.2

Definitions

1. The definitions set out in Article 10.3 (Definitions) of Chapter 10 (Investment liberalisation and trade in services) apply to this Chapter.

[1] For greater certainty, Māori rights, interests, duties and responsibilities includes those relating to mātauranga Māori.

2. The definition of "public telecommunications service" in Article 10.47(i) (Definitions) applies to this Chapter.

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

(a) "consumer" means any natural person using a public telecommunications service for other than professional purposes;

(b) "digital procurement" means procurement through electronic means;

(c) "direct marketing communication" means any form of commercial advertising by which a person communicates marketing messages directly to a user via a public telecommunications service, including electronic mail and text and multimedia messages (SMS and MMS);

(d) "electronic authentication" means an electronic process or act of verifying that enables the confirmation of:

(i) the electronic identification of a person; or

(ii) the origin and integrity of data in electronic form;

(e) "electronic invoicing" or "e-invoicing" means the automated creation, exchange and processing of invoices between suppliers and buyers using a structured digital format;

(f) "electronic seal" means data in electronic form used by a juridical person, which is attached to, or logically associated with, other data in electronic form to ensure the origin and integrity of that other data;

(g) "electronic signature" means data in electronic form that is attached to, or logically associated with, other data in electronic form, which:

(i) may be used to identify the signatory in relation to the other data in electronic form; and

(ii) is used by a signatory to agree on the other data in electronic form;[1]

(h) "internet access service" means a public telecommunications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;

(i) "personal data" means information relating to an identified or identifiable natural person;

(j) "trade administration document" means a form 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

(k) "user" means a person using a public telecommunications service.

[1] For greater certainty, nothing in this definition prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the data has not been altered or verifying the identity of the signatory.

ARTICLE 12.3

Right to regulate

The Parties reaffirm each Party's right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment, including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, the promotion and protection of cultural diversity, and, in the case of New Zealand, the promotion or protection of the rights, interests, duties and responsibilities of Māori.

SECTION B

CROSS-BORDER DATA FLOWS AND PERSONAL DATA PROTECTION

ARTICLE 12.4

Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy and recognise that each Party may have its own regulatory requirements in this regard.

2. To that end, a Party shall not restrict cross-border data flows taking place between the Parties in the context of activity that is within the scope of this Chapter, by:

(a) requiring the use of computing facilities or network elements in its territory for data processing, including by requiring the use of computing facilities or network elements that are certified or approved in the territory of the Party;

(b) requiring the localisation of data in its territory;

(c) prohibiting storage or processing of data in the territory of the other Party; or

(d) making the cross-border transfer of data contingent upon the use of computing facilities or network elements in its territory or upon localisation requirements in its territory.

3. For greater certainty, the Parties understand that nothing in this Article prevents the Parties from adopting or maintaining measures in accordance with Article 25.1 (General Exceptions) to achieve the public policy objectives referred to therein, which, for the purposes of this Article, shall be interpreted, where relevant, in a manner that takes into account the evolutionary nature of the digital technologies. The preceding sentence does not affect the application of other exceptions in this Agreement to this Article.

4. The Parties shall keep the implementation of this Article under review and assess its functioning within three years after the date of entry into force of this Agreement unless the Parties agree otherwise. A Party may also at any time propose to the other Party to review this Article. Such request shall be accorded sympathetic consideration.

5. In the context of the review referred to in paragraph 4, and following the release of the Waitangi Tribunal's Report Wai 2522 dated 19 November 2021, New Zealand:

(a) reaffirms its continued ability to support and promote Māori interests under this Agreement; and

(b) affirms its intention to engage Māori to ensure the review referred to in paragraph 4 takes account of the continued need for New Zealand to support Māori to exercise their rights and interests, and meet its responsibilities under te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

ARTICLE 12.5

Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to enhancing consumer confidence and trust in digital trade.

2. Each Party may adopt or maintain measures it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in this Agreement shall affect the protection of personal data and privacy afforded by the Parties' respective measures.

3. Each Party shall inform the other Party about any measures referred to in paragraph 2 that it adopts or maintains.

4. Each Party shall publish information on the protection of personal data and privacy that it provides to users of digital trade, including:

(a) how individuals can pursue a remedy for a breach of protection of personal data or privacy arising from digital trade; and

(b) guidance and other information regarding compliance of businesses with applicable legal requirements protecting personal data and privacy.

SECTION C

SPECIFIC PROVISIONS

ARTICLE 12.6

Customs duties on electronic transmissions

1. A Party shall not impose customs duties on electronic transmissions between a person of one Party and a person of the other Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

ARTICLE 12.7

No prior authorisation

1. Each Party shall endeavour not to impose prior authorisation or any other requirement having an equivalent effect on the supply of services by electronic means.

2. Paragraph 1 shall be without prejudice to authorisation schemes that are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

ARTICLE 12.8

Conclusion of contracts by electronic means

Unless otherwise provided for under its laws and regulations, each Party shall ensure that:

(a) contracts may be concluded by electronic means;

(b) contracts are not deprived of legal effect, validity or enforceability solely on the ground that the contract was concluded by electronic means; and

(c) no other obstacles to the use of electronic contracts are created or maintained.

ARTICLE 12.9

Electronic authentication

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal effect or admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal, or the authenticating data resulting from electronic authentication, solely on the ground that it is in electronic form.

2. A Party shall not adopt or maintain measures that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their electronic transaction; or

(b) prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic authentication in that electronic transaction complies with the applicable legal requirements.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of electronic transactions, the method of electronic authentication:

(a) is certified by an authority accredited in accordance with its law; or

(b) meets certain performance standards, which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of electronic transactions concerned.

4. To the extent provided for under its laws or regulations, a Party shall apply paragraphs 1 to 3 to other electronic processes or means of facilitating or enabling electronic transactions, such as electronic time stamps or electronic registered delivery services.

ARTICLE 12.10

Electronic invoicing

1. The Parties recognise the importance of e-invoicing standards as a key element of digital procurement systems to support interoperability and digital trade and that such systems can also be used for business-to-business and business-to-consumer electronic transactions.

2. Each Party shall ensure that the implementation of measures related to e-invoicing in its jurisdiction is designed to support cross-border interoperability. When developing measures related to e-invoicing, each Party shall take into account, as appropriate, international frameworks, guidelines or recommendations, where they exist.

3. The Parties shall endeavour to share best practices pertaining to e-invoicing and digital procurement systems.

ARTICLE 12.11

Transfer of or access to source code

1. The Parties recognise the increasing social and economic importance of the use of digital technologies, and the importance of the safe and responsible development and use of such technologies, including in respect of source code of software to foster public trust.

2. A Party shall not require the transfer of, or access to, the source code of software owned by a person of the other Party as a condition for the import, export, distribution, sale or use of such software, or of products containing such software, in or from its territory.[1]

3. For greater certainty, paragraph 2:

(a) does not apply to the voluntary transfer of, or granting of access to, source code of software on a commercial basis by a person of the other Party, for example in the context of a public procurement transaction or a freely negotiated contract; and

[1] This Article does not preclude a Party from requiring that access be provided to software used for critical infrastructure, to the extent required to ensure the effective functioning of critical infrastructure, subject to safeguards against unauthorised disclosure.

(b) does not affect the right of regulatory, administrative, law enforcement or judicial bodies of a Party to require the modification of source code of software to comply with its laws and regulations that are not inconsistent with this Agreement.

4. Nothing in this Article shall:

(a) affect the right of regulatory authorities, law enforcement, judicial or conformity assessment bodies of a Party to access source code of software, either prior to or following import, export, distribution, sale or use, for investigation, inspection or examination, enforcement action or judicial proceeding purposes, to determine compliance with its laws and regulations, including those relating to non-discrimination and the prevention of bias, subject to safeguards against unauthorised disclosure;

(b) affect requirements by a competition authority or other relevant body of a Party to remedy a violation of competition law;

(c) affect the protection and enforcement of intellectual property rights; or

(d) affect the right of a Party to take measures in accordance with point (a) of Article 14.1(2) (Incorporation of certain provisions of the GPA) under which Article III of the GPA is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 12.12

Online consumer trust

1. Recognising the importance of enhancing consumer trust in digital trade, each Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including measures that:

(a) proscribe fraudulent and deceptive commercial practices, including misleading commercial practices;

(b) require suppliers of goods and services to act in good faith and abide by fair commercial practices, including by respecting the rights of consumers regarding unsolicited goods and services; and

(c) grant consumers access to redress for breaches of their rights, including a right to remedies in cases where goods or services are paid and not delivered or provided as agreed.

2. Each Party shall provide a level of protection for consumers engaging in electronic commerce transactions that is at least equivalent to that provided for consumers of commerce conducted by non-electronic means under its laws, regulations and policies.

3. The Parties recognise the importance of entrusting their consumer protection agencies or other relevant bodies with adequate enforcement powers and the importance of cooperation between their consumer protection agencies or other relevant bodies in order to protect consumers and enhance online consumer trust.

4. The Parties recognise the benefits of mechanisms to facilitate the resolution of claims relating to cross-border electronic commerce transactions. To that end, the Parties shall explore options to make such mechanisms available for cross-border electronic commerce transactions between themselves.

ARTICLE 12.13

Unsolicited direct marketing communications

1. Each Party shall adopt or maintain measures to ensure the effective protection of users against unsolicited direct marketing communications.

2. Each Party shall ensure that direct marketing communications are not sent to users who are natural persons unless they have given their consent to receiving such communications. Consent shall be defined in accordance with each Party's law.

3. Notwithstanding paragraph 2, each Party shall allow persons that collect, in accordance with its law, the contact details of a user in the context of the supply of goods or services, to send direct marketing communications to that user for their own similar goods or services.

4. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable users to request cessation free of charge and at any moment.

5. Each Party shall provide users with access to redress against suppliers of direct marketing communications that do not comply with the measures adopted or maintained pursuant to paragraphs 1 to 4.

ARTICLE 12.14

Cooperation on regulatory matters with regard to digital trade

1. The Parties shall exchange information on the following regulatory matters in the context of digital trade:

(a) the recognition and facilitation of interoperable electronic trust and authentication services;

(b) the treatment of direct marketing communications;

(c) the protection of consumers online, including means for consumer redress and building consumer confidence;

(d) the challenges for SMEs in the use of electronic commerce;

(e) e-government; and

(f) other matters relevant for the development of digital trade.

2. For greater certainty, this provision shall not apply to a Party's rules and safeguards for the protection of personal data and privacy, including on cross-border transfers of personal data.

3. The Parties shall, where appropriate, cooperate and participate actively in international fora to promote the development of digital trade.

4. The Parties recognise the importance of cooperating on cybersecurity matters relevant to digital trade.

ARTICLE 12.15

Paperless trading

1. With a view to creating a paperless border environment for trade in goods, the Parties recognise the importance of eliminating paper forms and documents required for the import, export or transit of goods. To that end, the Parties are encouraged to eliminate paper forms and documents, as appropriate, and transition toward using forms and documents in data-based formats.

2. Each Party shall endeavour to make trade administration documents that it issues or controls, or that are required in the normal course of trade, available to the public in electronic format. For the purposes of this paragraph, the term "electronic format" includes formats suitable for automated interpretation and electronic processing without human intervention, as well as digitised images and forms.

3. Each Party shall endeavour to accept the electronic versions of trade administration documents as the legal equivalent of paper versions of trade administration documents.

4. The Parties shall endeavour to cooperate bilaterally and in international fora to enhance acceptance of electronic versions of trade administration documents.

5. In developing initiatives that provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by international organisations.

ARTICLE 12.16

Open internet access

The Parties recognise the benefits of users in their respective territories, subject to each Party's applicable policies, laws and regulations, being able to:

(a) access, distribute and use services and applications of their choice available on the internet, subject to reasonable network management that does not block or slow down traffic based on commercial reasons;

(b) connect devices of their choice to the internet, provided that such devices do not harm the network; and

(c) have access to information on the network management practices of their supplier of internet access services.

CHAPTER 13

ENERGY AND RAW MATERIALS

ARTICLE 13.1

Objectives

The objectives of this Chapter are to facilitate trade and investment between the Parties to promote, develop and increase energy generation from renewable sources and the sustainable production of raw materials, including through the use of green technologies.

ARTICLE 13.2

Principles

1. Each Party retains the sovereign right to determine whether areas within its territory, as well as in its archipelagic and territorial waters, exclusive economic zone and continental shelf, are available for exploring for and producing energy goods and raw materials.

2. Each Party preserves its right to adopt, maintain and enforce measures that are necessary to secure the supply of energy goods and raw materials and are consistent with this Agreement.

ARTICLE 13.3

Definitions

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

(a) "authorisation" means the permission, license, concession or similar administrative or contractual instrument by which the competent authority of a Party entitles an entity to exercise a certain economic activity in its territory;

(b) "balancing" means actions and processes, in all timelines, through which network operators continuously ensure maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;

(c) "energy goods" means the goods from which energy is generated and that are listed by the corresponding HS code in Annex 13 (Lists of energy goods, hydrocarbons and raw materials);[1]

(d) "hydrocarbons" means the goods that are listed by the corresponding HS in Annex 13 (Lists of energy goods, hydrocarbons and raw materials);

[1] For greater certainty, the term "energy goods" does not include agricultural, forestry or fisheries goods other than biogas or biofuels.

(e) "raw materials" means materials used in the manufacture of industrial goods that are listed by the corresponding HS in Annex 13 (Lists of energy goods, hydrocarbons and raw materials);[1]

(f) "renewable electricity" means electricity generated from renewable energy sources;

(g) "renewable energy" means energy produced from solar, wind, hydro, geothermal, biological, ocean sources as well as other ambient sources where the original energy source is renewable;

(h) "standard" means standard as defined in Annex 1 to the TBT Agreement; and

(i) "technical regulation" means technical regulation as defined in Annex 1 to the TBT Agreement.

ARTICLE 13.4

Import and export monopolies

A Party shall not designate or maintain a designated import or export monopoly. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import energy goods or raw materials from, or export energy goods or raw materials to, the other Party.[2]

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1 For greater certainty, the term "raw materials" does not include agricultural, forestry or fisheries goods.

2 For greater certainty, this Article is without prejudice to Chapter 10 (Investment liberalisation and trade in services) and does not include a right that results from the grant of an intellectual property right.

ARTICLE 13.5

Export pricing

A Party shall not impose a higher price for its exports of energy goods or raw materials to the other Party than the price charged for such energy goods or raw materials when destined for the domestic market, by means of any measure such as licences or minimum price requirements.

ARTICLE 13.6

Domestic pricing

Each Party shall seek to ensure that wholesale electrical energy and natural gas prices reflect actual supply and demand. If a Party decides to regulate the price of the domestic supply of energy goods and raw materials (hereinafter referred to as "regulated price"), it may do so only to achieve a legitimate public policy objective, and only by imposing a regulated price that is clearly defined, transparent, non-discriminatory and proportionate.

ARTICLE 13.7

Authorisation for exploration and production
of energy goods and raw materials

1. If a Party requires an authorisation to explore for or produce hydrocarbons, electricity or raw materials, that Party shall:

(a) grant such an authorisation in accordance with the conditions and procedures set out in Articles 10.33 (Objectivity, impartiality and independence) and 10.34 (Publication and information available); and

(b) ensure a transparent process for granting authorisations and publish at least the type of authorisation and the relevant area or part thereof, in such a manner as to enable potentially interested applicants to submit applications.

2. A Party may grant authorisations without complying with the conditions and procedures set out in Article 10.34 (Publication and information available) and point (b) of paragraph 1 of this Article in any of the following cases related to hydrocarbons:

(a) the area has been subject to a previous procedure complying with Article 10.34 (Publication and information available) and point (b) of paragraph 1 of this Article which has not resulted in an authorisation being granted;

(b) the area is available on a permanent basis for exploration or production; or

(c) the authorisation granted has been relinquished before its date of expiry.

3. A Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind.[1] The contribution shall be fixed in a manner that does not interfere with the management and decision-making process of the entity which has been granted the authorisation.

4. Each Party shall ensure that the applicant is provided with the reasons for the rejection of its application to enable that applicant to have recourse to procedures for appeal or review. The procedures for appeal or review shall be made public in advance.

ARTICLE 13.8

Assessment of environmental impact

1. Each Party shall ensure that its laws and regulations require an environmental impact assessment for activities related to production of energy goods or raw materials, where such activities may have a significant impact on the environment.

[1] For greater certainty, the term "financial contribution or a contribution in kind" in this paragraph does not include any security or payment required for the purpose of an entity meeting an obligation to fund and carry out decommissioning or any security or payment required for post decommissioning activities.

2. With respect to the environmental impact assessment referred to in paragraph 1, each Party shall, as required by its laws and regulations:

(a) ensure that all interested persons, including non-governmental organisations, have an early and effective opportunity, and an appropriate time period, to participate in the environmental impact assessment as well as an appropriate time period to provide comments on the environmental impact assessment report;

(b) take into account the findings of the environmental impact assessment relating to the effects on the environment prior to granting the authorisation;

(c) make publicly available the outcome findings of the environmental impact assessment; and

(d) identify and assess as appropriate the significant effects of a project on:

(i) population and human health;

(ii) biodiversity;

(iii) land, soil, water, air and climate; and

(iv) cultural heritage and landscape, including the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.

ARTICLE 13.9

Offshore risk and safety

1. Each Party shall ensure that regulatory functions relating to safety and environmental protection of offshore oil and gas operations are conducted independently from regulatory functions relating to economic development and licensing of offshore oil and gas operations, such as by maintaining separate legal entities.

2. Each Party shall, when applicable, establish the conditions necessary for safe offshore, exploration and production of oil and gas in its territory, in order to protect the marine environment and coastal communities against pollution. These conditions shall be based on high standards of safety and environmental protection for offshore oil and gas operations.

3. The Parties shall cooperate, as appropriate, to internationally promote high standards of safety and environmental protection for offshore oil and gas operations by sharing information and increasing transparency on safety and environmental performance.

ARTICLE 13.10

Access to energy infrastructure for producers of renewable electricity

1. Without prejudice to Article 13.7 (Authorisation for exploration and production of energy goods and raw materials), each Party shall ensure that producers of renewable electricity in its territory are granted access to the electricity transmission and distribution infrastructure in its territory on non-discriminatory, reasonable and cost-reflective terms within a reasonable period of time after the request for access has been submitted and under conditions that allow reliable use of that infrastructure.

2. Each Party shall ensure that owners or operators of electricity transmission infrastructure in its territory publish the terms and conditions that are referred to in paragraph 1 and take appropriate measures to minimise the curtailment of renewable electricity production.

3. Each Party shall ensure balancing markets are in place where producers of renewable energy may procure goods and services under reasonable and non-discriminatory terms.

4. This Article is without prejudice to the right of each Party to adopt or maintain in its laws and regulations derogations from the right to access to its electricity transmission infrastructure based on objective and non-discriminatory criteria, provided such derogations are necessary to fulfil a legitimate policy objective, such as the need to maintain the stability of the electricity system.

ARTICLE 13.11

Regulatory authority

Each Party shall maintain or establish an independent regulatory body or any other independent body that is:

(a) legally distinct and functionally separate from, and not accountable to:

(i) other authorities; or

(ii) operators or entities providing, or having access to, the electricity transmission and distribution infrastructure; and

(b) entrusted to resolve disputes regarding appropriate terms, conditions and tariffs for access to and use of electricity transmission and distribution infrastructure within a reasonable period of time.

ARTICLE 13.12

Cooperation on standards, technical regulations
and conformity assessment procedures

1. In accordance with Articles 9.5 (International standards) and 9.6 (Standards), the Parties shall promote cooperation between the regulators or standardisation bodies located within their respective territories in the area of energy efficiency and sustainable renewable energy, with a view to contributing to sustainable energy and climate policy.

2. For the purposes of paragraph 1, the Parties shall endeavour to identify relevant initiatives of mutual interest concerning standards, technical regulations, and conformity assessment procedures related to energy efficiency and sustainable renewable energy.

ARTICLE 13.13

Research, development and innovation

The Parties shall promote research, development and innovation in the areas of energy efficiency, renewable energy and raw materials, and cooperate as appropriate, including to:

(a) promote the dissemination of information and best practices on environmentally sound and economically efficient policies regarding energy goods and raw materials, and cost-effective practices and technologies in the areas of energy efficiency, renewable energy and raw materials, in a manner that is consistent with the adequate and effective protection of intellectual property rights; and

(b) promote research, development and application of energy-efficient and environmentally sound technologies, practices and processes in the areas of energy efficiency and renewable energy and raw materials, which would minimise harmful environmental impacts in the entire energy goods and raw materials chains.

ARTICLE 13.14

Cooperation on energy goods and raw materials

The Parties shall cooperate, as appropriate, in the area of energy goods and raw materials with a view to, *inter alia*:

(a) reducing or eliminating trade and investment distorting measures in third countries affecting energy goods and raw materials;

(b) coordinating their positions in international fora where trade and investment issues related to energy goods and raw materials are discussed and fostering international programmes in the areas of energy efficiency, renewable energy and raw materials;

(c) fostering exchange of market data in the area of:

(i) energy goods including information on the organisation of energy markets, promotion of new energy technologies and energy efficiency; and

(ii) raw materials;

(d) promoting corporate social responsibility in accordance with international standards, such as the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct;

(e) promoting the values of responsible sourcing and mining globally as well as maximising the contribution of their raw materials sectors and associated industrial value chains to the fulfilment of the United Nations Sustainable Development Goals;

(f) promoting research, development, innovation and training in relevant fields of common interest in the area of energy goods and raw materials;

(g) fostering exchange of information and best practices on domestic policy developments;

(h) promoting the efficient use of resources (i.e. improving production processes as well as durability, reparability, design for disassembly, ease of reuse and recycling of goods); and

(i) promoting internationally high standards of safety and environmental protection for offshore oil, gas and mining operations, by sharing information and increasing transparency on safety and environmental performance.

