Free Trade Agreement
Between
The Government of New Zealand
And
The Government of the People's Republic of China

FTA CONTENTS

ANNEXES

IMPLEMENTING ARRANGEMENTS

PREAMBLE

The Governments of New Zealand ("New Zealand") and the People's Republic of China ("China") hereinafter referred to collectively as "the Parties":

Inspired by their longstanding friendship and growing bilateral economic and trade relationship since the establishment of diplomatic relations in 1972;

Recalling the *Trade and Economic Cooperation Framework between New Zealand and the People's Republic of China* adopted on 28 May 2004 with the objective of strengthening the comprehensive and stable economic and trade relationship between the Parties;

Recognising that the strengthening of their economic partnership through a Free Trade Agreement, which removes barriers on the trade of goods and services and investment flows, will produce mutual benefits for New Zealand and China;

Desiring to avoid distortions in their reciprocal trade and to create an expanded market for the goods and services in their territories through establishing clear rules governing their trade which will ensure a predictable commercial framework for business operations;

Mindful that fostering innovation and the promotion and protection of intellectual property rights will encourage further trade, investment and cooperation between the Parties;

Building on their rights, obligations and undertakings under the *Marrakesh Agreement Establishing the World Trade Organization* and other multilateral, regional and bilateral agreements and arrangements;

Mindful of their commitment to the Asia-Pacific Economic Cooperation ("APEC") goals and principles, and in particular the efforts of all APEC economies to meet the APEC Bogor goals of free and open trade and the actions subscribed in the *Osaka Action Agenda*;

Upholding the rights of their governments to regulate in order to meet national policy objectives, and preserving their flexibility to safeguard the public welfare;

Mindful that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development and that closer economic partnership can play an important role in promoting sustainable development;

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

Have agreed as follows:

CHAPTER 1

INITIAL PROVISIONS

Article 1 Establishment of the Free Trade Area

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

Article 2 Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, are to:

(a) encourage expansion and diversification of trade between the Parties;

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

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

(d) substantially increase investment opportunities between the Parties;

(e) provide for the protection and enforcement of intellectual property rights in each Party's territory in accordance with the provisions of the TRIPS Agreement and enhance and strengthen cooperation on intellectual property rights; and

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

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

Article 3 Relation to Other Agreements

1. Nothing in this Agreement shall derogate from the existing rights and obligations of a Party under the WTO Agreement or any other multilateral or bilateral agreement to which it is a party.

2. In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of interpretation of public international law**.**

CHAPTER 2

GENERAL DEFINITIONS

Article 4 General Definitions

For the purposes of this Agreement, unless otherwise specified:

Agreement means the *Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China;*

APEC means Asia-Pacific Economic Cooperation;

customs duty includes any duty or charge of any kind imposed in connection with the importation of a good, but does not include:

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

(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, or the WTO *Agreement on Subsidies and Countervailing Measures*; and

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

days means calendar days;

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

FTA Joint Commission means the New Zealand – China Free Trade Area Joint Commission established under Article 179;

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

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

goods means domestic products as these are understood in GATT 1994 and includes originating goods;

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

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

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

person means a natural person or a juridical person;

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

WCO means the World Customs Organization;

WTO means the World Trade Organization;

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

CHAPTER 3

TRADE IN GOODS

Article 5 Scope

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

Article 6 National Treatment

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

Article 7 Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party.

2. Except as otherwise provided in this Agreement, and subject to a Party's Tariff Schedule as set out in Annex 1, as at the date of entry into force of this Agreement each Party shall eliminate its customs duties on originating goods of the other Party.

Article 8 Accelerated Tariff Elimination

1. At the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in their Tariff Schedules in Annex 1.

2. An agreement by the Parties to accelerate the elimination of customs duties on originating goods shall supersede any duty rate determined pursuant to their Schedules for such good and shall enter into force following approval by each Party in accordance with Article 180.2(b)(i) and their respective applicable legal procedures.

3. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Tariff Schedule. A Party considering doing so shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

Article 9 Administrative Fees and Formalities

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

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

Article 10 Agricultural Export Subsidies

1. For the purposes of this Article, agricultural goods means those products listed in Annex 1 of the WTO *Agreement on Agriculture* and export subsidies shall have the meaning assigned to that term in Article 1(e) of the WTO *Agreement on Agriculture*, including any amendment of that article.

2. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

3. Neither Party shall introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

Article 11 Non-Tariff Measures

1. A Party shall not adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.

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

Article 12 Consumer Protection

1. The Parties affirm their concern to provide protection in their territories from deceptive practices or the use of false or misleading descriptions in trade.

2. Each Party shall provide the legal means for interested parties to prevent the sale of products within the Party's territory which, under the laws of that Party, are labelled in a manner which is false, deceptive or misleading or is likely to create an erroneous impression about the character, composition, quality, or origin, including the country of origin, of the product.

Article 13 Special Agricultural Safeguard Measures

1. China may apply a special safeguard measure to agricultural goods specified in Table One of Annex 2, in accordance with this Article.

2. If during any given calendar year the volume of imports from New Zealand of an originating good listed in Table One of Annex 2 exceeds the trigger level for that product in that calendar year as set out in Table Two of Annex 2, China may apply a special safeguard measure to that product in the form of an additional customs duty.

3. The sum of the additional customs duty applied under paragraph 2 and any other customs duties applied to the product in question shall not exceed the lesser of the most-favoured-nation (“MFN”) applied rate of customs duty in effect on the date on which the special safeguard measure is applied or the base rate.

4. China may maintain a special safeguard measure applied under paragraph 2 only until the end of the calendar year in which China applies the measure.

5. Supplies of the product in question which were *en route* to China on the basis of a contract settled before the additional customs duty is applied under paragraph 2 shall be exempted from such additional customs duty, provided that they may be counted in the volume of imports of the product in question during the following calendar year for the purposes of a determination under paragraph 2 in that calendar year.

6. Any special safeguard measure shall be applied in a transparent manner. China shall ensure that the volume of imports is published regularly in a manner which is readily accessible to New Zealand, and shall give notice in writing, including relevant data, to New Zealand as far in advance as may be practicable and in any event within 10 days of the implementation of such action.

7. China may not apply or maintain, with respect to the same product, a special safeguard measure and at the same time apply or maintain a measure under Article XIX of GATT 1994 and the WTO *Agreement on Safeguards* or under Section 2 of Chapter 6 (Trade Remedies) of this Agreement.

Article 14 Mid-Term Review Mechanism

Following the application of the tariff reduction specified in Annex 1 of this Agreement for 2013 and before the application of tariff reduction specified therein for 2014, the Committee on Trade in Goods established under Article 16 shall conduct a review in accordance with Annex 3.

Article 15 Contact Points

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 16 Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet on the request of either Party to consider any matter arising under this Chapter, Chapter 4 (Rules of Origin and Operational Procedures), Chapter 5 (Customs Procedures and Cooperation) or Chapter 6 (Trade Remedies).

3. The Committee's functions shall include:

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

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures.

CHAPTER 4

RULES OF ORIGIN AND OPERATIONAL PROCEDURES

Section 1: Rules of Origin

Article 17 Definitions

For the purposes of this Chapter:

CIF means the value of the good imported inclusive of the cost of insurance and freight up to the port or place of entry in the country of importation;

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

FOB means the value of the good free on board inclusive of the cost of transport to the port or site of final shipment abroad;

generally accepted accounting principles means the recognized accounting standards of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Those standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

Harmonized System means the Harmonized Commodity Description and Coding System of the World Customs Organization;

materials means any matter or substance used in the production or transformation of another good, including a part or ingredient;

originating materials or **originating goods** means materials or goods which qualify as originating in accordance with the provisions of this Section;

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

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

production means methods of obtaining goods, including growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

Article 18 Preferential Tariff Treatment

Preferential tariff treatment under this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are consigned directly between the Parties.

Article 19 Originating Goods

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

(a) the good is wholly obtained or produced in the territory of a Party as set out and defined in Article 20, including where required to be so under Annex 5;

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

(c) the good is produced in the territory of one or both Parties, using non-originating materials that conform to a change in tariff classification, a regional value content, a process requirement or other requirements specified in Annex 5, and the good meets the other applicable provisions of this Section.