CHAPTER 14

PUBLIC PROCUREMENT

ARTICLE 14.1

Incorporation of certain provisions of the GPA

1. The Parties affirm their rights and obligations under the GPA.

2. The following provisions of the GPA are incorporated into and made part of this Agreement, *mutatis mutandis*, to procurement covered by Annex 14 (Public procurement market access commitments):

(a) Articles I-IV, VI-XV, XVI.1-XVI.3, XVII and XVIII; and

(b) Appendices II, III and IV of the GPA as they relate to each Party.

3. Notwithstanding Article 1.5(5) (Relation to other international agreements), if any of the GPA Articles referred to in point (a) of paragraph 2 are amended, those amendments shall not be automatically incorporated into this Chapter, but the Parties shall consult with a view to amending this Chapter, as appropriate.

4. For greater certainty, references to "covered procurement" in the provisions incorporated under paragraph 2 shall be interpreted as references to procurement covered by Annex 14 (Public procurement market access commitments).

ARTICLE 14.2

Additional disciplines

In addition to the provisions referred to under Article 14.1 (Incorporation of certain provisions of the GPA), the following provisions apply:

Use of electronic means in conducting procurement and publication of notices

1. All notices relating to covered procurement, including notices of intended procurement, summary notices, notices of planned procurement and contract award notices:

(a) shall be directly accessible by electronic means, free of charge, through a single point of access on the internet; and

(b) may also be published in an appropriate paper medium.

Tender documentation shall be made available through electronic means and the Parties shall use electronic means in the submission of tenders to the widest extent practicable.

Registration systems and qualification procedures

2. Pursuant to Article IX.1 of the GPA, where a Party, including its procuring entities, or any other competent authority maintains a supplier registration system, it shall ensure that information on the registration system is accessible through electronic means and that interested suppliers may request registration at any time. If a supplier meets the conditions for registration, it shall be registered within a reasonable period of time. If a supplier does not meet the conditions for registration, it shall be informed and provided with written reasons within a reasonable period of time.

Selective tendering

3. Pursuant to Article IX.5 of the GPA, if a procuring entity uses a selective tendering procedure, it shall not limit the number of suppliers invited to submit a tender with the intention of avoiding effective competition.

Environmental, social and labour considerations

4. A Party may:

(a) allow procuring entities to take into account environmental, labour and social considerations related to the object of the procurement, provided they are:

    (i) non-discriminatory; and

(ii) indicated in the notice of intended procurement or in the tender documentation;

(b) take appropriate measures to ensure compliance with its own and with international environmental, labour and social laws, regulations, obligations and standards provided they are not discriminatory.

Conditions for participation

5. While a procuring entity of a Party may, in establishing the conditions for participation, require relevant prior experience where essential to meet the requirements of the procurement in accordance with point (b) of Article VIII.2 of the GPA, that procuring entity shall not require prior experience in the territory of the Party to be a condition of the procurement.

ARTICLE 14.3

Exchange of statistics

Every two years, each Party shall make available to the other Party bilateral statistics on public procurement, subject to their availability in the official online procurement systems of each Party.

ARTICLE 14.4

Modifications and rectifications to coverage

1. A Party may modify or rectify its commitments in its Section of Annex 14 (Public procurement market access commitments) in accordance with paragraphs 3 to 9 of this Article.

2. If a modification or a rectification of a Party's Annexes to Appendix I to the GPA becomes effective pursuant to Article XIX of the GPA, it shall automatically become effective and applicable *mutatis mutandis* for the purposes of this Agreement.

Modifications

3. A Party intending to modify its commitments in its Section of Annex 14 (Public procurement market access commitments) shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

4. Notwithstanding point (b) of paragraph 3, a Party is not required to provide compensatory adjustments to the other Party if the modification covers an entity over which the Party has effectively eliminated its control or influence.

5. The other Party may object to the modification referred to in paragraph 3, if it disputes that:

(a) a compensatory adjustment proposed under point (b) of paragraph 3 is adequate to maintain a comparable level of mutually agreed coverage; or

(b) the modification covers an entity over which the Party has effectively eliminated its control or influence as provided for in paragraph 4.

The other Party shall object in writing within 45 days after the date of delivery of the notification referred to in point (a) of paragraph 3 or be deemed to have accepted the compensatory adjustment or modification, including for the purposes of Chapter 26 (Dispute settlement).

Rectifications

6. The following changes to a Section of Annex 14 (Public procurement market access commitments) shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in this Chapter:

(a) a change in the name of an entity;

(b) a merger of two or more entities listed in that Section; and

(c) the separation of an entity listed in that Section into two or more entities that are added to the entities listed in the same Section.

7. In the case of proposed rectifications to a Party's commitments in its Section of Annex 14 (Public procurement market access commitments), the Party shall notify the other Party every two years, in line with the cycle of notifications provided for under the GPA.

8. A Party may notify the other Party of an objection to a proposed rectification within 45 days after the date of delivery of the notification. If a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change in accordance with paragraph 6 of this Article, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in this Agreement. If no objection is submitted in writing within 45 days after the date of delivery of the notification, the Party shall be deemed to have agreed to the proposed rectification.

Consultations and dispute settlement

9. If the other Party objects to the proposed modification or rectification, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days after the date of delivery of the objection, the Party seeking to modify or rectify its Section of Annex 14 (Public procurement market access commitments) may refer the matter to dispute settlement. The intended modification or rectification of the relevant Section of Annex 14 (Public procurement market access commitments) will take effect only when both Parties have agreed or on the basis of a final decision of a dispute settlement panel.

ARTICLE 14.5

Further negotiations

The Parties shall enter into negotiations on market access with a view to making improvements to the coverage provided for under Sub-Section 2 (Sub-central government entities) and Sub-Section 3 (Other entities) of Section B of Annex 14 (Schedule of New Zealand) as soon as possible following New Zealand local authorities, State Services or State Sector entities being either:

(a) covered by New Zealand in another international trade agreement; or

(b) required to follow the New Zealand Government Procurement Rules[1] after the date of entry into force of this Agreement.[2]

[1] The New Zealand Government Procurement Rules are New Zealand's primary instrument for regulating government procurement. A Whole of Government Direction issued on 22 April 2014 under Section 107 of the Crown Entities Act 2004 required certain classes of entities to follow the Government Procurement Rules.

[2] For greater certainty, point (b) does not apply if one or more of the entities concerned were required to follow the New Zealand Government Procurement Rules on the date of entry into force of this Agreement.

CHAPTER 15

COMPETITION POLICY

ARTICLE 15.1

Competition principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anticompetitive business practices and state interventions have the potential to distort the proper functioning of markets and undermine the benefits of trade and investment liberalisation.

ARTICLE 15.2

Competitive neutrality

This Chapter applies to all enterprises, public or private.

ARTICLE 15.3

Economic activity

This Chapter applies to enterprises only to the extent that the enterprises perform an economic activity. For the purposes of this Chapter, the term "economic activity" pertains to the offering of goods or services on a market.

ARTICLE 15.4

Legislative framework

1. Each Party shall adopt or maintain competition law that:

(a) applies to all enterprises;

(b) applies in all sectors of the economy;[1] and

[1] For greater certainty, pursuant to Article 42 TFEU, Union competition rules apply to the agricultural sector in accordance with Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ EU L 347, 20.12.2013, p. 671).

(c) addresses, in an effective manner, all of the following practices:

(i) horizontal and vertical agreements between enterprises, decisions by associations of enterprises, and informal cooperation between enterprises that substitutes for the risks of competition, which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuses by one or more enterprises of a dominant position; and

(iii) concentrations between enterprises that would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

2. The Parties shall ensure that enterprises entrusted with the operation of tasks of public interest shall be subject to the rules referred to in this Chapter, in so far as the application of such rules does not obstruct the performance, in law or in fact, of particular tasks of public interest that are assigned to these enterprises. Assigned tasks of public interest shall be transparent and any limitation to or deviation from the application of the rules in this Chapter shall not go beyond what is strictly necessary to achieve the assigned tasks.

ARTICLE 15.5

Implementation

1. Each Party shall maintain an operationally independent authority that is responsible for, and appropriately equipped with the powers and resources necessary to ensure, the full application, and the effective enforcement, of the competition law referred to in Article 15.4(1) (Legislative framework).

2. Each Party shall apply its competition law in a transparent manner, respecting the principles of procedural fairness, including the rights of defence of the enterprises concerned, in particular the right to be heard and the right to judicial review.

3. Each Party shall make publicly available its competition laws and regulations, and any guidelines used in relation to their enforcement with the exception of internal operating procedures.

4. Each Party shall ensure that its competition laws and regulations are applied and enforced in a manner that does not discriminate on the basis of nationality.

5. Each Party shall ensure that, before a sanction or remedy is imposed in an enforcement proceeding, the respondent is afforded the opportunity to be heard and provide evidence in its defence. In particular, each Party shall ensure that the respondent has a reasonable opportunity to review and contest the evidence on which the imposition of the sanction or the remedy is based.

6. Subject to any redactions necessary to safeguard confidential information, each Party shall ensure that the grounds for any sanction imposed or remedy applied for violation of its competition law are made available to the defendant in a proceeding enforcing its competition laws or regulations.

7. Each Party shall ensure that the addressees of a decision imposing a sanction or a remedy for violation of its competition law are given the opportunity to seek judicial review of such a decision.

ARTICLE 15.6

Private right of action

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, through a court or other independent tribunal for harm to that person's business or property caused by a violation of a Party's competition law, either independently or following a finding of violation by the Party's competition authority or authorities.

2. Recognising that a private right of action is an important supplement to the public enforcement of a Party's competition law, each Party shall adopt or maintain laws or other measures that provide independent private right of action.

ARTICLE 15.7

Cooperation

1. The Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy and enforcement of competition law.

2. To facilitate the cooperation referred to in paragraph 1, the competition authorities of the Parties may exchange information, subject to the confidentiality rules in each Party's law.

3. The competition authorities of the Parties shall endeavour to coordinate, where possible and appropriate, their enforcement activities concerning the same or related conduct or cases.

ARTICLE 15.8

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to this Chapter.

CHAPTER 16

SUBSIDIES

ARTICLE 16.1

Principles

Subsidies may be granted by a Party when subsidies are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets, undermine the benefits of trade liberalisation and harm the environment. In principle, subsidies should not be granted by a Party when they negatively affect, or are likely to negatively affect, competition or trade or when they significantly harm the environment.

ARTICLE 16.2

Definitions and scope

1. For the purposes of this Chapter "subsidy" means:

(a) a measure that fulfils the conditions set out in Article 1.1 of the SCM Agreement, irrespective of whether the subsidy is granted to an enterprise, supplying goods or services;[1] and

[1] This Article does not prejudice the outcome of any future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those discussions at the WTO, the Parties may amend this Agreement in this respect.

(b) a subsidy in accordance with point (a) that is specific within the meaning of Article 2 of the SCM Agreement. Any subsidy falling under the provisions of Article 16.7 (Prohibited subsidies) shall be deemed to be specific.

2. This Chapter applies to subsidies granted to enterprises to the extent that those enterprises perform an economic activity.[1] For the purposes of this Chapter, the term "economic activity" pertains to the offering of goods or services on a market.

3. This Chapter applies to subsidies granted to enterprises entrusted with particular roles or tasks in the public interest, to the extent that the application of this Chapter does not, in law or in fact, obstruct the performance of the particular roles or tasks in the public interest entrusted to those enterprises. Such particular roles or tasks in the public interest shall be entrusted in advance in a transparent manner, and any limitation to, or deviation from, the application of this Chapter shall not go beyond what is necessary to achieve the entrusted roles or tasks in the public interest. For the purposes of this paragraph, "particular roles or tasks in the public interest" includes public service obligations.

4. Articles 16.6 (Consultations) and 16.7 (Prohibited subsidies) do not apply to subsidies granted by sub-central levels of government of each Party. In fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure the observance of this Chapter by sub-central levels of government of that Party.

[1] For greater certainty, "enterprises" includes public and private enterprises.

5. Articles 16.6 (Consultations) and 16.7 (Prohibited subsidies) do not apply to the audio-visual sector.

6. Article 16.7 (Prohibited subsidies) does not apply:

(a) to subsidies that are granted to compensate for the damage caused by natural disasters or other non-economic exceptional occurrences, provided that such subsidies are temporary; and

(b) to subsidies that are granted to respond to a national or global health or economic emergency, provided that such subsidies are temporary, targeted and proportionate, having regard to the harm caused by or arising from the emergency.

ARTICLE 16.3

Relation to the WTO Agreement

Nothing in this Chapter shall affect the rights and obligations of either Party under the SCM Agreement, the Agreement on Agriculture, Article XVI of GATT 1994 or Article XV of GATS.

ARTICLE 16.4

Fisheries subsidies

Each Party shall refrain from granting or maintaining harmful fisheries subsidies. For this purpose, the Parties shall cooperate on:

(a) fulfilling the United Nations Sustainable Development Goals Target 14.6;

(b) implementing the WTO Agreement on Fisheries Subsidies that, among other things, prohibits subsidies that contribute to illegal, unreported and unregulated fishing; and

(c) pursuing, in the framework of the WTO, negotiations for the adoption of comprehensive disciplines regarding the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing.

ARTICLE 16.5

Transparency

1. With respect to any subsidy granted or maintained within its territory, each Party shall make transparent, within one year after the date of entry into force of this Agreement and every two years thereafter, the following information:

(a) the legal basis and purpose of the subsidy;

(b) the form of the subsidy;

(c) the amount of the subsidy or the amount budgeted for the subsidy; and

(d) if possible, the name of the recipient of the subsidy.

2. Each Party shall meet the transparency requirements set out in paragraph 1 through:

(a) notification pursuant to Article 25 of the SCM Agreement;

(b) notification pursuant to Article 18 of the Agreement on Agriculture; or

(c) publication, by the Party or on its behalf, on a publicly accessible website.

3. Notwithstanding the transparency requirements set out in paragraph 1, a Party (the "requesting Party") may request additional information from the other Party (the "responding Party") about a subsidy granted by the responding Party, including:

(a) the legal basis and policy objective or purpose of the subsidy;

(b) the total amount or the annual budgeted amount for the subsidy;

(c) if possible, the name of the recipient of the subsidy;

(d) the dates and the duration of the subsidy and any other time limits attached to it;

(e) the eligibility requirements for the subsidy;

(f) any measures taken to limit the potential distortive effect on competition, trade or the environment; and

(g) any other information permitting an assessment of the negative effects of the subsidy.

4. The responding Party shall provide the information requested pursuant to paragraph 3 to the requesting Party in writing no later than 60 days after the date of delivery of the request. If the responding party does not provide, wholly or partially, the information requested by the requesting Party, the responding Party shall explain the reasons for not providing such information in its written response required by this paragraph.

ARTICLE 16.6

Consultations

1. If, at any time after making a request for additional information pursuant to Article 16.5(3) (Transparency), the requesting Party considers that a subsidy granted by the responding Party is negatively affecting, or is likely to negatively affect, its interests, it may express its concern in writing to the responding Party and request consultations on the matter. Consultations between the Parties to discuss the concerns raised shall be held within 60 days after the date of delivery of the request.

2. If, after the consultations referred to in paragraph 1, the requesting Party considers that the subsidy in question is negatively affecting, or is likely to negatively affect, its interests, in a disproportionate manner:

(a) in the case of subsidies granted to an enterprise supplying goods or services, the responding Party shall endeavour to eliminate or minimise any negative effects of the subsidy on the interests of the requesting Party; or

(b) in the case of subsidies granted in relation to goods covered by Annex 1 to the Agreement on Agriculture, taking into account the relevant provisions of that Agreement, the responding Party shall accord sympathetic consideration to the concerns of the requesting Party with due respect to Article 16.3 (Relation to the WTO Agreement).

3. For the purposes of point (a) of paragraph 2, the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

ARTICLE 16.7

Prohibited subsidies

1. The following subsidies that have or could have a significant negative effect on trade between the Parties shall be prohibited:

(a) subsidies whereby a government guarantees debts or liabilities of certain enterprises without any limitation as to the amount of those debts and liabilities or the duration of such guarantee; and

(b) subsidies to an insolvent enterprise, or enterprise in respect of which insolvency is imminent in the short to medium-term without the subsidy, if:

(i) there is no credible restructuring plan, based on realistic assumptions, with the view to ensure the return to long-term viability of the enterprise within a reasonable time period; or

(ii) the enterprise, other than a SME, does not contribute to the costs of restructuring.

2. Point (b) of paragraph 1 does not apply to subsidies provided to enterprises as temporary liquidity support in the form of loan guarantees or loans during the period which is necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to merely keep the enterprise in business. For the purposes of this paragraph, "temporary liquidity support in the form of loan guarantees or loans" includes solvency support.

3. Subsidies granted to ensure the orderly market exit of an enterprise are not prohibited.

4. This Article does not apply to subsidies, the cumulative amounts or budgets of which are less than SDR 160 000 per enterprise over a period of three consecutive years.

ARTICLE 16.8

Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the policy objective for which those subsidies were granted.

ARTICLE 16.9

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to Article 16.6 (Consultations).

CHAPTER 17

STATE-OWNED ENTERPRISES

ARTICLE 17.1

Scope

1. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, engaged in a commercial activity that may potentially affect trade or investment between the Parties.[1] Where such state-owned enterprises, enterprises granted special rights or privileges and designated monopolies engage both in commercial and non-commercial activities, only the commercial activities are covered by this Chapter.

2. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies at all levels of government.[2]

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[1] Entities created or regulated under the New Zealand Kiwifruit Export Regulations 1999 or the New Zealand Kiwifruit Industry Restructuring Act 1999 are excluded from the application of this Chapter, with the exception of Article 17.3 (Relation to the WTO Agreement) and Article 17.7 (Information exchange). Article 17.7 (Information exchange) clarifies the application of Article 17.3 (Relation to the WTO Agreement) for the purposes of this Chapter.

[2] The following are deemed not to be within the scope of this Chapter:
(a) local councils and entities covered by Chapter 14 (Public Procurement) and its Annex 14; and
(b) enterprises to which special rights and privileges have been granted, and monopolies designated, by the local councils referred to in point (a).

3. This Chapter does not apply to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies if in one of the three previous consecutive fiscal years the annual revenue derived from the commercial activities of the enterprise was less than SDR 100 million. During the first three years after the date of entry into force of this Agreement, that threshold shall be SDR 200 million.

4. This Chapter does not apply to situations where state-owned enterprises, enterprises granted special rights or privileges or designated monopolies act as procuring entities conducting procurement for governmental purposes and not with a view to commercial resale or with a view to use in the production of a good or in the supply of a service for commercial sale.[1]

5. Article 17.5 (Non-discriminatory treatment and commercial considerations) and Article 17.7 (Information exchange) do not apply to an activity performed in the exercise of governmental authority.

6. Article 17.5 (Non-discriminatory treatment and commercial considerations) does not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate, if that supply of financial services:

(a) supports exports or imports, provided that those services are:

(i) not intended to displace commercial financing; or

[1] This is without prejudice to the commitments made by the Parties in Chapter 14 (Public Procurement), including, in particular, its Annex 14.

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(b) supports private investment outside the territory of the Party, provided that those services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement referred to in point (b) of Article 17.2 (Definitions), provided that it falls within the scope of the Arrangement.

7. Article 17.5 (Non-discriminatory treatment and commercial considerations) does not apply to the services sectors that are outside the scope of Chapter 10 (Investment liberalisation and trade in services) as set out in Article 10.2(3) (Scope).

8. Article 17.5 (Non-discriminatory treatment and commercial considerations) does not apply to the extent that a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly of a Party makes a purchase or sale of a good or a service pursuant to:

(a) any existing non-conforming measure in accordance with Article 10.10 (Non-conforming measures) that the Party maintains, continues, renews or amends as set out in its Schedule in Annex 10-A (Existing measures); or

(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article 10.10 (Non-conforming measures) as set out in its Schedule in Annex 10-B (Future measures).

ARTICLE 17.2

Definitions

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

(a) "an activity performed in the exercise of governmental authority" means any activity which is performed, including any service that is supplied, neither on a commercial basis nor in competition with one or more economic operators;

(b) "Arrangement" means the Arrangement on Officially Supported Export Credits, developed within the framework of the OECD or a successor undertaking, whether developed within or outside of the OECD framework that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;

(c) "commercial activity" means an activity which an enterprise undertakes, the end result of which is the production of a good or the supply of a service to be sold in the relevant market in quantities and at prices determined by the enterprise, and which are undertaken with an orientation towards profit-making[1];

[1] For greater certainty, an activity undertaken by an enterprise that operates on a non-profit basis or a cost-recovery basis is not a commercial activity.

(d) "commercial considerations" means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry;

(e) "designate a monopoly" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(f) "designated monopoly" means an entity, including a consortium or a government agency, that in a relevant market in the territory of a Party is designated as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

(g) "enterprise granted special rights or privileges" means an enterprise, public or private, to which a Party has granted, in law or in fact, special rights or privileges[1]; special rights or privileges are granted by a Party when it designates or limits to two or more the number of enterprises authorised to provide a good or a service, other than according to objective, proportional and non-discriminatory criteria, substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions;

[1] For greater certainty, the granting of a quota allocation, licence or permit in relation to either a scarce resource or the distribution of export products to markets where tariff quotas, country-specific preferences or other measures are in force shall not, in and of itself, constitute a special right or privilege.

(h) "state-owned enterprise" means an enterprise in which a Party:

(i) directly owns more than 50 % of the share capital;

(ii) controls the exercise of more than 50 % of the voting rights;

(iii) holds the power to appoint a majority of the members of the board of directors or any other equivalent management body;

(iv) holds the power to control the decisions of the enterprise through any other ownership interest, including minority ownership; or

(v) has the power to direct the actions of the enterprise or otherwise exercise an equivalent level of control in accordance with the law of that Party.