Article 20 Goods Wholly Obtained

Within the meaning of Article 19(a), the following goods shall be considered as wholly obtained or produced in the territory of a Party:

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

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

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

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

(e) minerals and other naturally occurring substances, not included in paragraphs (a) to (d) above, extracted or taken from its soil, waters, seabed or beneath its seabed;

(f) goods extracted or taken by a Party, or a person of a Party, from the waters, seabed or subsoil beneath the seabed outside the territorial waters of that Party, provided that the Party has the right to exploit such waters, seabed or subsoil beneath the seabed under that Party's applicable domestic law in accordance with relevant international agreements to which that Party is a party;

(g) goods (fish, shellfish, plant and other marine life) taken within the territorial waters or the Exclusive Economic Zone of a Party seaward of the territorial sea under that Party's applicable laws in accordance with relevant international agreements to which that Party is a party, or taken from the high seas, by a vessel registered or recorded with a Party and flying or entitled to fly the flag of that Party;

(h) goods processed and/or made on board factory ships registered or recorded with a Party and flying or entitled to fly the flag of that Party, exclusively from goods referred to in paragraph (g) above;

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

(j) goods obtained or produced in the territory of a Party solely from goods referred to in paragraphs (a) to (i) above.

Article 21 Change in Tariff Classification

A change in tariff classification under Annex 5 requires that the non-originating materials used in the production of the goods undergo a change of tariff classification as a result of processes performed in the territory of one or both Parties.

Article 22 Regional Value Content

1. Where Annex 5 refers to a Regional Value Content ("RVC"), the RVC shall be calculated as follows:

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

where:

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

FOB is the FOB value of the goods; and

VNM is the value in CIF terms of non-originating materials (including materials of undetermined origin).

2. The value of the non-originating materials shall be:

(a) the CIF value at the time of importation of the material; or

(b) the earliest ascertained price paid or payable for the non-originating materials in the territory of the Party where the working or processing takes place. When the producer of a good acquires non-originating materials within that Party the value of such materials shall not include freight, insurance, packing costs, and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

3. Both the FOB and CIF values referred to above shall be determined pursuant to the Customs Valuation Agreement.

Article 23 Accumulation

Where originating goods or materials of a Party are incorporated into a good in the other Party's territory, the goods or materials so incorporated shall be regarded to be originating in the latter's territory.

Article 24 Minimal Operations or Processes

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

2. Operations or processes which contribute minimally to the essential characteristics of the goods, either by themselves or in combination, are considered to be minimal operations or processes and do not confer origin. These include:

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

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

(c) breaking-up and assembly of consignments;

(d) packing, unpacking or repacking operations;

(e) simple packaging operations, such as simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards;

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

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

(h) husking, partial or total bleaching, polishing, and glazing of cereals other than rice;

(i) operations to colour sugar or form sugar lumps.

Article 25 Direct Consignment

1. For the purposes of Article 18, the following shall be considered as consigned directly from the exporting Party to the importing Party:

(a) goods that are transported without passing through the territory of a non-Party;

(b) goods whose transport involves transit through one or more non-Parties with or without trans-shipment or temporary storage of up to 6 months in such non-Parties, provided that:

(i) the goods do not enter into trade or commerce there; and

(ii) the goods do not undergo any operation there other than unloading and reloading, repacking, or any operation required to keep them in good condition.

2. Compliance with the provisions set out in paragraph 1(b) shall be evidenced by presenting the customs authorities of the importing Party either with customs documents of the non-Parties or with any other documents.

Article 26 Packing and Containers for Transportation

Containers and packing materials used for the transport of goods shall not be taken into account in determining the origin of the goods.

Article 27 Packaging Materials and Containers for Retail Sale

Where goods are subject to a change in tariff classification criterion set out in Annex 5, the origin of the packaging materials and containers in which goods are packaged for retail sale shall be disregarded in determining the origin of the goods, provided that the packaging materials and containers are classified with the goods. However, if the goods are subject to an RVC requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials as the case may be when determining the origin of the goods.

Article 28 Accessories, Spare Parts and Tools

1. With regard to the change in tariff classification requirements for origin specified in Annex 5, accessories, spare parts, tools, instructional and information materials presented with the good upon importation shall be disregarded in the determination of the origin of the good, provided that these are classified with and not invoiced separately from the good.

2. Where the goods are subject to an RVC requirement, the value of the accessories, spare parts, tools, instructional and information materials shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the RVC of the goods.

3. This Article applies only where the quantities and values of said accessories, spare parts, tools, instructional and information materials are customary for the good.

Article 29 Neutral Elements

1. In determining whether a good is an originating good, the origin of any neutral elements as defined in paragraph 2 shall be disregarded.