ARTICLE 17.3

Relation to the WTO Agreement

Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, Article VIII of GATS, and paragraphs 18 to 21 of the WTO Ministerial Decision of 19 December 2015 on Export Competition (WT/MIN(15)/45 – WT/L/980) are incorporated into and made part of this Agreement, *mutatis mutandis*.[1]

ARTICLE 17.4

General provisions

1. Without prejudice to the rights and obligations of each Party under this Chapter, nothing in this Chapter prevents a Party from establishing or maintaining state-owned enterprises, granting special rights or privileges to enterprises or designating or maintaining monopolies.

2. A Party shall not require or encourage a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly to act in a manner inconsistent with this Chapter.

[1] Article 17.7 (Information exchange) specifies, as between the Parties and solely for the purposes of this Agreement, the Parties' understanding of how the obligations under Article XVII:4 of GATT 1994 are to be met for the purposes of this paragraph.

ARTICLE 17.5

Non-discriminatory treatment and commercial considerations

1. Each Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or a service, except to fulfil any terms of its public service mandate that are not inconsistent with point (b) or (c);

(b) in its purchase of a good or a service:

(i) accords to a good or a service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party; and

(ii) accords to a good or service supplied by a covered enterprise as defined in point (d) of Article 10.3 (Definitions) treatment no less favourable than it accords to a like good or a like service supplied by enterprises of that Party's own investors in the relevant market in the Party; and

(c) in its sale of a good or a service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party; and

(ii) accords to a covered enterprise as defined in point (d) of Article 10.3 (Definitions) treatment no less favourable than it accords to enterprises of that Party's own investors in the relevant market in the Party.

2. Provided that such different terms or conditions or refusal are made in accordance with commercial considerations, points (b) and (c) of paragraph 1 do not preclude a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; or

(b) refusing to purchase or supply goods or services.

ARTICLE 17.6

Regulatory framework

1. Each Party shall respect and make best use of relevant international standards including the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains:

(a) is independent from, and not accountable to, any of the enterprises regulated by such body; and

(b) acts impartially[1] in like circumstances with respect to all enterprises regulated by such body, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies.[2]

3. Each Party shall ensure the enforcement of its law to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies in a consistent and non-discriminatory manner.

ARTICLE 17.7

Information exchange

1. A Party which has a reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly (hereinafter referred to in this Article as "the entity") of the other Party may request the other Party in writing to provide information on the commercial activities of the entity related to the carrying out of this Chapter in accordance with paragraph 2.

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[1] For greater certainty, the impartiality with which the regulatory body or any other body exercising a regulatory function that the Party establishes or maintains exercises its regulatory functions is to be assessed by reference to a general pattern or practice of such body.

[2] For greater certainty, for those sectors in which the Parties have agreed in other Chapters to specific obligations relating to a regulatory body or any other body exercising a regulatory function that the Party establishes or maintains, the relevant provisions of those Chapters shall prevail.

2. The Party responding to a request shall provide the following information to the requesting Party, provided that the request includes an explanation of how the activities of the entity may be affecting the interests of the requesting Party under this Chapter and the request indicates which of the following information shall be provided:

(a) the ownership and the voting structure of the entity, indicating the percentage of shares that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and the percentage of voting rights that they cumulatively hold, in the entity;

(b) a description of any special shares or special voting or other rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, where such rights are different from those attached to the general common shares of the entity;

(c) a description of the organisational structure of the entity and its composition of the board of directors or of any other equivalent management body;

(d) a description of which government departments or public bodies regulate or monitor the entity, a description of the reporting requirements imposed on it by those government departments or public bodies, and the rights and practices of those government departments or any public bodies with respect to the appointment, dismissal or remuneration of senior executives and members of its board of directors or any other equivalent management body;

(e) annual revenue and total assets of the entity over the most recent three year period for which information is available;

(f) any exemptions, immunities and related measures from which the entity benefits under the law of the requested Party;

(g) in respect of entities covered by the New Zealand Local Government Act 2002 or successor legislation, any information that such entities are obliged to provide under that Act or any successor legislation; and

(h) any additional information regarding the entity that is publicly available, including annual financial reports and third party audits.

3. Without prejudice to Article 25.7 (Disclosure of information), paragraphs 1 and 2 shall not require a Party to disclose confidential information the disclosure of which would be inconsistent with its law.

4. If the requested information is not available to a Party, that Party shall provide the reasons for this in writing to the Party that requested the information.

CHAPTER 18

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS

ARTICLE 18.1

Objectives

The objectives of this Chapter are to:

(a) promote the creation, production, dissemination and commercialisation of innovative and creative goods and services in and between the Parties, contributing to a more sustainable and inclusive economy for the Parties;

(b) promote, support and govern trade between the Parties as well as reduce distortions and impediments to such trade; and

(c) ensure an adequate and effective level of protection and enforcement of intellectual property rights.

ARTICLE 18.2

Scope

1. This Chapter complements and further specifies the rights and obligations of each Party under the TRIPS Agreement and other international agreements in the field of intellectual property to which they are parties.

2. Each Party shall give effect to this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

3. This Chapter does not preclude a Party from providing more extensive protection for, or enforcement of, intellectual property rights than is required by this Chapter, provided that such protection and enforcement does not contravene this Chapter.

ARTICLE 18.3

Definitions

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

(a) "intellectual property rights" means all categories of intellectual property that are covered by Articles 18.8 (Authors) to 18.45 (Protection of plant variety rights) of this Chapter and Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention;

(b) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO to which a Party is a contracting party;

(c) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Stockholm on 14 July 1967;

(d) "WIPO" means the World Intellectual Property Organization; and

(e) "WPPT" means the WIPO Performances and Phonograms Treaty done at Geneva on 20 December 1996.

ARTICLE 18.4

International agreements

1. Each Party shall comply with its commitments under the following international agreements:

(a) TRIPS Agreement;

(b) WIPO Copyright Treaty adopted in Geneva on 20 December 1996;

(c) WPPT;

(d) Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled done in Marrakesh on 27 June 2013; and

(e) Trademark Law Treaty adopted at Geneva on 27 October 1994.

2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

(a) Beijing Treaty on Audiovisual Performances, adopted in Beijing on 24 June 2012;

(b) Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006; and

(c) The Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

3. Each Party shall ensure that the procedures provided under the following international agreements are available in its territory:

(a) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989, as last amended on 12 November 2007; and

(b) Patent Cooperation Treaty, done at Washington on 19 June 1970, as last amended on 3 October 2001.

ARTICLE 18.5

Exhaustion

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its law.

ARTICLE 18.6

National treatment

1. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection[1] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as revised at Paris on 24 July 1971, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961, WPPT, or the Treaty on Intellectual Property in Respect of Integrated Circuits done at Washington, on 26 May, 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.

[1] For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter, including measures to prevent the circumvention of effective technological measures referred to in Article 18.17 (Protection of technological measures) and measures concerning rights management information referred to in Article 18.18 (Obligations concerning rights management information).

2. A Party may avail itself of the exceptions permitted under paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws and regulations of the Party that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

ARTICLE 18.7

TRIPS Agreement and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (hereinafter referred to as the "Doha Declaration"). This Chapter shall be interpreted and implemented consistently with the Doha Declaration.

2. Each Party shall implement Article 31bis of the TRIPS Agreement, as well as the Annex to the TRIPS Agreement, including the Appendix to that Annex, which entered into force on 23 January 2017.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 18.8

Authors

Each Party shall provide authors with the exclusive right to authorise or prohibit:

(a) direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public by sale or other transfer of ownership of the original of their works or of copies thereof;

(c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of originals or copies of their works in respect of at least phonograms, computer programmes[1] and cinematographic works.

ARTICLE 18.9

Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

(a) the fixation[2] of their performances;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;

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1 A Party may exclude computer programmes where the programme itself is not the essential object of the rental.

2 The term "fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

(c) any form of distribution to the public, by sale or other transfer of ownership, of the fixations of their performances;

(d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation; and

(f) the commercial rental to the public of the fixation of their performances.

ARTICLE 18.10

Producers of phonograms

Each Party shall provide phonogram producers with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms;

(b) any form of the distribution to the public, by sale or other transfer of ownership, of their phonograms;

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.

ARTICLE 18.11

Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;

(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite; and

(e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

ARTICLE 18.12

Broadcasting and communication to the public of phonograms
published for commercial purposes[12]

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or communication to the public.[3]

2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

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1 Each Party may grant more extensive rights, such as exclusive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

2 A Party may comply with this Article by granting exclusive rights to performers and producers of phonograms for broadcasting and communication to the public.

3 Each Party may decide that "communication to the public" does not include the making available to the public of a phonogram, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 18.13

Term of protection[1]

1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.

2. In the case of a work of joint authorship, the term of protection as referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, if the pseudonym adopted by the author leaves no doubt as to the author's identity, or if the author discloses it during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

4. If a Party provides that the term of protection of a cinematographic or audiovisual work is calculated on a basis other than the life of a natural person, such term shall be no less than 70 years from the date of the first lawful publication or the first lawful communication to the public, or, failing such lawful publication or communication to the public within 70 years from the making of the work.

[1] If on the date of entry into force of this Agreement a Party's laws and regulations do not provide for the terms of protection set out in this Article, this Article shall apply only as of the date such laws and regulations enter into effect in that Party but in any case no later than four years after the date of entry into force of this Agreement. That Party shall notify the other Party the date upon which such laws and regulations entered into effect, if that date is earlier than four years after the date of entry into force of this Agreement.

5. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

6. The rights of performers shall expire 50 years after the date of the fixation of the performance. However, if a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire 70 years after the date of the first such publication or the first such communication to the public, whichever is the earlier.

7. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published or lawfully communicated to the public within this period, those rights shall expire 70 years from the date of the first such publication or the first such communication to the public. Each Party may adopt effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

8. The terms of protection laid down in this Article shall be calculated from the first day of January of the year following the event that gives rise to them.

9. Each Party may provide for longer terms of protection than those provided for in this Article.

ARTICLE 18.14

Resale right[1]

1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The resale right referred to in paragraph 1 shall apply to all acts of resale involving art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art as sellers, buyers or intermediaries.

3. Each Party may provide that the resale right referred to in paragraph 1 shall not apply to acts of resale if the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.

4. The procedure for collection of the remuneration and its amount shall be a matter for determination by the law of each Party.

[1] If on the date of entry into force of this Agreement a Party's laws and regulations do not provide for the protection set out in this Article, this Article shall apply only as of the date such laws and regulations enter into effect in that Party but in any case no later than two years after the date of entry into force of this Agreement. That Party shall notify the other Party the date upon which such laws and regulations entered into effect, if that date is earlier than two years after the date of entry into force of this Agreement.

ARTICLE 18.15

Collective management of rights

1. The Parties recognise the importance of, and shall endeavour to promote, cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.

2. The Parties recognise the importance of, and shall endeavour to promote, transparency of collective management organisations, in particular regarding the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Where a collective management organisation established in the territory of one Party represents another collective management organisation established in the territory of the other Party by way of a representation agreement, the Parties recognise that it is important that the representing collective management organisation:

(a) does not discriminate against right holders of the represented collective management organisation;

(b) accurately, regularly and diligently pays amounts owed to the represented collective management organisation; and

(c) provides the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to that amount of rights revenue.

ARTICLE 18.16

Limitations and exceptions

Each Party shall provide for limitations or exceptions to the rights set out in Articles 18.8 (Authors) to 18.12 (Broadcasting and communication to the public of phonograms published for commercial purposes) only in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

ARTICLE 18.17

Protection of technological measures[1]

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they are pursuing that objective.

[1] If on the date of entry into force of this Agreement a Party's laws and regulations do not provide for the protection set out in this Article, this Article shall apply only as of the date such laws and regulations enter into effect in that Party but in any case no later than four years after the date of entry into force of this Agreement. That Party shall notify the other Party the date upon which such laws and regulations entered into effect, if that date is earlier than four years after the date of entry into force of this Agreement.

2. Each Party shall provide adequate legal protection against:

(a) a person manufacturing, importing, distributing, selling, renting or advertising for sale or rental any device, product or component that:

(i) has only a limited purpose or use other than to circumvent any technological measure; or

(ii) is primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any technological measure; and

(b) a person providing any service that is promoted, advertised or marketed for the purpose of enabling or assisting in the circumvention of any technological measure.

3. For the purposes of this Sub-Section, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other protected subject matter, which are not authorised by the right holder of any copyright or related rights covered by this Sub-Section.

4. A Party may adopt or maintain appropriate measures, as necessary, to ensure that the adequate legal protection pursuant to paragraphs 1 and 2 of this Article does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in accordance with Article 18.16 (Limitations and exceptions).

ARTICLE 18.18

Obligations concerning rights management information

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

(a) the removal or alteration of any electronic rights-management information; or

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected pursuant to this Sub-Section from which electronic rights-management information has been removed or altered without authority;

if such person knows, or has reasonable grounds to know, that by so doing they are inducing, enabling, facilitating or concealing an infringement of any copyright or related rights as provided by the law of a Party.

2. For the purposes of this Article, the term "rights-management information" means any information provided by right holders that identifies the work or other subject matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

3. Paragraph 2 applies if any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Article.

SUB-SECTION 2

TRADEMARKS

ARTICLE 18.19

Trademark classification

Each Party shall maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as revised and amended.

ARTICLE 18.20

Signs of which a trademark may consist

A trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

(a) distinguishing the goods or services of one undertaking from those of other undertakings; and

(b) being represented on the respective trademark register of each Party in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

ARTICLE 18.21

Rights conferred by a trademark

1. Each Party shall provide that a registered trademark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties, not having the proprietor's consent, from using in the course of trade:

(a) any sign that is identical with the registered trademark in relation to goods or services that are identical with those for which the trademark is registered; and

(b) any sign where, because of its identity with, or similarity to, the registered trademark and the identity or similarity of the goods or services covered by this trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the registered trademark.

2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trademark is registered without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trademark that is identical to the trademark registered in respect of such goods, or that cannot be distinguished in its essential aspects from that trademark.[1]

3. The entitlement of the proprietor of a trademark as referred to in paragraph 2 may lapse if, during the proceedings to determine whether the registered trademark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

ARTICLE 18.22

Registration procedure

1. Each Party shall provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration, including partial refusal of registration, shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.

[1] A Party may take additional appropriate measures with a view to ensure the smooth transit of generic medicines.

2. Each Party shall provide for the possibility for third parties to oppose trademark applications or, where appropriate, trademark registrations. Such opposition proceedings shall be adversarial.

3. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

ARTICLE 18.23

Well-known trademarks

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 18.24

Exceptions to the rights conferred by a trademark

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms including geographical indications, and may provide other limited exceptions, provided that such exceptions take account of the legitimate interests of the proprietor of the trademark and of third parties.

2. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(a) the name or address of the third party;

(b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; or

(c) the trademark, where it is necessary to indicate the intended purpose of a good or service, in particular as accessories or spare parts,

provided that the third party uses them in accordance with honest practices in industrial or commercial matters.

3. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right that only applies in a particular locality if that right is recognised by the laws of the Party in question and is used within the limits of the territory in which it is recognised.

ARTICLE 18.25

Grounds for revocation

1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous period of time[1] determined by the law of each Party, the trademark has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, no person may claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the above continuous period of time and filing of the application for revocation, genuine use of the trademark has been started or resumed. The commencement or resumption of use within a period of time[2] determined by the law of each Party preceding the filing of the application for revocation, which began at the earliest on expiry of the continuous period of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

2. A trademark shall also be liable to revocation if, after the date on which it was registered:

(a) as a consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered; or

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1 For the purposes of this sentence, the period of time determined by the law of each Party shall be at least three years.

2 For the purposes of this sentence, the period of time determined by the law of each Party shall be at least one month.

(b) as a consequence of the use made of it by the proprietor of the trademark or with the proprietor's consent in respect of the goods or services for which it is registered, the trademark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

ARTICLE 18.26

Bad faith applications

A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

SUB-SECTION 3

DESIGNS

ARTICLE 18.27

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this Sub-Section. For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the registered design, or using articles bearing or embodying the protected design if such acts are undertaken for commercial purposes.[1]

[1] A Party may satisfy Article 18.27 (Protection of registered designs) in relation to "exporting" and "stocking" by providing the holder of the registered design the right to prevent third parties from offering for sale or hire, or selling or hiring any article bearing or embodying the registered design in a way that gives rise to the exporting or stocking of that article.

3. A Party may provide that a design applied to or incorporated in a product that constitutes a component part of a complex product shall only be considered to be new or original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

4. For the purposes of point (a) of paragraph 3, the term "normal use" means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 18.28

Duration of protection

Each Party shall ensure that the right holder of a registered design may have the term of protection renewed for one or more periods of five years each. Each Party shall ensure that the duration of protection available for registered designs amounts to a total term of at least 15 years from the date of filing.

ARTICLE 18.29

Protection conferred to unregistered designs

1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.[1]

2. The duration of protection available for the unregistered design shall amount to at least three years from the date on which the design was first made available to the public in the territory of the Party.

ARTICLE 18.30

Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the holder of the protected design, taking account of the legitimate interests of third parties.

[1] A Party may satisfy Article 18.29 (Protection conferred to unregistered designs), in relation to "exporting" by providing the holder of the unregistered design the right to prevent third parties from selling, putting on the market or importing the product bearing or embodying the unregistered design in a way that gives rise to the exporting of that product.

2. Design protection shall not extend to designs solely dictated by its technical or functional considerations. A design shall not subsist in features of appearance of a product that must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3. By way of derogation from paragraph 2, a design shall, in accordance with the conditions set out in Article 18.27(1) (Protection of registered designs), subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 18.31

Relationship to copyright

Each Party shall ensure that a design, including an unregistered design, shall also be eligible for protection under its copyright law as from the date on which the design was created or fixed in any form. Each Party shall determine the extent to which, and the conditions under which, such protection is conferred, including the level of originality required.

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE 18.32

Scope, procedures and definitions

1. This Sub-Section applies to the recognition and protection of geographical indications for wine, spirits and foodstuffs, which originate in the Parties.

2. For the purposes of this Sub-Section, the following definitions apply:

(a) "geographical indication" means an indication that identifies a good as originating in a Party, or a region or locality in that Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

(b) "product class" means a product class listed in Annex 18-A (Product classes); and

(c) "product specification" means, in relation to the relevant good for a geographical indication, the approved requirements for the use of that geographical indication in marketing that good.

3. Following the completion of an opposition procedure and an examination of the geographical indications, New Zealand shall protect the geographical indications of the Union listed in Section A of Annex 18-B (List of geographical indications - European Union) in accordance with, at least, the level of protection set out in this Sub-Section.

4. Following the completion of an opposition procedure and an examination of the geographical indications, the Union shall protect the geographical indications of New Zealand listed in Section B of Annex 18-B (List of geographical indications – New Zealand) in accordance with, at least, the level of protection set out in this Sub-Section.

ARTICLE 18.33

Amendment of the list of geographical indications

1. The list of product classes in Annex 18-A (Product classes) and the list of geographical indications to be protected in Annex 18-B (Lists of geographical indications) may be amended by decision of the Trade Committee, including by adding geographical indications, updating the list of product classes or removing geographical indications which have ceased to be protected in their place of origin.

2. Additions to Annex 18-B (Lists of geographical indications) shall not exceed 30 geographical indications of each Party every three years after the date of entry into force of this Agreement. New geographical indications shall be added after the opposition procedure is completed in accordance with paragraph 3 and after such geographical indications are examined to the satisfaction of both Parties.

3. Each Party shall provide that objections to a request for protection of a geographical indication under the opposition procedure referred to in Article 18.32(3) and (4) (Scope, procedures and definitions) may be made, and that any such request for protection may be refused or otherwise not afforded. The grounds of objection to a request for protection of a geographical indication shall be the following:

(a) the geographical indication is identical or confusingly similar to a trademark that has been registered, or applied to be registered, in good faith in the Party in respect of the same or a similar good, or to a trademark in respect of which rights have been acquired in the Party through use in good faith in respect of the same or a similar good;

(b) the geographical indication is identical with or similar to a trademark in relation to any good that is not similar to the good in respect of which the trademark is registered where the trademark is well known in the Party and the use of the geographical indication would indicate a connection between the good and the owner of the trademark and the interests of the trademark owner are likely to be damaged by such use;

(c) the geographical indication is a term customary in common language as the common name for the relevant good in the Party;

(d) the geographical indication is a term that is used in the Party as the name of a plant variety or an animal breed and as a result is likely to mislead consumers as to the true origin of the good;

(e) the geographical indication is a homonymous or partially homonymous geographical indication; and

(f) use or registration of the geographical indication in the Party would be likely to be offensive.

4. For the purposes of this Sub-Section, in determining whether a term is customary in common language as the common name for the relevant good in a Party, the Party may take into account how consumers understand the term in that Party. Factors relevant to such consumer understanding may include evidence as to whether the term is used to refer to the same type of good in question, as indicated by relevant sources, and how the good referenced by the term is marketed and used in trade in that Party.

5. In assessing the objections for protection submitted by a person against any of the grounds referred to in paragraph 3, a Party shall base its assessment only on the situation existing in that Party.

ARTICLE 18.34

Protection of geographical indications

1. Each Party shall, in respect of geographical indications of the other Party listed in Annex 18-B (Lists of geographical indications), provide the legal means for interested parties to prevent in its territory:

(a) the commercial use of a geographical indication identifying a good for a like good[1] not meeting the applicable product specifications of the geographical indication even if:

(i) the true origin of the good is indicated;

(ii) the geographical indication is used in translation[2] or transliteration[3]; or

(iii) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like;

(b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and

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1 For the purposes of this Sub-Section, the term "like good" means a good that falls within the same product class as defined in Annex 18-A (Product classes).

2 For greater certainty, it is understood that this is to be assessed on a case-by-case basis. This provision does not apply when evidence is provided that there is no link between the geographical indication and the translated term.

3 For the purposes of this Sub-Section, the term "transliteration" means the conversion of characters following the phonetics of the original language or languages of the relevant geographical indication.

(c) any other use of a geographical indication that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention which may include commercial use of a geographical indication that exploits the reputation of that geographical indication, including when that good is used as an ingredient.

2. This Sub-Section does not apply in respect of a geographical indication of a Party listed in Annex 18-B (Lists of geographical indications) that is no longer protected pursuant to the laws and regulations of the other Party.

3. If a geographical indication of a Party listed in Annex 18-B (Lists of geographical indications) ceases to be protected in the territory of the Party of origin, the Party of origin shall promptly notify the other Party and request cancellation of protection for the geographical indication.

4. Nothing in this Sub-Section shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where the name is used in such a manner as to mislead the public.

5. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of a geographical indication of the other Party with respect to a good for which the relevant indication is identical or similar to:

(a) the customary name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; or

(b) a term customary in common language as the common name for such a good in that Party.

6. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of any individual component contained in a multicomponent geographical indication of the other Party with respect to a good for which the individual component is identical or similar to:

(a) the customary name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; or

(b) a term customary in common language as the common name for such a good in that Party.

7. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of any word, or translation or transliteration of any word, contained in a geographical indication of the other Party where that word, translation or transliteration is a common English word such as "mountain", "alps" or "river".

ARTICLE 18.35

Date of protection

1. Each Party shall provide that geographical indications listed in Annex 18-B (Lists of geographical indications), and referred to in Article 18.32 (Scope, procedures and definitions), are protected as of the date of entry into force of this Agreement in accordance with Article 18.34 (Protection of geographical indications).

2. For geographical indications added to Annex 18-B (Lists of geographical indications) after the date of entry into force of this Agreement, each Party shall provide that such geographical indications are protected in accordance with Article 18.34 (Protection of geographical indications) from the date on which the names were published for opposition purposes as referred to in Article 18.33(2) (Amendment of the list of geographical indications).

ARTICLE 18.36

Right of use of geographical indications

1. A geographical indication protected under this Sub-Section may be used by any operator marketing a good that conforms to the corresponding product specification.

2. Paragraph 1 does not restrict a Party's ability to regulate the production or marketing of goods to which a geographical indication relates in accordance with the law of that Party.

ARTICLE 18.37

Relationship to trademarks

1. The registration of a trademark that contains or consists of a geographical indication of the other Party listed in Annex 18-B (Lists of geographical indications) shall be refused or invalidated, ex officio, if the Party's laws and regulations so permit or at the request of an interested party, with respect to a good that falls within the product class specified in Annex 18-A (Product classes) for that geographical indication and that does not originate in the place of origin specified in Annex 18-B (Lists of geographical indications) for that geographical indication.

2. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in a Party before the date of protection of that geographical indication referred to in Article 18.35 (Date of protection), measures adopted to implement this Sub-Section in that Party shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication. Such trademark may continue to be used and renewed for that good notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the Party's law on trademarks.

3. A Party's law may provide that any request made in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party.

ARTICLE 18.38

Enforcement of protection

Each Party shall provide that geographical indications listed in Annex 18-B (Lists of geographical indications) are enforced ex officio or at the request of an interested party, in accordance with its law by appropriate administrative and judicial steps.

ARTICLE 18.39

General rules

1. In the case of homonymous geographical indications, for which protection is requested in accordance with Article 18.33 (Amendment of the list of geographical indications), for goods falling within the same product class, the Trade Committee shall adopt a decision to determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

2. A Party that, in the context of negotiations of an international agreement with a third country, considers the possible protection of a geographical indication identifying a good originating in that third country shall inform the other Party and give that Party the opportunity to comment before the geographical indication becomes protected, if:

(a) the geographical indication under consideration in the negotiations with the third country is homonymous with a geographical indication of the other Party listed in Annex 18-B (Lists of geographical indications); and

(b) the concerned good falls within the product class specified in Annex 18-A (Product classes) for the homonymous geographical indication of the other Party.

3. A product specification of a geographical indication listed in Annex 18-B (Lists of geographical indications) shall be that approved, including any amendments also approved, by the relevant authorities of the Party in the territory from which the good originates.

4. The protection of a geographical indication of a Party listed in Annex 18-B (Lists of geographical indications) may only be cancelled by the Party in which the good originates.

5. Goods may be marketed and sold until stocks are exhausted, if they have been legally described and presented in a manner prohibited by this Sub-Section on the date:

(a) of entry into force of this Agreement;

(b) of the adoption by decision of the Trade Committee of an amendment to the list of geographical indications in accordance with Article 18.33 (Amendment of the list of geographical indications); or

(c) on which a relevant transitional period set out in Annex 18-B (Lists of geographical indications) ends.

ARTICLE 18.40

Systems of protection of geographical indications

1. Each Party shall establish or maintain a system for the registration and protection of geographical indications in its territory.

2. The system referred to in paragraph 1 shall contain at least the following elements:

(a) an official means to make available to the public the list of registered geographical indications;

(b) an administrative process to verify that a geographical indication to be registered identifies a good as originating in the territory of a Party, or a region or locality in that Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

(c) an opposition procedure that allows the legitimate interests of third parties to be taken into account; and

(d) a procedure for the cancellation of the protection of a geographical indication that takes into account the legitimate interests of third parties and those of the users of the registered geographical indications in question.

SUB-SECTION 5

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 18.41

Scope of protection of trade secrets and definitions

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.

2. For the purposes of this Sub-Section, the following definitions apply:

(a) "trade secret" means information that:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; and

(b) "trade secret holder" means any person lawfully controlling a trade secret.

3. For the purposes of this Sub-Section, at least the following conduct shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, if obtained by unauthorised access to, or by appropriation of or copying of any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder and that contain the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in point (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret; and

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. Nothing in this Sub-Section shall be understood as requiring either Party to consider any of the following conduct as contrary to honest commercial practices:

(a) independent discovery or creation;

(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(c) acquisition, use or disclosure of information required or allowed by the law of each Party; and

(d) use by employees of their experience and skills honestly acquired in the normal course of their employment.

5. Nothing in this Sub-Section shall be understood as restricting freedom of expression and information, including the freedom of the media as protected in each Party.

ARTICLE 18.42

Civil judicial procedures and remedies of trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article 18.41 (Scope of protection of trade secrets and definitions) or who has access to documents that form part of those legal proceedings, is not permitted to use or disclose any trade secret or alleged trade secret that the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

2. In the civil judicial proceedings referred to in Article 18.41 (Scope of protection of trade secrets and definitions), each Party shall provide that its judicial authorities have the authority at least to:

(a) order provisional measures, in accordance with the law of a Party, to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(b) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(c) order the persons that knew or ought to have known that they were acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the injury suffered as a result of such acquisition, use or disclosure of the trade secret;

(d) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices. Such specific measures may include, in accordance with the law of a Party, the possibility of restricting access to certain documents in whole or in part, restricting access to hearings and their corresponding records or transcript, and making available a non-confidential version of the judicial decision in which the passages containing trade secrets have been removed or redacted; and

(e) impose sanctions on parties or any other persons participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.

3. Each Party shall ensure that its judicial authorities do not have to apply the judicial procedures and remedies referred to in Article 18.41 (Scope of protection of trade secrets and definitions) when the conduct contrary to honest commercial practices is carried out in accordance with the law of a Party, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by the law of a Party.

ARTICLE 18.43

Protection of data submitted to obtain an authorisation
to put a pharmaceutical product[1] on the market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place pharmaceutical products on the market (hereinafter referred to as "marketing authorisation") against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use or except where the disclosure is necessary for an overriding public interest.

[1] For the purposes of this Article, the term "pharmaceutical product" is defined by the law of each Party. In the case of the Union, the term "pharmaceutical product" means a "medicinal product".

2. Each Party shall ensure that for a period of at least five years from the date of a first marketing authorisation in the Party concerned (hereinafter referred to as "first marketing authorisation") and in accordance with any conditions set out in its law, the authority responsible for the granting of a marketing authorisation does not accept any subsequent application for a marketing authorisation that relies on the results of pre-clinical tests or clinical trials submitted in the application for the first marketing authorisation without the explicit consent of the holder of the first marketing authorisation, unless international agreements recognised by both Parties provide otherwise.

ARTICLE 18.44

Protection of data submitted to obtain marketing authorisation
for agricultural chemical products[1]

1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to obtain a marketing authorisation for an agricultural chemical product. During the period in which that temporary right is held, the test or study report shall not be used for the benefit of any other person who seeks to obtain a marketing authorisation for an agricultural chemical product, unless the explicit consent of the first owner is proved. For the purposes of this Article, the term "temporary right" means "data protection".

[1] For the purposes of this Article, the term "agricultural chemical product" is defined by the law of each Party. In the case of the Union, the term "agricultural chemical product" means a "plant protection product".

2. The test or study report referred to in paragraph 1 should fulfil the following conditions:

(a) be necessary for the authorisation or for an amendment of an authorisation in order to allow additional uses; and

(b) be recognised as compliant with the principles of good laboratory practice or of good experimental practice, in accordance with each Party's law.

3. The period of data protection shall be at least 10 years from the grant of the first authorisation by the relevant authority in the territory of the Party.

4. Each Party may establish rules to avoid duplicative testing on vertebrate animals.

SUB-SECTION 6

PLANT VARIETIES

ARTICLE 18.45

Protection of plant variety rights[1]

Each Party shall have a system[2] in place for the protection of plant variety rights that gives effect to the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991.

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1 For greater certainty, the Parties understand that the measures referred to in Article 25.6 (Tiriti o Waitangi/Treaty of Waitangi) may include measures in respect of matters covered by this Sub-Section that New Zealand deems necessary to protect Māori rights, interests, duties and responsibilities in fulfilment of its obligations under te Tiriti o Waitangi/the Treaty of Waitangi, provided that the conditions of Article 25.6 (Tiriti o Waitangi/Treaty of Waitangi) are fulfilled.

2 For greater certainty, for the purpose of this Sub-Section, the system may be a sui generis system.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 18.46

General obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular under its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.[1]

2. Those measures, procedures and remedies shall:

(a) be fair and equitable;

[1] For the purposes of this Section, the term "intellectual property rights" shall not include rights covered by Sub-Section 5 (Protection of undisclosed information) of Section B (Standards concerning intellectual property rights).

(b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;

(c) be effective, proportionate and dissuasive; and

(d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

ARTICLE 18.47

Persons entitled to apply for the application of the measures, procedures and remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section:

(a) the holders of intellectual property rights in accordance with the law of the Party;

(b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of the Party;

(c) intellectual property collective rights management bodies that are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with law of the Party; and

(d) professional defence bodies that are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the law of the Party.

ARTICLE 18.48

Measures for preserving evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support their claims that their intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to appropriate safeguards and the protection of confidential information.

2. Measures referred to in paragraph 1 may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production or distribution of such goods and the documents relating thereto.

ARTICLE 18.49

Evidence

1. Each Party shall take measures necessary to enable its competent judicial authorities to order, on application by a party that has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence that lies in the control of the opposing party, that such evidence be produced by the opposing party, subject to the protection of confidential information.

2. Each Party shall also take measures necessary to enable its competent judicial authorities to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

ARTICLE 18.50

Right of information

1. Each Party shall ensure that, in the context of civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, its competent judicial authorities may order the infringer or alleged infringer or any other person to provide relevant information in that person's control or possession on the origin and distribution networks of the goods or services that infringe an intellectual property right.

2. For the purposes of this Article the term "any other person" means a person who, at least:

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing on a commercial scale services used in infringing activities; or

(d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or provision of the services.

3. The information referred to in paragraph 1 shall, as appropriate, comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; and

(b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

4. Paragraphs 1 and 2 shall apply without prejudice to other law of a Party that:

(a) grants the right holder rights to receive fuller information;

(b) governs the use in civil proceedings of the information communicated pursuant to this Article;

(c) governs responsibility for misuse of the right of information;

(d) affords an opportunity for refusing to provide information that would force any other person referred to in paragraph 1 to admit their own participation or that of their close relatives in an infringement of an intellectual property right; or

(e) governs the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 18.51

Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringement of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to prevent the entry into or movement within the channels of commerce of goods suspected of infringing an intellectual property right.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary halt on the transfer of, or dealing in, and, where a Party's law so provides, the seizure of the movable and immovable property of the alleged infringer, including the freezing of the alleged infringer's bank accounts and other assets. To that end, the competent authorities may order the communication of relevant bank, financial or commercial information, or appropriate access to the relevant information.

4. Each Party shall ensure that its judicial authorities, in respect of the measures referred to in paragraphs 1 to 3, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.

ARTICLE 18.52

Corrective measures

1. Each Party shall ensure that its judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to be infringing an intellectual property right. If appropriate, under the same conditions, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party shall ensure that its judicial authorities have the authority to order that the measures referred to in paragraph 1 are carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE 18.53

Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, its judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Each Party shall also ensure that its judicial authorities may issue an injunction against an intermediary whose services are used by a third party to infringe an intellectual property right.

ARTICLE 18.54

Alternative measures

Each Party may provide that its judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 18.52 (Corrective measures) or Article 18.53 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 18.52 (Corrective measures) or Article 18.53 (Injunctions) if that person acted unintentionally and without negligence, if execution of the measures in question would cause that person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE 18.55

Damages

1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly engaged, or had reasonable grounds to know it was engaging, in an infringing activity, to pay the right holder damages appropriate to the injury the right holder has suffered as a result of the infringement.

2. Each Party shall ensure that when its judicial authorities set the damages referred to in paragraph 1:

(a) they take into account all appropriate aspects, such as the negative economic consequences, including lost profits, that the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or alternatively

(b) they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees that would have been due if the infringer had requested authorisation to use the intellectual property right in question.

3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that its judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages that may be pre-established.

ARTICLE 18.56

Legal costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

ARTICLE 18.57

Publication of judicial decisions

Each Party shall provide that, in legal proceedings instituted for infringement of an intellectual property right, its judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

ARTICLE 18.58

Presumption of authorship or ownership

The Parties recognise that for the purposes of applying the measures, procedures and remedies provided for in Section C (Enforcement of intellectual property rights):

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for the author's name to appear on the work in the usual manner; and

(b) point (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE 18.59

Administrative procedures

To the extent that any civil remedy can be ordered on the merits of a case as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Sub-Section.

SUB-SECTION 2

BORDER ENFORCEMENT

ARTICLE 18.60

Border measures

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications to a Party's customs authorities requesting to suspend the release of or detain goods suspected of infringing at least trademarks, copyright and related rights, geographical indications and industrial designs (hereinafter referred to as "suspected goods").

2. Each Party shall have in place electronic systems for the management by its customs authorities of the applications referred to in paragraph 1.

3. Each Party shall provide that, where requested by its customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the suspected goods, including storage, handling, and any costs relating to the destruction or disposal of the suspected goods.

4. Each Party shall provide that its customs authorities decide about granting or recording an application referred to in paragraph 1 within a reasonable period of time.

5. Each Party shall provide for the granted or recorded application or recordation to apply to multiple shipments.

6. With respect to goods under customs control, each Party shall provide that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.

7. Each Party shall ensure that its customs authorities use risk analysis to identify suspected goods.

8. Each Party shall have in place procedures allowing for the destruction of suspected goods without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose the destruction. If such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, these goods are disposed of outside the commercial channels in a manner that avoids any harm to the right holder.

9. A Party may have in place procedures allowing for the swift destruction of counterfeit trademark and pirated goods sent in postal or express couriers' consignments.

10. A Party may decide not to apply this Article to the import of goods put on the market in another country by or with the consent of the right holders. A Party may also exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.

11. Each Party shall ensure that its customs authorities maintain a regular dialogue and promote cooperation with the relevant stakeholders and where necessary with other authorities[1] involved in the enforcement of intellectual property rights.

12. The Parties shall cooperate in respect of international trade in goods suspected of infringing intellectual property rights. In particular, the Parties shall share information, to the extent possible and where necessary, on trade in goods suspected of infringing intellectual property rights affecting a Party.

13. Without prejudice to other forms of cooperation, the mutual administrative assistance provided for in the CCMAA, applies with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

[1] For greater certainty, other authorities shall not include judicial authorities.

ARTICLE 18.61

Consistency with GATT 1994 and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by its customs authorities, whether or not covered by this Sub-Section, each Party shall ensure consistency with its obligations under GATT and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

SECTION D

FINAL PROVISIONS

ARTICLE 18.62

Modalities of cooperation

1. The Parties shall cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter.

2. The cooperation of the Parties on intellectual property rights protection and enforcement matters, where necessary and as appropriate, may include the following activities:

(a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;

(b) exchange of experience on legislative progress;

(c) exchange of experience on the enforcement of intellectual property rights;

(d) exchange of experiences on enforcement at central and sub-central levels by customs, police, administrative and judiciary bodies;

(e) coordination to prevent exports of counterfeit goods, including coordination with other countries;

(f) technical assistance, capacity building, exchange and training of personnel;

(g) protection and defence of intellectual property rights and dissemination of information in this regard to *inter alia* business circles and civil society;

(h) raising public awareness of consumers and right holders;

(i) enhancement of institutional cooperation, particularly between the Parties' intellectual property offices;

(j) awareness promotion and education of the general public on policies concerning the protection and enforcement of intellectual property rights;

(k) promotion of protection and enforcement of intellectual property rights with public-private collaboration involving SMEs;

(l) formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime; and

(m) exchange of information and experience on intellectual property-related aspects of genetic resources, traditional knowledge and traditional cultural expressions.

3. Each Party may make publicly available the product specifications, or a summary thereof, and relevant contact points for control or management of geographical indications of the other Party protected pursuant to Sub-Section 4 (Geographical Indications).

4. The Parties shall, either directly or through the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications, maintain contact on all matters related to the implementation and functioning of this Chapter.

ARTICLE 18.63

Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including online and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned including in the following ways:

(a) each Party shall endeavour to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;

(b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and

(c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.

ARTICLE 18.64

Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications, shall, with respect to this Chapter, have the following functions:

(a) exchange information and experiences on issues related to intellectual property, including in the area of geographical indications, including legislative and policy developments, and any other matter of mutual interest related to the implementation and operation of this Chapter;

(b) be responsible for exchanging information on geographical indications for the purposes of considering their protection in accordance with Article 18.34 (Protection of geographical indications); and

(c) further to Article 18.39(2) (General rules), deal with any matter arising from product specifications of protected geographical indications of the other Party listed in Annex 18-B (Lists of geographical indications).

CHAPTER 19

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 19.1

Context and objectives

1. The Parties recall Agenda 21 and the Rio Declaration on Environment and Development, adopted at Rio de Janerio on 14 June 1992 (hereinafter referred to as the "Rio Declaration on Environment and Development"), the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002, the ILO Declaration on Social Justice for a Fair Globalization, adopted at Geneva on 10 June 2008 by the International Labour Conference at its 97th Session (hereinafter referred to as the "2008 ILO Declaration on Social Justice for a Fair Globalization"), the Outcome Document of the United Nations Conference on Sustainable Development of 2012 entitled "The Future We Want" endorsed by United Nations General Assembly Resolution 66/288, adopted on 27 July 2012, and the United Nations 2030 Agenda for Sustainable Development, adopted on 25 September 2015 by United Nations General Assembly Resolution 70/1 (hereinafter referred to as "UN 2030 Agenda for Sustainable Development") and its Sustainable Development Goals.

2. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing.

3. The Parties affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development.

4. The Parties recognise the urgent need to address climate change, as outlined in the Intergovernmental Panel on Climate Change Special Report on Global Warming of 1.5°C, as a contribution to the economic, social and environmental objectives of sustainable development.

5. The objective of this Chapter is to enhance the integration of sustainable development, notably its environmental and social dimensions (in particular the labour aspects), in the trade and investment relationship between the Parties, including through strengthening dialogue and cooperation.

ARTICLE 19.2

Right to regulate and levels of protection

1. The Parties recognise the right of each Party to:

(a) determine its sustainable development policies and priorities;

(b) establish the levels of domestic environmental and labour protection, including social protection, that it deems appropriate; and

(c) adopt or modify its relevant law and policies.

Such levels, law and policies shall be consistent with each Party's commitment to the Agreements and internationally recognised standards referred to in this Chapter.

3. Each Party shall strive to ensure that its relevant law and policies provide for, and encourage, high levels of environmental and labour protection, and shall strive to improve such levels, law and policies.

4. A Party shall not weaken or reduce the levels of protection afforded in its environmental or labour law in order to encourage trade or investment.

5. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental or labour law in order to encourage trade or investment.

6. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour law in a manner affecting trade or investment.

7. A Party shall not establish or use its environmental or labour law or other environmental or labour measures in a manner that would constitute a disguised restriction on trade or investment.

ARTICLE 19.3

Multilateral labour standards and agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to decent work for all, as expressed in the 2008 ILO Declaration on Social Justice for a Fair Globalization.

2. Recalling the 2008 ILO Declaration on Social Justice for a Fair Globalization, the Parties note that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

3. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted at Geneva on 18 June 1998 by the International Labour Conference at its 86th Session, each Party shall respect, promote and realise the principles concerning the fundamental rights at work, which are the subject of the fundamental ILO Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;[1]

[1] The Parties affirm the importance of ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 adopted at Geneva on 11 June 2014 by the International Labour Conference at its 103rd Session.