2. Neutral elements are goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good. These include:

(a) fuel, energy, catalysts and solvents;

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

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

(d) tools, dies and moulds;

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

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

(g) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

Article 30 Interchangeable Materials

1. In determining whether a good is an originating good, any interchangeable materials shall be distinguished by:

(a) physical separation of the goods; or

(b) an inventory management method recognised in the generally accepted accounting principles of the exporting Party.

2. Interchangeable materials are goods or materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination.

Article 31 De Minimis

A good that does not meet tariff classification change requirements, pursuant to the provisions of Annex 5, shall nonetheless be considered to be an originating good if:

(a) the value of all non-originating materials, including materials of undetermined origin, that do not meet the tariff classification change requirement does not exceed 10% of the FOB value of the given good, determined pursuant to Article 22; and

(b) the good meets all the other applicable criteria of this Section.

Article 32 Compliance

Compliance with the requirements of this Section shall be determined in accordance with the provisions of Section 2 as applicable.

Section 2: Operational Procedures

Article 33 Definitions

For the purposes of this Section:

authorized body means any government authority or other entity authorized under the domestic legislation of a Party to issue a Certificate of Origin;

Certificate of Origin means a form issued by an authorized body of the exporting Party, identifying the goods being consigned between the Parties and certifying, for the purposes of Section 1 of this Chapter, that the goods to which the certificate relates originate in a Party;

competent authority means a government agency responsible for carrying out verification activities under Article 41, and notified by each Party to the other Party;

Declaration of Origin means a statement as to the origin of the goods made by the manufacturer, producer, supplier or exporter of those goods or by any other competent person;

origin document means a Certificate of Origin, a Declaration of Origin or other documentary evidence of origin;

other documentary evidence of origin means any other documentary evidence sufficient to substantiate the origin of the goods.

Article 34 Granting Preference

The importing Party shall grant preferential tariff treatment to goods imported from the other Party only in cases where an importer claiming preferential tariff treatment provides to the importing customs administration upon importation of the goods, in accordance with this Chapter, a Certificate of Origin, a Declaration of Origin, or any other documentary evidence of origin that the importing Party may decide.

Article 35 Refund of Import Duties or Deposits

1. Where a Certificate of Origin or a Declaration of Origin, as the case may be, is not provided at the time of importation of a good from a Party pursuant to Article 34, the importing Party may impose the applied non-preferential import customs duty or require payment of a deposit on that good, where applicable. In such a case the importer may apply for a refund of any excess import customs

duty or deposit paid within one year of the date on which the good was imported, provided that:

(a) a written declaration that the good presented qualifies as an originating good was provided to the customs administration of the importing Party at the time of importation; and

(b) a valid Certificate of Origin or Declaration of Origin, as the case may be, is provided in relation to the good imported.

2. The requirement in paragraph 1(a) shall not apply for the first 12 months following entry into force of this Agreement.

Article 36 Certificate of Origin

1. A Certificate of Origin shall be in the format as set out in Annex 6, and shall:

(a) contain a unique certificate number;

(b) cover the goods presented under a single import customs declaration;

(c) state the basis on which the goods are deemed to qualify as originating for the purposes of Section 1 of this Chapter;

(d) contain security features, such as specimen signatures or stamps as advised to the importing Party by the exporting Party; and

(e) be completed in English.

2. A Certificate of Origin shall remain valid for 12 months from the date of issue.

3. Only the original Certificate of Origin marked “ORIGINAL” shall be submitted within the said period to the importing customs administration.

4. In the event of theft, loss or damage of a Certificate of Origin, the exporter or manufacturer may make a written request to the authorized bodies of the exporting Party for issuing a certified copy, provided that the exporter or manufacturer makes sure that the original copy previously issued has not been used. The certified copy shall bear the words “CERTIFIED TRUE COPY of the original Certificate of Origin number ___ dated ___”. If the importing customs administration ascertains that the original copy has been used, the certified copy shall be invalid and vice versa.

5. The format and any requirements set out in Annex 6 may be revised or modified by joint decision through an exchange of letters between the Parties.