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

4. The Parties welcome the decision of the 110th International Labour Conference by which safety and health is added to the fundamental principles and rights at work. No later than at its first meeting the Trade Committee may adopt a decision to amend paragraph 3 accordingly to reflect this addition.

5. Each Party shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so.[1]

6. The Parties shall periodically exchange information in an appropriate way on their respective progress with regard to the ratification of ILO Conventions or Protocols.

7. Each Party shall effectively implement the ILO Conventions that New Zealand and the Member States have respectively ratified and which have entered into force.

8. Each Party shall, with due regard to national conditions and circumstances, promote through its laws and practices the strategic objectives of the ILO through which the Decent Work Agenda is expressed, set out in the 2008 Declaration on Social Justice for a Fair Globalization, in particular with regard to:

(a) decent working conditions for all, with regard to, *inter alia*, wages and earnings, working hours, other conditions of work and social protection; and

[1] The Parties note that all Member States have ratified the fundamental ILO Conventions.

(b) social dialogue on labour matters between social partners and relevant government authorities.

9. Each Party shall:

(a) adopt and implement measures and policies regarding occupational health and safety, including compensation in case of occupational injury or illness; and

(b) maintain an effective labour inspection system.

10. Each Party recalls its obligations under paragraph 7, where it has ratified relevant ILO Conventions relating to point (a) or (b) of paragraph 9.

11. The Parties shall work together to strengthen their cooperation on trade-related aspects of labour measures and policies, bilaterally, regionally and in international fora, as appropriate, including in the ILO. Such cooperation may cover *inter alia*:

(a) implementation of fundamental, priority and other up to date ILO Conventions;

(b) decent work, including the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue and gender equality;

(c) strengthening protection of the labour rights of each Party's vulnerable groups; and

(d) the impact of labour law and standards on trade and investment, or the impact of trade and investment law on labour.

ARTICLE 19.4

Trade and gender equality

1. The Parties recognise the need to advance gender equality and women's economic empowerment and to promote a gender perspective in the Parties' trade and investment relationship. Moreover, they acknowledge the important current and future contribution by women to economic growth through their participation in economic activity, including international trade. Accordingly, the Parties emphasise their intention to implement this Agreement in a manner that promotes and enhances gender equality.

2. The Parties recognise that inclusive trade policies can contribute to advancing women's economic empowerment and gender equality, in line with Sustainable Development Goals Target 5 of the United Nations 2030 Agenda for Sustainable Development and the objectives of the Joint Declaration on Trade and Women's Economic Empowerment adopted at the WTO Ministerial Conference in Buenos Aires on 12 December 2017.

3. The Parties emphasise the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies and gender mainstreaming can play in this regard. These include advancing women's participation in the economy and international trade, including by providing equal rights and access to opportunities for the participation of women in the labour market.

4. Each Party shall promote public awareness and transparency of its gender equality laws, regulations and policies, including their impact on and relevance for inclusive economic growth and trade policy.

5. The Parties reiterate their commitments under Article 19.2 (Right to regulate and levels of protection) in relation to their respective laws aimed at ensuring gender equality and equal opportunities for women and men.

6. Each Party shall effectively implement its obligations under the United Nations Conventions to which it is a party that address gender equality or women's rights, including the Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the United Nations General Assembly on 18 December 1979, noting in particular its provisions related to eliminating discrimination against women in economic life and in the field of employment. In this respect, the Parties reiterate their respective commitments under Article 19.3 (Multilateral labour standards and agreements) including those regarding effective implementation of the ILO Conventions related to gender equality and the elimination of discrimination in respect of employment and occupation.

7. The Parties shall work together on trade-related aspects of gender equality policies and measures, including activities for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement. To this end, the Parties shall facilitate cooperation between relevant stakeholders, including wāhine Māori[1] in the case of New Zealand.

[1] The term "wāhine Māori" refers to indigenous women of New Zealand.

8. The cooperation referred to in paragraph 7 shall cover matters of joint interest *inter alia*:

(a) exchange of information and best practices related to collection of sex-disaggregated data and gender-based analysis of trade policies;

(b) sharing experiences and best practices related to the design, implementation, monitoring, evaluation and strengthening of policies and programmes aimed at enhancing women's participation in economic activity, including international trade;

(c) promoting women's participation, leadership and education, in particular in fields in which women are traditionally underrepresented such as science, technology, engineering, mathematics (STEM), as well as innovation, e-commerce and any other field related to trade;

(d) promoting financial inclusion, financial literacy and access to trade finance and education; and

(e) exchange of information and experiences with regard to measures relating to licensing requirements and procedures, qualification requirements and procedures, or technical standards relating to authorisation for the supply of a service that do not discriminate based on gender.

9. Acknowledging the importance of the work on trade and gender being carried out at the multilateral level, the Parties shall cooperate in international and multilateral fora, including at the WTO and OECD, to advance trade and gender issues and understanding, including, as appropriate, through voluntary reporting as part of their National Reports during their WTO Trade Policy Reviews.

ARTICLE 19.5

Multilateral environmental agreements and international environmental governance

1. The Parties recognise the importance of international environmental governance, in particular the role of the United Nations Environment Programme (hereinafter referred to as "UNEP") and its highest governing body, the United Nations Environment Assembly (hereinafter referred to as "UNEA"), as well as multilateral environmental agreements (hereinafter referred to as "MEAs"), as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.

2. In light of paragraph 1, each Party shall effectively implement the MEAs, protocols and amendments that it has ratified and which have entered into force.

3. The Parties shall periodically, and in an appropriate manner, exchange information on their respective situations as regards becoming a party to MEAs, including their protocols and amendments.

4. The Parties affirm the right of each Party to adopt or maintain measures to further the objectives of MEAs to which it is a party. The Parties recall that measures adopted or enforced to implement these MEAs may be justified under Article 25.1 (General exceptions).

5. The Parties shall work together to strengthen their cooperation on trade-related aspects of environmental policies and measures, bilaterally, regionally and in international fora, as appropriate, including in the United Nations High-level Political Forum for Sustainable Development, UNEP, UNEA, MEAs, OECD, FAO, and the WTO. Such cooperation may cover *inter alia*:

(a) policies and measures promoting mutual supportiveness of trade and environment including:

(i) sharing information on policies and practices to encourage the shift to a circular economy; and

(ii) promoting, including by removing obstacles to trade and investment, initiatives that contribute to a circular economy;

(b) initiatives on sustainable production and consumption, including initiatives aimed at promoting green growth and pollution abatement;

(c) initiatives to encourage trade and investment in environmental goods and services, including by addressing related tariff and non-tariff barriers;

(d) the impact of environmental law and standards on trade and investment, or the impact of trade and investment law on the environment; and

(e) other trade-related aspects of MEAs, including implementation.

ARTICLE 19.6

Trade and climate change

1. The Parties recognise the importance of taking urgent action to combat climate change and its impacts, and the role of trade in pursuing this objective, consistent with the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 (hereinafter referred to as the "UNFCCC"), the purpose and goals of the Paris Agreement, and with other MEAs and multilateral instruments in the area of climate change.

2. In light of paragraph 1, each Party shall effectively implement the UNFCCC and the Paris Agreement, including commitments with regard to Nationally Determined Contributions.

3. A Party's commitment to effectively implement the Paris Agreement under paragraph 2 includes the obligation to refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement.

4. In light of paragraph 1, each Party shall:

(a) promote the mutual supportiveness of trade and climate policies and measures, thereby contributing to the transition to a low greenhouse gas emission, resource-efficient and circular economy and to climate-resilient development;

(b) facilitate the removal of obstacles to trade and investment in goods and services of particular relevance for climate change mitigation and adaptation, such as renewable energy and energy efficient products and services, for instance through addressing tariff and non-tariff barriers or through the adoption of policy frameworks conducive to the deployment of best available technologies; and

(c) promote emissions trading as an effective policy tool for reducing greenhouse gas emissions efficiently, and promote environmental integrity in the development of international carbon markets.

5. The Parties shall work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally and regionally, including with third countries and in international fora, as appropriate, including in the UNFCCC, the Paris Agreement, the WTO, the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on 26 August 1987 (hereinafter referred to as the "Montreal Protocol"), the International Civil Aviation Organisation and the International Maritime Organisation (hereinafter referred to as the "IMO"). This cooperation may cover *inter alia*:

(a) policy dialogue and cooperation regarding implementation of the Paris Agreement, including with respect to means to promote climate resilience, renewable energy, low-carbon technologies, energy efficiency, sustainable transport, sustainable and climate-resilient infrastructure development, emissions monitoring, and emissions action in relation to third countries as appropriate;

(b) policy and technical exchanges regarding the development and implementation of domestic and international carbon pricing including emissions trading and the promotion of effective standards of environmental integrity in their implementation;

(c) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the IMO to be implemented by and for ships engaged in international trade; and

(d) supporting an ambitious phase-out of ozone depleting substances and phase-down of hydrofluorocarbons under the Montreal Protocol through measures to control their production, consumption and trade, the introduction of environmentally friendly alternatives to them, the updating of safety and other relevant standards, and combating the illegal trade of substances regulated by the Montreal Protocol.

ARTICLE 19.7

Trade and fossil fuel subsidy reform

1. The Parties recall the Sustainable Development Goals Target 12.C to rationalise inefficient fossil fuel subsidies that encourage wasteful consumption, including by phasing out harmful fossil fuel subsidies, the Glasgow Climate Pact, adopted in Glasgow on 13 November 2021, and the WTO Ministerial Statement on Fossil Fuel Subsidies, adopted in Geneva on 14 December 2021 that encourage efforts towards meeting this target.

2. The Parties recognise that fossil fuel subsidies can distort markets, disadvantage renewable and clean energy, and be inconsistent with the goals of the Paris Agreement.

3. In light of paragraphs 1 and 2, the Parties share the goal of reforming and progressively reducing fossil fuel subsidies and reaffirm their commitment to work to meet this objective in accordance with national circumstances, while taking fully into account the specific needs of populations affected.

4. The Parties shall strengthen their cooperation on trade-related aspects of fossil fuel subsidy policies and measures bilaterally and in international fora. Recognising that the WTO can play a central role in the fossil fuel reform agenda, the Parties shall work together and encourage the other WTO members to advance reform and pursue new fossil fuel subsidy disciplines in the WTO, including through enhanced transparency and reporting that will enable the evaluation of the trade, economic, and environment effects of fossil fuel subsidy programmes.

ARTICLE 19.8

Trade and biological diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing these objectives, consistent with relevant MEAs to which they are a party, including the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (hereinafter referred to as the "Convention on Biological Diversity") and its Protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 (hereinafter referred to as "CITES"), and the decisions adopted thereunder.

2. In light of paragraph 1, each Party shall:

(a) implement measures to combat illegal wildlife trade, including with respect to third countries as appropriate;

(b) promote the long-term conservation and sustainable use of CITES-listed species and the inclusion of animal and plant species in the Appendices to the CITES where they meet the criteria for listing, and conduct periodic reviews, which may result in a recommendation to amend the Appendices to the CITES, in order to ensure that they properly reflect the conservation needs of species subject to international trade;

(c) promote trade in products derived from the sustainable use of biological resources in order to contribute to the conservation of biodiversity; and

(d) take appropriate action to conserve biological diversity when it is subject to pressures linked to trade and investment, in particular to prevent the spread of invasive alien species.

3. The Parties recognise the importance of respecting, protecting, preserving and maintaining knowledge, innovations and practices of indigenous peoples and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity, and the role of international trade in supporting this.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of biodiversity policies and measures bilaterally, regionally and in international fora, as appropriate, including in the Convention on Biological Diversity and CITES. This cooperation may cover *inter alia*:

(a) initiatives and good practices concerning trade in products and services derived from the sustainable use of biological resources with the aim of conserving biological diversity;

(b) trade and the conservation and sustainable use of biological diversity, including the development and application of natural capital and ecosystem accounting methods, the valuation of ecosystems and their services and related economic instruments;

(c) combatting illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and initiatives to enhance information sharing and cooperation;

(d) access to genetic resources, and the fair and equitable sharing of benefits from their utilisation consistent with the objectives of the Convention on Biological Diversity; and

(e) sharing information and management experience on the movement, prevention, detection, control and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

ARTICLE 19.9

Trade and forests

1. The Parties recognise the importance of the conservation and sustainable management of forests for providing environmental functions and economic and social opportunities for present and future generations, and the role of trade in pursuing this objective.

2. In light of paragraph 1, each Party shall:

(a) combat illegal logging and related trade, including with respect to third countries, by legislative or other action;

(b) promote the conservation and sustainable management of forests and trade in forest products harvested in accordance with the law of the country of harvest and from sustainably managed forests; and

(c) exchange information with the other Party on trade-related initiatives regarding sustainable forest management, forest conservation, forest governance, initiatives designed to combat illegal logging, and other relevant policies of mutual interest.

3. Recognising that deforestation is a major driver of global warming and biodiversity loss, the Parties shall exchange knowledge and experience on ways to encourage the consumption and trade in products from deforestation-free supply chains, in order to minimise the risk that goods associated with deforestation or forest degradation are placed on the market.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of sustainable forest management, minimising deforestation and forest degradation, forest conservation, illegal logging, and the role of forests and wood-based products in climate change mitigation and the circular and bioeconomies, bilaterally, regionally and in international fora as appropriate.

ARTICLE 19.10

Trade and sustainable management of fisheries and aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as promoting responsible and sustainable aquaculture, and the role of trade in pursuing these objectives.

2. The Parties acknowledge that inadequate fisheries management, forms of fisheries subsidies that contribute to overcapacity and overfishing, and illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing threaten fish stocks, the livelihood of persons engaged in responsible fishing practices and the sustainability of trade in fishery products, and confirm the need for action to end these practices.

3. In light of paragraphs 1 and 2, each Party shall:

(a) implement long-term conservation and management measures to ensure sustainable use of marine living resources based on the best scientific evidence available, the application of the precautionary approach and internationally recognised best practices consistent with relevant United Nations and FAO agreements[1], in order to:

(i) prevent overfishing and overcapacity;

(ii) minimise bycatch of non-target species and juveniles; and

(iii) promote the recovery of overfished stocks;

(b) participate constructively in the work of the Regional Fisheries Management Organisations (hereinafter referred to as "RFMOs") to which they are members, observers, or cooperating non-contracting parties, with the aim of achieving good fisheries governance and sustainable fisheries, such as through the promotion of scientific research and the adoption of conservation measures based on best available science, the strengthening of compliance mechanisms, the undertaking of periodic performance reviews and the adoption of effective control, monitoring and enforcement of the RFMOs' management; and

[1] Relevant United Nations and FAO agreements include the United Nations Convention on the Law of the Sea of 1982, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1995, the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of 2009 and the FAO Code of Conduct for Responsible Fisheries.

(c) implement an ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and promote the long-term conservation of marine turtles, seabirds, marine mammals and other species recognised as threatened in relevant international agreements to which it is a party.

4. The Parties acknowledge that IUU fishing threatens fishery stocks and the livelihoods of responsible fishers, and recognise the importance of concerted national, regional and international action to address IUU fishing in accordance with national and international instruments[1] and by using relevant bilateral and international frameworks.

5. In support of efforts to combat IUU fishing practices and to help prevent, deter and eliminate trade in products from species harvested from those practices, each Party shall support monitoring, control, surveillance, compliance and enforcement systems, including by adopting, reviewing or revising, as appropriate, effective measures to:

(a) deter vessels that are flying their flags and their nationals from supporting or engaging in IUU fishing activities, and respond to IUU fishing when it occurs or is being supported; and

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1 Regional and international instruments include, as they may apply, the 2001 IUU Fishing Plan of Action, the 2005 Rome Declaration on IUU Fishing, adopted in Rome on 12 March 2005, the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at Rome, 22 November 2009, the FAO Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels as well as instruments establishing and adopted by RFMOs, which are defined as intergovernmental fisheries organisations or arrangements, as appropriate, that have the competence to establish conservation and management measures.

(b) encourage traceability, facilitate electronic traceability and certification to exclude products from IUU fishing from trade flows, and encourage cooperation and information exchange.

6. The Parties shall promote the development of sustainable and responsible aquaculture, taking into account its economic, social, cultural and environmental aspects, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

7. The Parties shall work together to strengthen their cooperation on trade-related aspects of fishery and aquaculture policies and measures, bilaterally, regionally and in international fora, as appropriate, including in the WTO, FAO, OECD, United Nations General Assembly, RFMOs and other multilateral instruments in this field, with the aim of promoting sustainable fishing practices and trade in fish products from sustainably managed fisheries.

ARTICLE 19.11

Trade and investment supporting sustainable development

1. The Parties recognise that the following can meaningfully contribute to sustainable development:

(a) trade and investment in goods and services that are related to the protection of the environment or that contribute to enhancing social conditions; and

(b) the use of transparent, factual and non-misleading sustainability schemes or other voluntary initiatives.

2. To that end, the Parties recall their commitment under Article 2.5 (Elimination of customs duties) to eliminate customs duties on environmental goods originating in the other Party. These goods contribute to achieving environmental and climate goals by preventing, limiting, minimising or remediating environmental damage to water, air and soil and by contributing to the dissemination of technologies that serve to mitigate climate change. An illustrative list of such environmental goods is provided in Annex 19 (Environmental goods and services)[1].

3. Further, the Parties recall their commitments on environmental services and manufacturing activities under Chapter 10 (Investment liberalisation and trade in services), including the Annexes to that Chapter. These services and activities contribute to achieving environmental and climate goals by preventing, limiting, minimising or remediating environmental damage to water, air and soil and by assisting the transition to a circular economy. An illustrative list of such environmental services and manufacturing activities is provided in Annex 19 (Environmental goods and services).[2]

4. In light of paragraph 1, each Party shall promote and facilitate trade and investment in:

(a) environmental goods and services;

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[1] This list of environmental goods is non-exhaustive and without prejudice to the approach to the listing of environmental goods that either New Zealand or the Union may take in other negotiations.

[2] This list of environmental services is non-exhaustive and without prejudice to the approach to the listing of environmental services that either New Zealand or the Union may take in other negotiations.

(b) goods that contribute to enhanced social conditions; and

(c) goods subject to transparent, factual and non-misleading sustainability assurance schemes such as fair and ethical trade schemes and eco-labels.

5. Promotion and facilitation activities referred to in paragraph 4 may include:

(a) awareness-raising actions and information and public education campaigns;

(b) adoption of policy frameworks conducive to the deployment of best available technologies;

(c) encouraging the uptake of transparent, factual and non-misleading sustainability schemes, especially for SMEs;

(d) addressing related non-tariff barriers; and

(e) reference to relevant international standards, such as the ILO Conventions and Guidelines or MEAs.

6. The Parties shall work together to strengthen their cooperation on trade-related aspects of issues covered by this Article bilaterally, regionally and in international and multilateral fora as appropriate, including through the exchange of information, best practices and outreach initiatives.

ARTICLE 19.12

Trade and responsible business conduct and supply chain management

1. The Parties recognise the importance of responsible business conduct and corporate social responsibility practices, including responsible supply chain management, and the role of trade in pursuing this objective.

2. In light of paragraph 1, each Party shall:

(a) promote, including by supporting their dissemination and use, relevant international instruments, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the United Nations Global Compact and the United Nations Guiding Principles on Business and Human Rights; and

(b) promote corporate social responsibility, responsible business conduct, including responsible supply chain management, by providing supportive policy frameworks that encourage the uptake of relevant practices by businesses.

3. The Parties recognise the utility of international sector-specific guidelines in the areas of corporate social responsibility and responsible business conduct, and shall promote joint work in this regard. In respect of the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas and its supplements, each Party shall implement measures to promote the uptake of OECD Due Diligence Guidance. As members of the Committee on World Food Security in the FAO, the Parties shall also promote awareness for the "Principles for Responsible Investment in Agriculture and Food Systems" and the "Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security".

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of issues covered by this Article bilaterally, regionally and in international fora as appropriate, including through the exchange of information, best practices and outreach initiatives.

ARTICLE 19.13

Scientific and technical information

1. When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations.

2. In accordance with the precautionary approach,[1] where there are risks of serious or irreversible damage to the environment or to occupational safety and health, the lack of full scientific certainty shall not be used as a reason for preventing a Party from adopting appropriate measures to prevent such damage.

3. The measures referred to in paragraph 2 shall not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

ARTICLE 19.14

Transparency

In order to inform the development and implementation of such measures, each Party shall, to the extent possible and appropriate, provide interested persons and stakeholders with a reasonable opportunity to comment on:

(a) measures aimed at protecting the environment or labour conditions that may affect trade or investment; and

(b) trade or investment measures that may affect the protection of the environment or labour conditions.

[1] For greater certainty, in relation to the implementation of this Agreement in the territory of the Union, the precautionary approach refers to the precautionary principle.

ARTICLE 19.15

Committee on Trade and Sustainable Development

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The Committee on Trade and Sustainable Development shall, with respect to this Chapter, have the following functions:

(a) carry out the tasks referred to in point (b) of Article 26.13(3) (Compliance measures);

(b) contribute to the work of the Trade Committee on issues covered by this Chapter, including with regard to topics for discussion with the domestic advisory groups referred to in Article 24.6 (Domestic advisory groups); and

(c) consider any other matter related to this Chapter as agreed between the Parties.

3. The Committee on Trade and Sustainable Development shall publish a report after each of its meetings.

4. Each Party shall give due consideration to communications and opinions from the public on matters related to this Chapter. A Party may inform where appropriate, the domestic advisory groups established under Article 24.6 (Domestic advisory groups) as well as the contact point of the other Party, designated pursuant to Article 19.16 (Contact points), of such communications and opinions.

ARTICLE 19.16

Contact points

Each Party shall, upon entry into force of this Agreement, designate a contact point to facilitate communication and coordination between the Parties on any matter relating to this Chapter and notify the other Party of the contact details for the contact point. Each Party shall notify the other Party promptly in the event of any change of those contact details.

CHAPTER 20

MĀORI TRADE AND ECONOMIC COOPERATION

ARTICLE 20.1

Definitions

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

(a) Aotearoa New Zealand means New Zealand, Party to this Agreement. Aotearoa ("long white cloud") is a Māori term that refers to New Zealand;

(b) "te ao Māori" means the Māori worldview based on a holistic approach to life;

(c) "mātauranga Māori" means Māori traditional knowledge that relates to te ao Māori;

(d) "tikanga Māori" means Māori protocols, customs and normal practice;

(e) "kaupapa Māori" means an approach entrenched in a Māori worldview;

(f) "Māori relational approaches" refers to whakapapa or family connections, and building strong relationships, which are core values at the heart of the Māori worldview and central to how Māori engage;

(g) "wellbeing " from a te ao Māori perspective means the balancing and interconnection of numerous factors required for individuals and groups to be truly well and thrive; including taha tinana (body), taha hinengaro (mind), taha wairua (spirit), whenua (land), whakapapa (genealogy) and kaitiakitanga (stewardship). It can also include environmental, economic, and cultural aspects;

(h) "tāonga" means a highly valuable or prized object, element, natural resource or possession, and can be tangible or intangible;

(i) "Mānuka" means the Māori word used exclusively for the tree Leptospermum scoparium grown in Aotearoa New Zealand and products including honey and oil deriving from that tree. Mānuka (and its spelling variations including "Manuka" and "Maanuka") is culturally important to Māori as a tāonga and traditional medicine; and

(j) "wāhine Māori" means indigenous women of Aotearoa New Zealand.

ARTICLE 20.2

Context and purpose

1. The Parties acknowledge that te Tiriti o Waitangi/the Treaty of Waitangi is a foundational document of constitutional importance to Aotearoa New Zealand.

2. The Parties recognise the importance of international trade in enabling and advancing Māori wellbeing, and the challenges that may exist for Māori in accessing the trade and investment opportunities derived from international trade.

3. The purpose of this Chapter is to pursue mutual cooperation to contribute towards Aotearoa New Zealand's efforts to enable and advance Māori economic aspirations and wellbeing.

4. The Parties recognise the importance of cooperation under this Chapter being implemented, in the case of Aotearoa New Zealand, in a manner consistent with te Tiriti o Waitangi/the Treaty of Waitangi and where appropriate informed by te ao Māori, mātauranga Māori, tikanga Māori and kaupapa Māori.

5. The Parties recognise the value that Māori approaches, informed by te ao Māori, mātauranga Māori, tikanga Māori and kaupapa Māori, can contribute to the design and implementation of policies and programmes in Aotearoa New Zealand that protect and promote Māori trade and economic aspirations.

6. The Parties recognise the value of increased Māori participation in international trade and investment, including digital trade. This includes through the promotion of Māori relational approaches, informed by te ao Māori, mātauranga Māori, tikanga Māori and kaupapa Māori, in the case of Aotearoa New Zealand.

7. The Parties recognise the value of enhancing people-to-people links that may result from the opportunities created by this Chapter for both Parties.

ARTICLE 20.3

International instruments

1. The Parties note:

(a) the United Nations Declaration on the Rights of Indigenous Peoples, adopted in New York on 13 September 2007 and their respective positions made on that declaration;

(b) the United Nations Educational, Scientific and Cultural Organization UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in Paris on 20 October 2005;

(c) the UN 2030 Agenda for Sustainable Development;

(d) their rights and responsibilities under the Convention on Biological Diversity; and

(e) the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, endorsed by the Human Rights Council in its Resolution 17/4 on 16 June 2011.

ARTICLE 20.4

Provisions across this Agreement benefitting Māori

In addition to this Chapter, there are specific provisions in other Chapters of this Agreement that aim to enhance Māori participation in trade and investment opportunities derived from this Agreement that, in the case of Aotearoa New Zealand, further contribute to the ability for Māori to exercise their rights and interests under te Tiriti o Waitangi/the Treaty of Waitangi. Those provisions include:

(a) Chapter 2 (National treatment and market access for goods), including Mānuka, Mānuka Honey, Mānuka Oil and other goods of interest to Māori;

(b) Chapter 7 (Sustainable food systems), including cooperation on indigenous knowledge, participation, and leadership in food systems, in line with national circumstances under Article 7.4 (Cooperation to improve the sustainability of food systems);

(c) Chapter 10 (Investment liberalisation and trade in services);

(d) Chapter 12 (Digital trade);

(e) Chapter 14 (Public procurement);

(f) Chapter 18 (Intellectual property);

(g) Chapter 19 (Trade and sustainable development), including wāhine Māori under Article 19.4 (Trade and gender equality);

(h) Chapter 21 (Small and medium-sized enterprises);

(i) Chapter 24 (Institutional provisions), including Māori representation in the case of Aotearoa New Zealand in the domestic advisory groups under Article 24.6 (Domestic advisory groups) and the Civil Society Forum under Article 24.7 (Civil Society Forum); and

(j) Chapter 25 (Exceptions and general provisions), including on te Tiriti o Waitangi/the Treaty of Waitangi under Article 25.6 (Tiriti o Waitangi/Treaty of Waitangi).

ARTICLE 20.5

Cooperation activities

1. The Parties acknowledge that cooperation activities under this Chapter shall be carried out within the existing framework set by the Partnership Agreement and subject to the resources available to each Party.[1]

2. To achieve the objectives set out in this Chapter, the Parties may coordinate cooperation activities, with Māori in the case of Aotearoa New Zealand, and other relevant stakeholders as appropriate. Those cooperation activities may include:

(a) collaborating to enhance the ability for Māori-owned enterprises to access and benefit from the trade and investment opportunities created by this Agreement;

(b) collaborating to develop links between Union and Māori-owned enterprises, with a particular focus on SMEs, to facilitate access to new and existing supply chains, enable and strengthen opportunities for digital trade, and facilitate cooperation between enterprises on trade in Māori products;

(c) supporting science, research and innovation links, as appropriate between Union and Māori communities, pursuant to the Agreement on scientific and technological cooperation between the European Community and the Government of New Zealand[2]; and

[1] For greater certainty, this Chapter does not impose any legal or financial obligations requiring the Parties to explore, commence or conclude any individual cooperation activities.

[2] OJ EU L 171, 1.7.2009, p. 28.

(d) cooperating and exchanging information and experience on geographical indications.

3. In undertaking the cooperation activities referred to in paragraph 2, each Party may invite the views and participation of relevant stakeholders, and in the case of Aotearoa New Zealand of Māori in accordance with te Tiriti o Waitangi/the Treaty of Waitangi.

4. All cooperation shall be at the request of a Party, on mutually agreed terms in respect of each cooperation activity.

ARTICLE 20.6

Institutional mechanism

1. In accordance with point (b) of Article 24.2(1) (Functions of the Trade Committee), the Trade Committee shall supervise and facilitate the implementation and application of, *inter alia*, this Chapter.

2. In accordance with Article 24.6 (Domestic advisory groups), each Party's domestic advisory group[1] shall advise that Party on issues covered by this Agreement, including those covered by this Chapter, and may submit recommendations on the implementation of this Chapter.

[1] In the case of Aotearoa New Zealand, the Domestic Advisory Group shall include Māori representatives.

3. In accordance with Article 24.7 (Civil Society Forum), the Civil Society Forum[1] gathering independent civil society organisations established in the territories of the Parties, including members of the domestic advisory groups, shall conduct a dialogue on the implementation of this Agreement, including on the implementation of this Chapter.

4. The Joint Committee established under Article 53(1) of the Partnership Agreement shall monitor the development of the comprehensive relationship between the Parties and exchange views and make suggestions on any issues of common interest, including issues that are not covered by this Agreement.

ARTICLE 20.7

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to this Chapter.

[1] In the case of Aotearoa New Zealand, the Civil Society Forum shall include Māori representatives.

CHAPTER 21

SMALL AND MEDIUM-SIZED ENTERPRISES

ARTICLE 21.1

Objectives

The Parties recognise the importance of SMEs in the Parties' bilateral trade and investment relations and affirm their commitment to enhance the ability of SMEs to benefit from this Agreement.

ARTICLE 21.2

Information sharing

1. Each Party shall establish or maintain a digital medium such as an SMEs specific website that allows the public in the Union and in New Zealand to easily access information regarding this Agreement, including:

(a) a summary of this Agreement; and

(b) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that each Party considers to be relevant to SMEs of both Parties; and

(ii) any additional information that the Party considers would be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall provide access through the digital medium referred to in paragraph 1, to the:

(a) text of this Agreement, including all annexes, in particular tariff schedules, and product-specific rules of origin;

(b) equivalent digital medium of the other Party; and

(c) information from its own authorities and other appropriate entities that the Party considers would be useful to persons interested in trading, investing and doing business in that Party.

3. The information in paragraph 2(c) shall, as appropriate, include the following:

(a) customs regulations and procedures for importation, exportation and transit as well as relevant forms, documents and other related information;

(b) sanitary and phytosanitary measures as required by Chapter 6 (Sanitary and phytosanitary measures);

(c) technical regulations and other matters as required by Chapter 9 (Technical barriers to trade);

(d) rules on public procurement, a database containing public procurement notices and other relevant information pursuant to Chapter 14 (Public procurement);

(e) regulations and procedures concerning intellectual property rights as required by Chapter 18 (Intellectual property);

(f) business registration procedures; and

(g) other information that the Party considers may be of assistance to SMEs.

4. Each Party shall provide access through the digital medium referred to in paragraph 1, such as through an internet link on a website to a searchable database or similar, to the following product-specific and generic information with respect to its market:

(a) rates of customs duties and quotas, including most-favoured nation, rates concerning non most-favoured nation countries and preferential rates and tariff rate quotas;

(b) excise duties;

(c) taxes (value added tax or sales tax);

(d) customs or other fees, including other product specific fees;

(e) rules of origin as provided for in Chapter 3 (Rules of origin and origin procedures);

(f) duty drawback, deferral, or other types of relief that reduce, refund, or waive customs duties;

(g) criteria used to determine the customs value of the good;

(h) other tariff measures;

(i) information needed for import procedures; and

(j) information related to non-tariff measures or regulations.

5. Each Party shall regularly, or when requested by the other Party, update the information made available under this Article to ensure it is up-to-date and accurate.

6. Each Party shall ensure that information referred to in this Article is presented in a form that is easy for SMEs to use. Each Party shall endeavour to make the information available in English.

7. A Party shall not apply a fee for access to the information referred to in this Article for a person of either Party.

ARTICLE 21.3

SMEs contact points

1. Each Party shall designate a SMEs contact point responsible for carrying out the functions listed in this Article and shall notify the other Party of the contact details for that contact point. Each Party shall promptly notify the other Party of any change of those contact details.

2. The SMEs contact points shall:

(a) ensure that SMEs' needs are taken into account in the implementation of this Agreement so that SMEs of both sides can take advantage of this Agreement;

(b) ensure that the information referred to in Article 21.2 (Information sharing) is up-to-date and relevant for SMEs. A Party may, through the SMEs contact point, suggest additional information that the other Party may include in the information to be provided in accordance with Article 21.2 (Information sharing);

(c) examine any matter relevant to SMEs in connection with the implementation of this Agreement, including:

(i) exchanging information and cooperating as appropriate to assist the Trade Committee in its task to monitor and implement the SMEs related aspects of this Agreement; and

(ii) assisting other committees, contact points and working groups established by this Agreement when considering matters of relevance to SMEs;

(d) report periodically on their activities, jointly or individually, to the Trade Committee for its consideration; and

(e) consider any other matter arising under this Agreement pertaining to SMEs as the Parties may agree.

3. SMEs contact points shall meet as necessary and shall carry out their work in person or by other appropriate means, which may include electronic mail, videoconferencing, or other means.

4. SMEs contact points may seek to cooperate with experts and external organisations, as appropriate, in carrying out their activities.

ARTICLE 21.4

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to this Chapter.

CHAPTER 22

GOOD REGULATORY PRACTICES AND REGULATORY COOPERATION

ARTICLE 22.1

General principles

1. Each Party shall be free to determine its approach to good regulatory practices and regulatory cooperation under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles[1] underlying its regulatory management system.

2. Nothing in this Chapter shall be construed as to require a Party to:

(a) deviate from domestic procedures for preparing and adopting regulatory measures;

(b) take actions that would risk compromising or undermining the public policy objective of a particular regulatory measure;

(c) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(d) achieve any particular regulatory outcome.

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[1] For the Union, such principles include those included in and derived from the TFEU.

3. Each Party shall be free to identify its regulatory priorities and to prepare and adopt regulatory measures to address those regulatory priorities ensuring the levels of protection that the Party considers appropriate.

ARTICLE 22.2

Definitions

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

(a) "regulatory authority" means:

(i) for the Union, the European Commission; and

(ii) for New Zealand, the Executive Government of New Zealand;

(b) "regulatory measures" means, unless otherwise provided in this Chapter:

(i) for the Union:

(A) regulations and directives, as provided in Article 288 TFEU; and

(B) delegated and implementing acts, as provided in Article 290 and Article 291 TFEU, respectively;

(ii) for New Zealand:

(A) Government bills that may become Public Acts of the Parliament of New Zealand, except for the purpose of Articles 22.9 (Periodic review of regulatory measures in effect) and 22.10 (Access to regulatory measures) where it means Public Acts of the Parliament of New Zealand; and

(B) regulations made by Order in Council.

ARTICLE 22.3

Scope

1. This Chapter applies to regulatory measures issued or initiated by the regulatory authority of a Party in respect to any matter covered by this Agreement.

2. For greater certainty, this Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of the Member States.

ARTICLE 22.4

Transparency of processes and mechanisms

1. The regulatory authority of each Party shall make publicly available and for free descriptions of the general processes and mechanisms under which the regulatory authority prepares, develops, evaluates or reviews its regulatory measures. This shall be done through a digital medium.

2. The descriptions referred to in paragraph 1 shall refer to any relevant guidelines, rules or procedures, including those guidelines, rules or procedures regarding opportunities for the public to provide comments.

ARTICLE 22.5

Internal coordination of regulatory development[1]

Further to Article 22.4 (Transparency of processes and mechanisms), for the preparation or development of regulatory measures, the regulatory authority of each Party shall maintain internal processes or mechanisms for internal coordination, consultation and review. Such processes or mechanisms shall, *inter alia*, seek to:

(a) foster good regulatory practices, such as those set forth in this Chapter;

[1] For greater certainty, a Party may comply with Articles 22.5 (Internal coordination of regulatory development) and 22.9(1) (Periodic review of regulatory measures in effect) through any combination of separate or combined processes or mechanisms.

(b) identify and avoid unnecessary duplication and inconsistent requirements in the Party's regulatory measures;

(c) ensure compliance with international trade and investment obligations; and

(d) promote the consideration of effects of the regulatory measures being prepared or developed, which may include those on SMEs.

ARTICLE 22.6

Early information on planned regulatory measures

1. Each Party shall, on at least an annual basis, list planned major[1] regulatory measures[2] that it reasonably expects to adopt within a year and make such list or lists publicly available.

2. With respect to each major regulatory measure, referred to in paragraph 1, the regulatory authority of each Party should make publicly available, as early as possible:

(a) a brief description of its scope and objectives; and

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[1] The regulatory authority of each Party may determine what constitutes a "major" regulatory measure for the purposes of this Chapter.

[2] In the case of New Zealand, "regulatory measures" for the purposes of this Article shall be understood as regulations made by Order in Council, as specified in point (b)(ii)(B) of Article 22.2 (Definitions).

(b) the estimated timing for its adoption, including opportunities for public consultation.

ARTICLE 22.7

Public consultation

1. When preparing or developing major regulatory measures, the regulatory authority of each Party shall, to the extent possible and appropriate:

(a) make publicly available, such as by publishing draft regulatory measures or consultation documents, sufficient details about those major regulatory measures to allow any person to assess whether and how the person's interests might be significantly affected;

(b) offer reasonable opportunities for any person, on a non-discriminatory basis, to provide comments; and

(c) consider the comments received.

2. For the purposes of providing information and receiving comments related to public consultations, the regulatory authority of each Party shall make information accessible to the public by digital means, preferably through a dedicated electronic portal.

3. The regulatory authority of each Party shall endeavour to make publicly available a summary of the results of the consultations and comments received, except to the extent necessary to protect confidential information or withhold personal data or inappropriate content.

ARTICLE 22.8

Impact assessment

1. The regulatory authority of each Party affirms its intention to carry out, in accordance with its respective rules and procedures, an impact assessment of major regulatory measures it is preparing.

2. For carrying out an impact assessment, the regulatory authority of each Party shall promote the identification and consideration of:

(a) the need for a regulatory measure, including the nature and the significance of the problem a regulatory measure intends to address;

(b) any feasible and appropriate regulatory and non-regulatory options that would achieve the Party's public policy objectives, including the option of not regulating;

(c) to the extent possible and relevant, the potential social, economic and environmental impact of the options, such as any impacts on international trade and investment, or the impact on SMEs; and

(d) how the options under consideration relate to relevant international standards, if any, including the reason for any divergence, where appropriate.

3. With respect to any impact assessment that a regulatory authority of a Party has carried out for a regulatory measure, that regulatory authority shall report on the factors it considered in its assessment and summarise the relevant findings. The information shall be made publicly available no later than when the regulatory measure to which it relates is made publicly available.

ARTICLE 22.9

Periodic review of regulatory measures in effect

1. Further to Article 22.4 (Transparency of processes and mechanisms), the regulatory authority of each Party shall maintain processes or mechanisms to promote periodic review of regulatory measures in effect.

2. The regulatory authority of each Party shall endeavour to ensure that periodic reviews consider, where appropriate:

(a) whether there are opportunities to achieve its public policy objectives more effectively and efficiently;[1] and

[1] For greater certainty, this may include whether unnecessary regulatory burdens, including on SMEs, can be reduced.

(b) whether the regulatory measures under review are likely to remain fit for purpose.

3. The regulatory authority of each Party shall, to the extent possible and appropriate, make publicly available any plans for, and the results of, such periodic review.

ARTICLE 22.10

Access to regulatory measures

Each Party shall ensure that regulatory measures in effect are published in a designated register or via a single digital medium that is publicly available, searchable, free of charge and updated regularly.

ARTICLE 22.11

Regulatory cooperation

1. The Parties recognise the value in creating a simple mechanism to identify potential opportunities for undertaking regulatory cooperation between them.

2. A Party may propose a regulatory cooperation activity to the other Party. It shall transmit its proposal to the other Party's contact point designated in accordance with Article 22.12 (Contact points on regulatory cooperation).

3. The proposals may consist of:

(a) bilateral information exchanges on regulatory cooperation approaches; or

(b) informal cooperation between the regulatory authorities.

4. The other Party shall reply to the proposal within a reasonable period of time.

5. Where appropriate, and if the regulatory authorities so agree, the implementation of a regulatory cooperation activity may be carried out by the relevant divisions, departments or agencies in each Party.

ARTICLE 22.12

Contact points on regulatory cooperation

Promptly after the date of entry into force of this Agreement, each Party shall designate a contact point which shall be responsible for coordinating regulatory cooperation activities under Article 22.11 (Regulatory cooperation) and notify the other Party of the contact details for the contact point. Each Party shall promptly notify the other Party of any change to those contact details.

ARTICLE 22.13

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to this Chapter.

CHAPTER 23

TRANSPARENCY

ARTICLE 23.1

Objectives

1. Recognising the impact that their respective regulatory environments may have on trade and investment between them, the Parties aim to provide a predictable regulatory environment and efficient procedures for economic operators, especially SMEs.

2. The Parties affirm their commitments in relation to transparency under the WTO Agreement, and build on those commitments in this Chapter.

ARTICLE 23.2

Definition

For the purposes of this Chapter, "administrative decision" means a decision or action with legal effect that applies to a specific person, good or service in an individual case and covers the failure to take an administrative decision when that is so required by the law of a Party.

ARTICLE 23.3

Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published via an officially designated medium and, where feasible, by electronic means, or otherwise made available in such a manner as to enable any person to become acquainted with them.

2. To the extent possible and appropriate, each Party shall provide an explanation of the objective of, and rationale for, the laws, regulations, procedures and administrative rulings of general application referred to in paragraph 1.

3. To the extent possible and appropriate, each Party shall provide a reasonable period of time between publication and entry into force of laws and regulations with respect to any matter covered by this Agreement.

ARTICLE 23.4

Enquiries

1. Each Party shall maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations with respect to any matter covered by this Agreement.

2. Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any law or regulation, whether in force or planned, with respect to any matter covered by this Agreement, unless a specific mechanism is established under another Chapter of this Agreement.

ARTICLE 23.5

Administrative proceedings

1. Each Party shall administer all laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement in an objective, impartial and reasonable manner.

2. When administrative proceedings relating to particular persons, goods or services of the other Party are initiated in respect of the application of laws, regulations, procedures or administrative rulings of general application, referred to in paragraph 1, each Party shall:

(a) endeavour to provide persons that are directly affected by the administrative proceedings with reasonable notice, in accordance with its law, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any issues in question; and

(b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision in so far as time, the nature of the proceedings and the public interest permit.

ARTICLE 23.6

Review and appeal

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of administrative decisions with respect to any matter covered by this Agreement. Each Party shall ensure that its judicial, arbitral or administrative tribunals carry out procedures for appeal or review in a non-discriminatory and impartial manner. Such tribunals shall be impartial and independent of the authority entrusted with administrative enforcement powers.

2. With respect to the tribunals or procedures referred to in paragraph 1, each Party shall ensure that the parties before those tribunals or to those procedures are provided with:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.

3. Each Party shall ensure that the decision referred to in point (b) of paragraph 2 is, subject to appeal or further review as provided for in its law, implemented by the authority entrusted with administrative enforcement powers.

ARTICLE 23.7

Relation to other Chapters

The provisions set out in this Chapter supplement the specific rules set out in other Chapters of this Agreement.

CHAPTER 24

INSTITUTIONAL PROVISIONS

ARTICLE 24.1

Trade Committee

1. The Parties hereby establish a Trade Committee comprising representatives of both Parties to oversee the attainment of the objectives of this Agreement. Each Party may refer to the Trade Committee any issue relating to the implementation, application and interpretation of this Agreement.

2. The Trade Committee shall meet no later than six months after the date of entry into force of this Agreement. Thereafter, the Trade Committee shall meet on an annual basis, unless otherwise agreed by the representatives of the Parties, or without undue delay at the request of either Party.

3. The meetings of the Trade Committee shall take place in Brussels or Wellington alternately, unless otherwise agreed by the representatives of the Parties. The Trade Committee may meet in person or by other appropriate means of communication, as agreed by the representatives of the Parties.

4. The Trade Committee shall be co-chaired by the New Zealand Minister responsible for trade and the Member of the European Commission responsible for trade, or their respective designees.

ARTICLE 24.2

Functions of the Trade Committee

1. The Trade Committee shall:

(a) consider ways to further enhance trade and investment between the Parties;

(b) supervise and facilitate the implementation and application of this Agreement;

(c) supervise, guide and coordinate the work of all specialised committees and other bodies established under this Agreement, and recommend to those specialised committees and bodies any necessary action;

(d) consider any proposal to amend this Agreement;

(e) without prejudice to Chapter 26 (Dispute settlement) seek appropriate ways and methods of preventing or solving problems that may arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

(f) in the event of accession of a third country to the Union, examine any effects of such accession on this Agreement and consider any necessary adjustment or transition measures, sufficiently in advance of the date of accession; and

(g) consider and discuss any matter other than those set out in points (a) to (f) of interest relating to an area covered by this Agreement.

2. The Trade Committee may:

(a) decide to establish specialised committees or other bodies other than those established pursuant to Article 24.4 (Specialised committees), dissolve any such specialised committees or other bodies and determine or change their composition, function and tasks;

(b) allocate responsibilities to specialised committees or other bodies established under this Agreement;

(c) delegate certain of its powers or responsibilities to a specialised committee, except those powers and responsibilities referred to in point (a) or (d) of this paragraph;

(d) recommend to the Parties any amendments to this Agreement;

(e) adopt decisions to issue interpretations of the provisions of this Agreement;

(f) except in relation to this Chapter, until the end of the fourth year following the entry into force of this Agreement, adopt decisions amending this Agreement, provided that such amendments are necessary to correct errors, or to address omissions or other deficiencies;

(g) adopt decisions as envisaged in this Agreement or make recommendations in accordance with Article 24.5 (Decisions and recommendations);

(h) communicate on matters related to this Agreement with all interested parties including private sector, social partners and civil society organisations;

(i) adopt decisions to amend this Agreement in accordance with Article 27.1(3) (Amendments) in the instances set out in Article 24.3 (Amendments by the Trade Committee); and

(j) take any other action in the exercise of its functions as the Parties may agree.

3. The Trade Committee shall regularly inform the Joint Committee established under the Partnership Agreement of its activities and those of its specialised committees or other bodies, as relevant, at the regular meetings of the Joint Committee.

ARTICLE 24.3

Amendments by the Trade Committee

The Trade Committee may adopt decisions to amend the following parts of this Agreement in accordance with, where applicable, the relevant provisions included in the Chapters, Annexes or Appendices set out below, as well as in accordance with Article 27.1(3) (Amendments)[1]:

(a) Annex 2-A (Tariff elimination schedules) to Chapter 2 (National treatment and market access for goods);

(b) Chapter 3 (Rules of origin and origin procedures) and Annex 3-A (Introductory notes to product-specific rules of origin), Annex 3-B (Product-specific rules of origin), including its Appendix 3-B-1 (Origin quotas and alternatives to the product-specific rules of origin in Annex 3-B), Annex 3-C (Text of the statement on origin) and Annex 3-D (Supplier's declaration referred to in Article 3.3(4) (Cumulation of origin)) to Chapter 3 (Rules of origin and origin procedures);

(c) Annex 6-B (Regional conditions for plants and plant products), Annex 6-C (Equivalence recognition of SPS measures), Annex 6-D (Guidelines and procedures for an audit or verification), Annex 6-E (Certification) and Annex 6-F (Import checks and fees) to Chapter 6 (Sanitary and phytosanitary measures);

[1] For greater certainty, when reference is made in this Article to Annexes, the Trade Committee shall also have the power to amend Appendices to those Annexes even if such Appendices are not explicitly stated in this Article.

(d) Annex 9-A (Acceptance of conformity assessment (Documents)), Annex 9-B (Motor vehicles and equipment or parts thereof), Annex 9-C (Arrangement referred to in Article 9.10(5)(b) for the regular exchange of information in relation to the safety of non-food products and related preventive, restrictive and corrective measures), Annex 9-D (Arrangement referred to in Article 9.10(6) for the regular exchange of information regarding measures taken on non-compliant non-food products other than those covered by Article 9.10(5)(b)) and Annex 9-E (Wine and spirits) to Chapter 9 (Technical barriers to trade);

(e) the mutual recognition instrument referred to in Article 10.39(5) (Mutual recognition of professional qualifications) of Chapter 10 (Investment liberalisation and trade in services)[1];

(f) Article 10.9(1) (Performance requirements) and Annex 10-A (Existing measures) and Annex 10-B (Future measures), in order to integrate disciplines on performance requirements with respect to the establishment or operation of a financial service supplier negotiated pursuant to Article 10.9(11) (Performance requirements) of Chapter 10 (Investment liberalisation and trade in services);

(g) Annex 13 (Lists of energy goods, hydrocarbons and raw materials) to Chapter 13 (Energy and raw materials);

(h) Annex 14 (Public procurement market access commitments) to Chapter 14 (Public Procurement);

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[1] For greater certainty, the Trade Committee shall have the power to adopt by decision such instrument as an Annex to this Agreement as well as to amend or revoke it after it has been adopted.

(i) Annex 18-A (Product classes) and Annex 18-B (Lists of geographical indications) to Chapter 18 (Intellectual property);

(j) Article 19.3(3) and (4) (Multilateral labour standards and agreements) of Chapter 19 (Trade and sustainable development);

(k) Annex 24 (Rules of procedure of the Trade Committee) to Chapter 24 (Institutional provisions);

(l) Annex 26-A (Rules of procedure) and Annex 26-B (Code of conduct for panellists and mediators) to Chapter 26 (Dispute settlement); and

(m) any other provision, Appendix or Annex, for which the possibility of such decision is explicitly foreseen in this Agreement.

ARTICLE 24.4

Specialised committees

1. The following specialised committees are hereby established:

(a) the Committee on Trade in Goods, which addresses matters covered by Chapter 2 (National treatment and market access for goods), Chapter 5 (Trade remedies) and Chapter 9 (Technical barriers to trade);

(b) the Committee on Sanitary and Phytosanitary Measures, which addresses matters covered by Chapter 6 (Sanitary and phytosanitary measures) and Chapter 8 (Animal welfare);

(c) the Committee on Sustainable Food Systems, which addresses matters covered by Chapter 7 (Sustainable food systems);

(d) the Committee on Wine and Spirits, which addresses matters covered by Annex 9-E (Wine and spirits);

(e) the Committee on Trade and Sustainable Development, which addresses matters covered by Chapter 19 (Trade and sustainable development); and

(f) the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications which addresses matters covered in Chapter 10 (Investment liberalisation and trade in services), Chapter 11 (Capital movements, payments and transfers), Chapter 12 (Digital trade), Chapter 14 (Public procurement) and Chapter 18 (Intellectual property).

2. The Joint Customs Cooperation Committee shall act under the auspices of the Trade Committee as a specialised committee, which addresses matters covered in Chapter 3 (Rules of origin and origin procedures), Chapter 4 (Customs and trade facilitation) and in the provisions on border enforcement and customs cooperation in Chapter 18 (Intellectual property) and any additional customs-related provisions of this Agreement.

3. Unless otherwise provided in this Agreement or agreed by the representatives of the Parties, the specialised committees shall meet once a year, or without undue delay at the request of either Party or at the request of the Trade Committee. The meetings shall take place in the European Union or in New Zealand alternately or by any other appropriate means of communication, as agreed by the representatives of the Parties. The specialised committees shall agree on their meeting schedule and set their agenda.

4. Specialised committees shall comprise representatives of each Party and they shall be co-chaired, at an appropriate level, by representatives of each Party.

5. Each specialised committee may decide its own rules of procedure, in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*.

6. With respect to the issues related to their area of competence as referred to in paragraph 1, the specialised committees shall have the power to:

(a) monitor and review the implementation and operation of this Agreement;

(b) consider and discuss technical issues arising from the implementation of this Agreement, without prejudice to Chapter 26 (Dispute settlement);

(c) adopt decisions where this Agreement so provides or make recommendations;

(d) conduct the preparatory work necessary to support the functions of the Trade Committee, including when the latter has to adopt decisions or recommendations; and

(e) provide a forum for the Parties to exchange information, discuss best practices and share implementation experiences.

7. With respect to the issues related to their area of competence as referred to in paragraph 1, the specialised committees shall:

(a) inform the Trade Committee of the schedule and agenda of their meetings sufficiently in advance;

(b) report to the Trade Committee on the results and conclusions from each of their meetings; and

(c) carry out any task assigned and any responsibility delegated to them by the Trade Committee.

8. The creation or existence of a specialised committee shall not prevent a Party from bringing any matter directly to the Trade Committee.

9. Each Party shall ensure that when a specialised committee meets, all the competent authorities for each issue on the agenda are represented, as each Party deems appropriate, and that each issue can be discussed at the adequate level of expertise.

ARTICLE 24.5

Decisions and recommendations

1. The decisions adopted by the Trade Committee, or, as the case may be, by a specialised committee, shall be binding on the Parties and on all the bodies set up under this Agreement, including the panels referred to in Chapter 26 (Dispute settlement). The Parties shall take measures necessary to implement the decisions taken by the Trade Committee. Recommendations shall have no binding force.

2. The Trade Committee or, as the case may be, a specialised committee, shall adopt its decisions and make its recommendations by consensus.

ARTICLE 24.6

Domestic advisory groups

1. Each Party shall designate a domestic advisory group within a year after the date of entry into force of this Agreement. The domestic advisory group shall advise the Party concerned on issues covered by this Agreement. It shall comprise a balanced representation of independent civil society organisations including non-governmental organisations, business and employers' organisations as well as trade unions active on economic, sustainable development, social, human rights, environmental and other matters. In the case of New Zealand, the domestic advisory group shall include Māori representatives. The domestic advisory group may be convened in different configurations to discuss the implementation of different provisions of this Agreement.

2. Each Party shall meet with its domestic advisory group at least once a year. Each Party shall consider views or recommendations submitted by its domestic advisory group on the implementation of this Agreement.

3. In order to promote public awareness of the domestic advisory groups, each Party may publish the list of organisations participating in its domestic advisory group and shall publish the contact point for that group.

4. The Parties shall promote interaction between their respective domestic advisory groups.

ARTICLE 24.7

Civil Society Forum

1. The Parties shall facilitate the organisation of a Civil Society Forum to conduct a dialogue on the implementation of this Agreement and shall agree at the first meeting of the Trade Committee on operational guidelines for the conduct of the Civil Society Forum.

2. The Civil Society Forum shall endeavour to meet in conjunction with the meeting of the Trade Committee. The Parties may also facilitate participation in the Civil Society Forum by virtual means.

3. The Civil Society Forum shall be open for the participation of independent civil society organisations established in the territories of the Parties, including members of the domestic advisory groups referred to in Article 24.6 (Domestic advisory groups). Each Party shall endeavour to promote a balanced representation, including non-governmental organisations, business and employers´ organisations and trade unions active on economic, sustainable development, social, human rights, environmental and other matters. In the case of New Zealand, the Civil Society Forum shall include Māori representatives.

4. The representatives of the Parties participating in the Trade Committee shall, as appropriate, take part in a session of the meeting of the Civil Society Forum in order to present information on the implementation of this Agreement and to engage in a dialogue with the Civil Society Forum. This session shall be chaired by the co-chairs of the Trade Committee or their designees, as appropriate. The Parties shall, jointly or individually, publish any formal statements made at the Civil Society Forum.

CHAPTER 25

EXCEPTIONS AND GENERAL PROVISIONS

ARTICLE 25.1

General exceptions

1. For the purposes of Chapter 2 (National treatment and market access for goods), Chapter 4 (Customs and trade facilitation), Section B (Investment liberalisation) of Chapter 10 (Investment liberalisation and trade in services), Chapter 12 (Digital trade), Chapter 13 (Energy and raw materials) and Chapter 17 (State-owned enterprises), Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalization or trade in services, nothing in Chapter 10 (Investment liberalisation and trade in services), Chapter 11 (Capital movements, payments and transfers), Chapter 12 (Digital trade), Chapter 13 (Energy and raw materials) and Chapter 17 (State-owned enterprises) shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security or public morals or to maintain public order;[1]

[1] The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety.

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with a Chapter or a Section referred to in paragraphs 1 and 2 of this Article:

(a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures, which are necessary to protect human, animal or plant life or health;

(b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and

(c) measures taken to implement multilateral environmental agreements may fall under point (b) or (g) of Article XX of GATT 1994 or under point (b) of paragraph 2 of this Article.

4. Before a Party takes any measures provided for in points (i) and (j) of Article XX of GATT 1994, that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If no agreement is reached within 30 days of providing the information, the Party may apply the relevant measures. Where exceptional and critical circumstances requiring immediate action prevent prior information or examination, the Party intending to take the measures may apply forthwith precautionary measures necessary to deal with the situation. That Party shall inform the other Party immediately thereof.

ARTICLE 25.2

Security exceptions

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology and economic activities as carried out directly or indirectly for the purpose of supplying a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

ARTICLE 25.3

Taxation

1. For the purpose of this Article, the following definitions apply:

(a) "direct taxes" means all taxes on income or capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, taxes on wages or salaries paid by enterprises and taxes on capital appreciation;

(b) "residence" means residence for tax purposes; and

(c) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either any Member State of the Union, the Union or New Zealand are party to.

2. Nothing in this Agreement shall affect the rights and obligations of either New Zealand or the Union or its Member States, under any tax convention. In the event of any inconsistency between this Agreement and any tax convention, the tax convention shall prevail to the extent of the inconsistency. With regard to a tax convention between the Union or its Member States and New Zealand, the relevant competent authorities under this Agreement and the tax convention shall jointly determine whether an inconsistency exists between this Agreement and the tax convention.[1]

3. Articles 10.7 (Most-favoured-nation treatment) and 10.17 (Most-favoured-nation treatment) shall not apply to an advantage accorded by a Party pursuant to a tax convention.

[1] For greater certainty, this is without prejudice to Chapter 26 (Dispute settlement).

4. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure that:

(a) aims at ensuring the equitable or effective[1] imposition or collection of direct taxes; or

(b) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

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[1] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:
(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
(iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

ARTICLE 25.4

Restrictions in case of balance of payments
and external financial difficulties

1. Where a Party experiences serious balance of payments or external financial difficulties or threat thereof, that Party may adopt or maintain temporary safeguard measures with regard to capital movements, payments or transfers[1].

2. Any temporary safeguard measure adopted or maintained under paragraph 1 shall:

(a) be consistent with the Articles of the Agreement of the International Monetary Fund;

(b) not exceed what is necessary to deal with the circumstances described in paragraph 1;

(c) be temporary and phased out progressively as the circumstances described in paragraph 1 improve;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) be non-discriminatory so that the other Party is treated no less favourably than any non-Party in like situations.

[1] For greater certainty, serious balance of payments and external financial difficulties, or threat thereof, may be caused, among other factors, by serious difficulties relating to monetary or exchange rate policies, or threat thereof.

3. With respect to trade in goods, a Party may adopt temporary safeguard measures in order to safeguard its external financial position or balance of payments. Any temporary safeguard measure adopted or maintained under this paragraph shall be consistent with GATT 1994 and its Understanding on the Balance-of-Payments Provisions.

4. With respect to trade in services, a Party may adopt temporary safeguard measures in order to safeguard its external financial position or balance of payments. Any temporary safeguard measure adopted or maintained under this paragraph shall be consistent with Article XII of GATS.

ARTICLE 25.5

Temporary safeguard measures

1. In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union or threat thereof, the Union may adopt or maintain temporary safeguard measures with regard to capital movements, payments or transfers for a period that does not exceed six months.

2. Any temporary safeguard measure adopted or maintained under paragraph 1 shall be limited to the extent that is strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between New Zealand and a third country in like situations.

ARTICLE 25.6

Tiriti o Waitangi/Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods, trade in services and investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by this Agreement, including in fulfilment of its obligations under te Tiriti o Waitangi/the Treaty of Waitangi.

2. The Parties agree that the interpretation of te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 26 (Dispute settlement) shall otherwise apply to this Article. A panel established under Article 26.5 (Establishment of a panel) may be requested by the Union to determine only whether any measure referred to in paragraph 1 is inconsistent with its rights under this Agreement.

ARTICLE 25.7

Disclosure of information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private except where a panel requires such confidential information in dispute settlement proceedings under Chapter 26 (Dispute settlement). In such cases, the panel shall ensure that confidentiality is fully protected.

2. Each Party shall treat as confidential any information submitted by the other Party to the Trade Committee or to specialized committees that the other Party has designated as confidential.

ARTICLE 25.8

WTO waivers

If a right or obligation in this Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a waiver decision adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the duplicated provision in this Agreement.

CHAPTER 26

DISPUTE SETTLEMENT

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 26.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement and the Sanitary Agreement with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 26.2

Scope

1. This Chapter applies, subject to paragraph 2, with respect to any dispute between the Parties concerning the interpretation and application of this Agreement and of the Sanitary Agreement (hereinafter referred to as "covered provisions").

2. The covered provisions shall include all provisions of the Sanitary Agreement and of this Agreement with the exception of:

(a) Sections B (Anti-dumping and countervailing duties) and C (Global safeguard measures) of Chapter 5 (Trade remedies);

(b) Chapter 15 (Competition policy);

(c) Article 16.6 (Consultations);

(d) Chapter 20 (Māori trade and economic cooperation);

(e) Chapter 21 (Small and medium-sized enterprises);

(f) Chapter 22 (Good regulatory practice and regulatory cooperation); and

(g) provisions of te Tiriti o Waitangi/the Treaty of Waitangi, with respect its interpretation including as to the nature of the rights and obligations arising under it.

SECTION B

CONSULTATIONS

ARTICLE 26.3

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 26.2 (Scope) by entering into consultations in good faith, with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made (hereinafter referred to as "the Party complained against") shall reply to that request promptly, but no later than 10 days after the date of its delivery. Unless the Parties agree otherwise, consultations shall be held within 30 days after the date of delivery of the request for consultations, and take place in the territory of the Party complained against. The consultations shall be deemed concluded within 30 days after the date of delivery of the request, or within 90 days after that date for disputes under Chapter 19 (Trade and sustainable development), unless the Parties agree to continue consultations.

4. Consultations on matters of urgency, including those regarding perishable goods, or seasonal goods or services that rapidly lose their trade value, shall be held within 15 days after the date of delivery of the request for consultations. The consultations shall be deemed concluded within those 15 days, unless the Parties agree to continue consultations.

5. During consultations each Party shall provide sufficient factual information so as to allow a complete examination of the manner in which the measure at issue could affect the application of this Agreement or the Sanitary Agreement. Each Party shall endeavour to ensure the participation of personnel of their competent governmental authorities who have expertise in the matter subject to the consultations.

6. In disputes concerning the provisions of Chapter 19 (Trade and sustainable development) which relate to the multilateral agreements or instruments referred to in Chapter 19 (Trade and sustainable development), the Parties shall take into account information from the ILO or relevant bodies or organisations established under MEAs in order to promote coherence between the work of the Parties and those organisations or bodies. Where relevant, the Parties shall seek advice from those organisations or their relevant bodies, or any other expert or body they deem appropriate. Each Party may seek, if appropriate, the views of the domestic advisory groups referred to in Article 24.6 (Domestic advisory groups) or other expert advice.

7. Consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

8. A measure proposed by a Party, but not yet implemented, may be the subject of consultations under this Article but may not be the subject of panel procedures under Section C (Panel procedures) or mediation under Section D (Mediation).

SECTION C

PANEL PROCEDURES

ARTICLE 26.4

Initiation of panel procedures

1. The Party that sought consultations may request the establishment of a panel, if:

(a) the Party complained against does not respond to the request for consultations within 10 days after the date of its delivery;

(b) consultations are not held within the time periods set out in Article 26.3(3) and (4) (Consultations) respectively;

(c) the Parties agree not to have consultations; or

(d) consultations have been concluded and no mutually agreed solution has been reached.

2. The request for the establishment of a panel (hereinafter referred to as "panel request") shall be made by means of a written request delivered to the other Party, and to any external body entrusted pursuant to paragraph 4, if applicable. The complaining Party shall identify the measure at issue in its panel request, and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly.

3. Each Party shall ensure that the panel request is promptly made public.

4. The Trade Committee may decide to entrust an external body with assisting panels under this Chapter, including providing administrative and legal support. The Trade Committee's decision shall also address the costs arising from the entrustment.

ARTICLE 26.5

Establishment of a panel

1. A panel shall be composed of three panellists.

2. Within 15 days after the date of delivery of the panel request, the Parties shall consult in good faith with a view to agree on the composition of the panel.

3. If the Parties do not agree on the composition of the panel within the time period provided for in paragraph 2, each Party shall appoint a panellist within 10 days after the expiry of the time period established in paragraph 2:

(a) from the sub-list of that Party established under Article 26.6 (Lists of panellists); or

(b) for disputes under Chapter 19 (Trade and sustainable development), from the sub-list of that Party in the TSD list established pursuant to point (b) of Article 26.6(1) (Lists of panellists).

If a Party does not appoint a panellist from its sub-list within the time period provided for in paragraph 3, the co-chair of the Trade Committee from the complaining Party shall select by lot, within 10 days after the expiry of the time period provided for in paragraph 3, the panellist from the sub-list of the Party that has not appointed a panellist. The co-chair of the Trade Committee from the complaining Party may delegate such selection by lot.

4. If the Parties do not agree on the chairperson of the panel within the time period established in paragraph 2, the co-chair of the Trade Committee from the complaining Party shall select by lot, within 10 days after the expiry of that time period, the chairperson of the panel:

(a) from the sub-list of chairpersons established under Article 26.6 (Lists of panellists); or

(b) for disputes under Chapter 19 (Trade and sustainable development), from the sub-list of chairpersons in the TSD list established pursuant to point (b) of Article 26.6(1) (Lists of panellists).

The co-chair of the Trade Committee from the complaining Party may delegate such selection by lot.

5. The panel shall be deemed to be established 15 days after the three selected panellists have accepted their appointment in accordance with Rule 10 of Annex 26-A (Rules of procedure), unless the Parties agree otherwise. Each Party shall promptly make public the date of establishment of the panel.

6. If any of the lists provided for in Article 26.6 (Lists of panellists) have not been established or do not contain sufficient names or contain only names of persons who are not available at the time a panellist is to be selected pursuant to paragraph 3 or 4, the panellists shall be drawn by lot from the individuals who have been formally proposed by one Party or both Parties in accordance with Annex 26-A (Rules of procedure).

ARTICLE 26.6

Lists of panellists

1. The Trade Committee shall, at its first meeting after the date of entry into force of this Agreement, establish:

(a) a list of individuals who are willing and able to serve as panellists; and

(b) a separate list of individuals who are willing and able to serve as panellists in disputes under Chapter 19 (Trade and sustainable development) ("TSD list").

2. Each of the lists referred to in points (a) and (b) of paragraph 1 shall be composed of the following sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the Union;

(b) one sub-list of individuals established on the basis of proposals by New Zealand; and

(c) one sub-list of individuals who are not nationals of either Party and who shall serve as chairperson to the panel.

3. The sub-lists referred to in points (a), (b) and (c) of paragraph 2, shall include at least three individuals each. The sub-list referred to in point (c) of paragraph 2 shall not have more than six individuals. The Trade Committee shall ensure that the list is always maintained at this number of individuals.

4. The Trade Committee may establish additional lists of individuals with expertise in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 26.5 (Establishment of a panel).

ARTICLE 26.7

Requirements for panellists

1. Each panellist shall:

(a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement;

(b) be independent of, and not be affiliated with or take instructions from, either Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with Annex 26-B (Code of conduct for panellists and mediators).

2. The chairperson shall also have experience in dispute settlement procedures.

3. Notwithstanding point (a) of paragraph 1 and paragraph 2, each panellist on the TSD list shall have specialised knowledge of, or expertise in:

(a) labour or environmental law;

(b) issues addressed in the Chapter 19 (Trade and sustainable development); or

(c) the resolution of disputes arising under international agreements.

4. In view of the subject-matter of a particular dispute, the Parties may agree to derogate from the requirements listed in point (a) of paragraph 1.

ARTICLE 26.8

Functions of the panel

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of facts, the applicability of the covered provisions and the basic rationale behind any findings and recommendations that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 26.9

Terms of reference

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the panel shall be:

"to examine, in the light of the relevant covered provisions referred to by the Parties, the matter referred to in the panel request, to make findings on the applicability of the covered provisions and the conformity of the measure at issue with those provisions and to deliver a report in accordance with Articles 26.11 (Interim report) and 26.12 (Final report)."

2. If the Parties agree on terms of reference other than those set out in paragraph 1, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

ARTICLE 26.10

Decision on urgency

1. If a Party so requests, the panel shall decide, within 10 days after its establishment, whether the case concerns matters of urgency.

2. If the panel decides that the dispute concerns matters of urgency, the applicable time periods set out in Section C (Panel procedures) of this Chapter shall be half the time prescribed therein, except for the time periods referred to in Article 26.5 (Establishment of a panel) and Article 26.9 (Terms of reference).

ARTICLE 26.11

Interim report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of establishment of the panel. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel shall, under no circumstances, deliver its interim report later than 120 days after the date of establishment of the panel.

2. Each Party may deliver to the panel a written request to review precise aspects of the interim report within 10 days after its delivery. A Party may comment on the other Party's request within six days after the delivery of the request.

ARTICLE 26.12

Final report

1. The panel shall deliver its final report to the Parties within 120 days after the date of establishment of the panel. If the panel considers that such deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel shall, under no circumstances, deliver its final report later than 150 days after the date of establishment of the panel.

2. The final report shall include a discussion of any written request by the Parties on the interim report as referred to in Article 26.11(2) (Interim Report) and clearly address the comments of the Parties.

ARTICLE 26.13

Compliance measures

1. The Party complained against shall take any measure necessary to comply promptly with the findings and recommendations in the final report in order to bring itself in compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after delivery of the final report, deliver a notification to the complaining Party of the measures which it has taken or which it envisages to take to comply.

3. In addition, as regards disputes under Chapter 19 (Trade and sustainable development):

(a) the Party complained against shall, no later than 30 days after delivery of the final report, inform its civil society mechanism established pursuant to Article 24.6 (Domestic advisory groups) and the contact point of the other Party established pursuant to Article 19.20 (Contact points) of the measures which it has taken or which it envisages to take to comply; and

(b) the Trade and Sustainable Development Committee shall monitor the implementation of the compliance measures. The domestic advisory groups referred to in Article 24.6 (Domestic advisory groups) may submit observations to the Trade and Sustainable Development Committee in this regard.

ARTICLE 26.14

Reasonable period of time

1. If immediate compliance is not possible, the Party complained against shall, no later than 30 days after the date of delivery of the final report, deliver a notification to the complaining Party of the length of the reasonable period of time it will require for such compliance. The Parties shall endeavour to agree on the length of the reasonable period of time to comply.

2. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, at the earliest 20 days after the date of delivery of the notification referred to in paragraph 1, request in writing the original panel to determine the length of the reasonable period of time. The panel shall deliver its decision to the Parties within 20 days after the date of delivery of such request.

3. The Party complained against shall deliver a written notification of its progress in complying with the final report to the complaining Party no later than 30 days before the expiry of the reasonable period of time.

4. The Parties may agree to extend the reasonable period of time.

ARTICLE 26.15

Compliance review

1. The Party complained against shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.

2. If the Parties disagree on the existence or the consistency with the covered provisions of any measure taken to comply, the complaining Party may deliver a request, in writing, to the original panel to decide on the matter. Such request shall identify any measure at issue and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The panel shall deliver its decision to the Parties within 54 days after the date of delivery of such request.

ARTICLE 26.16

Temporary remedies

1. The Party complained against shall, if requested by the complaining Party, enter into consultations with the complaining Party with a view to agreeing a mutually acceptable compensation, if:

(a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report;

(b) the Party complained against fails to deliver a notification of any measure taken to comply within the deadline referred to in Article 26.13 (Compliance measures) or before the date of expiry of the reasonable period of time;

(c) the panel finds that no measure taken to comply exists; or

(d) the panel finds that the measure taken to comply is inconsistent with the covered provisions.

2. For disputes under Chapter 19 (Trade and sustainable development) this Article applies if:

(a) a situation set out in point (a), (b) or (c) of paragraph 1 arises and the final report pursuant to Article 26.12 (Final report) finds a violation of:

(i) Article 19.3(3) (Multilateral labour standards and agreements); or

(ii) Article 19.6(3) (Trade and climate change), if that panel, in its final report, finds that the Party complained against failed to refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement; or

(b) a situation set out in point (d) of paragraph 1 arises and the decision of the compliance panel pursuant to Article 26.15 (Compliance review) finds a violation of:

(i) Article 19.3(3) (Multilateral labour standards and agreements); or

(ii) Article 19.6(3) (Trade and climate change), if the panel, in its decision finds that the Party complained against failed to refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement.

3. If in the circumstances set out in paragraphs 1 and 2, the complaining Party chooses not to request consultations in relation to compensation, or the Parties do not agree on compensation within 20 days after entering into consultations on compensation, the complaining Party may deliver a written notification to the Party complained against that it intends to suspend the application of obligations under the covered provisions. Such notification shall specify the level of intended suspension of obligations.

4. The complaining Party may suspend the obligations 10 days after the date of delivery of the notification referred to in paragraph 3, unless the Party complained against delivers a written request under paragraph 6.

5. The suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation.

6. If the Party complained against considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation or that the conditions set out in paragraph 2 are not fulfilled, it may deliver a written request to the original panel before the expiry of the 10 day period provided for in paragraph 4 to decide on the matter. The panel shall deliver its decision on the level of the suspension of obligations or on whether the conditions set out in paragraph 2 are not fulfilled, to the Parties within 30 days after the date of that request. Obligations shall not be suspended until the panel has delivered its decision. The suspension of obligations shall be consistent with that decision.

7. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 26.26 (Mutually agreed solution);

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into compliance with those provisions.

ARTICLE 26.17

Review of any measure taken to comply
after the adoption of temporary remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days after the date of delivery of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the Party complained against may terminate the application of such compensation within 30 days after delivery of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into compliance with the covered provisions within 30 days after the date of delivery of the notification, either Party may deliver a written request to the original panel to decide on the matter, failing which the suspension of obligations or the compensation, as the case may be, shall be terminated. The panel shall deliver its decision to the Parties within 46 days after the date of the delivery of the request. If the panel finds that the measure taken to comply is in conformity with the covered provisions, the suspension of obligations or compensation, as the case may be, shall be terminated. Where relevant, the complaining Party shall adjust the level of suspension of obligations or of compensation in light of the panel decision.

3. If the Party complained against considers that the level of suspension of obligations implemented by the complaining Party exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel to decide on the matter.

ARTICLE 26.18

Replacement of panellists

If during any dispute settlement procedure under this Section a panellist is unable to participate, withdraws, or needs to be replaced because he or she does not comply with Annex 26-B (Code of conduct for panellists and mediators), the procedure provided for in Article 26.5 (Establishment of a panel) applies and any replacement panellist shall have all the powers and duties of the original panellists. The time period for the delivery of the report or decision of the panel shall be extended for the time necessary for the appointment of the new panellist.

ARTICLE 26.19

Rules of procedure

1. Panel procedures shall be governed by this Section and Annex 26-A (Rules of procedure).

2. Any hearing of the panel shall be open to the public unless otherwise provided in Annex 26-A (Rules of procedure).

ARTICLE 26.20

Suspension and termination

1. At the request of both Parties, the panel shall suspend its work at any time for a period agreed by the Parties which does not exceed 12 consecutive months.

2. The panel shall resume its work before the expiry of the suspension period at the written request of both Parties, or at the expiry of the suspension period at the written request of either Party. The requesting Party shall deliver a notification to the other Party accordingly. If the panel does not resume its work at the expiry of the suspension period in accordance with this paragraph, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

3. If the work of the panel is suspended, the relevant time periods set out in this Section shall be extended by the same period of time for which the work of the panel was suspended.

ARTICLE 26.21

Right to seek and receive information

1. At the request of a Party, or upon its own initiative, the panel may seek from the Parties, relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

2. Upon the request of a Party or on its own initiative, the panel may seek any information it deems appropriate from any source. The panel also has the right to seek the opinion of experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. With regard to matters related to compliance with multilateral agreements and instruments referred to in Chapter 19 (Trade and sustainable development), the opinions of external experts or information requested by the panel should include information and advice from the ILO or relevant bodies or organisations established under MEAs.

4. The panel shall consider amicus curiae submissions from natural persons of a Party or legal persons established in a Party in accordance with Annex 26-A (Rules of procedure).

5. Any information or opinion obtained by the panel pursuant to this Article shall be disclosed to the Parties and the Parties may provide comments thereon.

ARTICLE 26.22

Rules of interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969.

2. The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

3. Reports and decisions of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 26.23

Reports and decisions of the panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If this is not possible, the panel shall decide by majority vote. In no case shall separate opinions of panellists be disclosed.

2. The decisions and reports of the panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons.

3. Each Party shall make the reports and decisions of the panel and its submissions publicly available, subject to the protection of confidential information.

4. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel in accordance with Rules 34 to 36 of Annex 26-A (Rules of procedure).

ARTICLE 26.24

Choice of forum

1. If a dispute arises regarding a particular measure in alleged breach of the covered provisions and a substantially equivalent obligation under any other international trade agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

2. Once a Party has selected the forum and initiated dispute settlement procedures under this Section or under any other international trade agreement, that Party shall not initiate dispute settlement procedures under any other agreement with respect to the particular measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

(a) the dispute settlement procedures under this Section are deemed to be initiated by a Party's panel request in accordance with Article 26.4 (Initiation of panel procedures);

(b) the dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's panel request in accordance with Article 6 of the DSU; and

(c) the dispute settlement procedures under any other international trade agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of any other international trade agreement to which the disputing Parties are party. A Party shall not invoke the WTO Agreement or any other international trade agreement between the Parties to preclude the other Party from suspending obligations pursuant to this Chapter.

SECTION D

MEDIATION

ARTICLE 26.25

Mediation

The Parties may have recourse to mediation with regard to any measure that a Party considers to be adversely affecting trade and investment between the Parties. The mediation procedure is set out in Annex 26-C (Rules of procedure for mediation).

SECTION E

COMMON PROVISIONS

ARTICLE 26.26

Mutually agreed solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 26.2 (Scope).

2. If a mutually agreed solution is reached during the panel procedures or mediation procedure, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, as applicable. Upon such notification, the panel procedures or the mediation procedure shall be terminated.

3. Any mutually agreed solution reached by the Parties shall be made available to the public.

4. Each Party shall take any measure necessary to implement the mutually agreed solution within the agreed time period.

5. No later than at the expiry of the agreed time period the implementing Party shall inform the other Party, in writing, of any measure it has taken to implement the mutually agreed solution.

ARTICLE 26.27

Time periods

1. All time periods set out in this Chapter shall be counted in calendar days from the day following the act to which they refer, unless otherwise specified.

2. Any time period set out in this Chapter may be modified by mutual agreement of the Parties.

3. As regards Section C (Panel procedures), the panel may at any time propose to the Parties to modify any time period set out in this Chapter, stating the reasons for the proposal.

ARTICLE 26.28

Costs

1. Each Party shall bear its own expenses derived from its participation in the panel procedures or mediation procedure.

2. Unless otherwise provided in Annex 26-A (Rules of procedure), the Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the panellists and mediators. The remuneration of the panellists and mediators shall be in accordance with WTO standards.

3. The Trade Committee may adopt a decision setting out the parameters or other details on the remuneration and the reimbursement of expenses of panellists and mediators, including any related costs that could be incurred in the proceedings. Pending such decision, the remuneration and the reimbursement of expenses of panellists and mediators and of any related costs shall be determined in accordance with Rule 10 of Annex 26-A (Rules of procedure).

ARTICLE 26.29

Amendments to the annexes

The Trade Committee may amend Annexes 26-A (Rules of procedure) and 26-B (Code of conduct for panellists and mediators).

CHAPTER 27

FINAL PROVISIONS

ARTICLE 27.1

Amendments

1. The Parties may agree, in writing, to amend this Agreement.

2. Amendments shall enter into force on the first day of the second month, or on such later date as may be agreed by the Parties, following the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures for entry into force of such amendments.

3. The Trade Committee may amend this Agreement by decision, where provided for in Article 24.3 (Amendments by the Trade Committee). The decision of the Trade Committee shall either specify the date of entry into force of the amendments or, if required by a Party's domestic system, provide that such amendments enter into force after the notification in writing of the completion of any outstanding legal requirements and procedures of the Parties.

ARTICLE 27.2

Entry into force

1. This Agreement shall enter into force on the first day of the second month following the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures for the entry into force of this Agreement. The Parties may agree on another date of entry into force of this Agreement.

2. The notifications referred to in paragraph 1 shall be sent to the General Secretariat of the Council of the European Union and to the Ministry of Foreign Affairs and Trade of New Zealand.

ARTICLE 27.3

Termination

1. This Agreement shall remain in force unless terminated pursuant to paragraph 2.

2. A Party may notify the other Party of its intention to terminate this Agreement. A notification to the Union shall be sent to the General Secretariat of the Council of the European Union and a notification to New Zealand shall be sent to the Ministry of Foreign Affairs and Trade of New Zealand. The termination of this Agreement shall take effect six months after the date of the delivery of the notification, unless the Parties agree otherwise.

ARTICLE 27.4

Fulfilment of obligations

1. Each Party is fully responsible for the observance of all provisions of this Agreement.

2. Each Party shall ensure that all necessary measures are taken to give effect to the provisions of this Agreement, including their observance at all levels of government as well as by persons exercising delegated governmental authority. Each Party shall perform the obligations set out in this Agreement in good faith.

3. This Agreement forms part of the common institutional framework referred to in Article 52(1) of the Partnership Agreement. A Party may take appropriate measures relating to this Agreement in the event of a particularly serious and substantial violation of any of the obligations described in Article 2(1) or 8(1) of the Partnership Agreement as essential elements, which threatens international peace and security so as to require an immediate reaction. A Party may also take such appropriate measures relating to this Agreement in the event of an act or omission that materially defeats the object and purpose of the Paris Agreement. Such appropriate measures shall be taken in accordance with the procedure set out in Article 54 of the Partnership Agreement.

ARTICLE 27.5

Delegated authority

Unless otherwise provided for in this Agreement, each Party shall ensure that when a juridical person, including a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, exercises any regulatory, administrative or other governmental authority that that Party has delegated to such a person to carry out, that person acts in accordance with that Party's obligations under this Agreement.

ARTICLE 27.6

No direct effect

1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than rights or obligations created between the Parties under public international law.

2. A Party shall not provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 27.7

Laws and regulations and amendments thereto

Unless otherwise specified, where reference is made in this Agreement to laws and regulations of a Party, those laws and regulations shall be understood to include amendments thereto.

ARTICLE 27.8

Integral parts of this Agreement

1. The Annexes, Appendices, Declarations, Joint declarations and footnotes to this Agreement shall form an integral part of this Agreement.

2. Each of the Annexes to this Agreement, including its Appendices, shall form an integral part of the Chapter that refers to that Annex or to which reference is made in that Annex. For greater certainty:

(a) Annex 2-A (Tariff elimination schedules) and its Appendices form an integral part of Chapter 2 (National treatment and market access for goods);

(b) Annex 3-A (Introductory notes to product-specific rules of origin), Annex 3-B (Product-specific rules of origin) and its Appendices and Annexes 3-C (Text of the statement on origin), 3-D (Supplier's declaration referred to in Article 3.3(4) (Cumulation of origin)), 3-E (Joint declaration concerning the principality of Andorra) and 3-F (Joint declaration concerning the republic of San Marino) form an integral part of Chapter 3 (Rules of origin and origin procedures);

(c) Annexes 6-A (Competent authorities), 6-B (Regional conditions for plants and plant products), 6-C (Equivalence recognition of SPS measures), 6-D (Guidelines and procedures for an audit or verification), 6-E (Certification) and 6-F (Import checks and fees) form an integral part of Chapter 6 (Sanitary and phytosanitary measures);

(d) Annexes 9-A (Acceptance of conformity assessment (Documents)), 9-B (Motor vehicles and equipment or parts thereof) and its Appendix, 9-C (Arrangement referred to in Article 9.10(5)(b) for the regular exchange of information in relation to the safety of non-food products and related preventive, restrictive and corrective measures), 9-D (Arrangement referred to in Article 9.10(6) for the regular exchange of information regarding measures taken on non-compliant non-food products, other than those covered by Article 9.10 (5)(b)) and 9-E (Wine and spirits) and its Appendices form an integral part of Chapter 9 (Technical barriers to trade);

(e) Annexe 10-A (Existing measures), Annex 10-B (Future measures), Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short term business visitors), Annex 10-D (List of activities of short-term business visitors), Annex 10-E (Contractual service suppliers and independent professionals), Annex 10-F (Movement of natural persons for business purposes) and their Appendices form an integral part of Chapter 10 (Investment liberalisation and trade in services);

(f) Annex 13 (Lists of energy goods, hydrocarbons and raw materials) forms an integral part of Chapter 13 (Energy and raw materials);

(g) Annex 14 (Public procurement market access commitments) forms an integral part of Chapter 14 (Public procurement);

(h) Annexes 18-A (Product classes) and 18-B (List of geographical indications) form an integral part of Chapter 18 (Intellectual property);

(i) Annex 19 (Environmental goods and services) forms an integral part of Chapter 19 (Trade and sustainable development);

(j) Annex 24 (Rules of procedure of the Trade Committee) forms an integral part of Chapter 24 (Institutional provisions);

(k) Annexes 26-A (Rules of procedure), 26-B (Code of conduct for panellists and mediators) and 26-C (Rules of procedure for mediation) form an integral part of Chapter 26 (Dispute settlement); and

(l) Annex 27 (Joint declaration on Customs Unions) forms an integral part of Chapter 27 (Final provisions).

ARTICLE 27.9

Authentic texts

This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorised to this effect, have signed this Agreement.

Done at …… on ……

For the European Union

For New Zealand