Article 37 Declaration of Origin

1. A Declaration of Origin shall be in the format as set out in Annex 7, and shall be accepted in place of a Certificate of Origin:

(a) for any consignment whose aggregate customs value does not exceed US$1,000 or its equivalent in the currency of the importing Party, or such higher amount as that Party may establish;

(b) for any consignment of goods covered by an advance ruling in accordance with Article 52 that deems the good to qualify as originating, so long as the facts and circumstances on which the ruling was based remain unchanged and the ruling remains legally valid; or

(c) when the importing Party otherwise decides, for any reason, that a Certificate of Origin is not required in relation to a specific consignment or in general.

2. Notwithstanding paragraph 1, where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purposes of circumventing the requirements of this Section, the importing Party may deny preferential tariff treatment.

3. A Declaration of Origin shall cover the goods presented under a single import customs declaration, and shall remain valid for 12 months from the date of issue.

4. The format and any requirements set out in Annex 7 may be revised or modified by joint decision through an exchange of letters between the Parties.

Article 38 Amendments to Origin Documents

1. Neither erasures nor superimpositions shall be permitted on any origin documents. Any amendment shall be made by striking out the erroneous information and making any addition which might be required. Such alterations shall be endorsed by the person who made them.

2. Any unused space shall be crossed out to prevent any addition subsequent to certification.

Article 39 Retention of Origin Documents

1. Each Party shall require its producers, exporters and importers to retain origin documents for a period specified in its domestic legislation.

2. Each Party shall ensure that its authorized bodies retain copies of Certificates of Origin and other documentary evidence of origin for a period specified in its domestic legislation.

Article 40 Authorized Bodies

1. A Certificate of Origin shall be issued only by an authorized body in the exporting Party.

2. Each Party shall inform the customs administration of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide details of any security features for relevant forms and documents used by each authorized body, prior to the issuance of any certificates by that body. Any change in the information provided above shall be advised promptly to the customs administration of the other Party.

Article 41 Verification of Origin

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

(a) written requests for additional information from the importer;

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

(c) requests that the competent authorities of the exporting Party verify the origin of a good; or

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

2. A verification process under paragraph 1 shall only be initiated when there are reasonable grounds to doubt the accuracy or authenticity of origin documents, the origin status of the goods concerned or the fulfilment of any other requirements under this Section, and when customs duty is sufficiently material to warrant the request.

3. A verification request to the competent authority of the exporting Party shall specify the reasons, and any documents and information obtained justifying the verification activities shall be forwarded to the competent authority of the requested Party.

4. The Parties shall develop an electronic verification system to ensure the effective and efficient implementation of this Section in a manner and within a timeframe to be jointly determined by the Parties.

Article 42 Denial of Preferential Tariff Treatment

1. A Party may deny preferential tariff treatment to a good when:

(a) the name of the relevant authorized body or any security features for relevant forms and documents used by that authorized body, or any change in the above information, has not been advised to the customs administration of the other Party;

(b) the importer, exporter, manufacturer or producer, as appropriate, fails to provide information which the Party has requested in the course of a verification process under Article 41, or the requested competent authority is unable for any reason to respond to the request to the satisfaction of the importing customs administration, within 6 months of the date of request; or

(c) the good does not or did not comply with the other requirements of this Chapter, including where:

(i) the Certificate of Origin has not been duly completed and signed;

(ii) the origin of the goods is not in conformity with Section 1;

(iii) the data provided under the Certificate of Origin does not correspond to those of the supporting documents submitted; or

(iv) the description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, do not conform to the goods imported.

2. In the event preferential tariff treatment is denied, the importing Party shall ensure that its customs administration provides in writing to the exporter, the importer or producer, as the case may be, the reasons for that decision.

Article 43 Review

The competent authorities of the Parties shall review the procedures under this Section as they mutually deem necessary.

CHAPTER 5

CUSTOMS PROCEDURES AND COOPERATION

Article 44 Definitions

For the purposes of this Chapter:

customs administration means:

(a) in relation to New Zealand, the New Zealand Customs Service; and

(b) in relation to China, the General Administration of Customs of the People's Republic of China;

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

customs procedures means the treatment applied by each customs administration to goods and means of transport that are subject to customs control;

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

means of transport means various types of vessels, vehicles, aircraft and pack-animals which enter or leave the territory carrying persons, goods or articles.

Article 45 Scope and Objectives

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. The objectives of this Chapter are to:

(a) simplify and harmonise customs procedures of the Parties;

(b) ensure predictability, consistency and transparency in the application of customs laws and administrative procedures of the Parties;

(c) ensure the efficient and expeditious clearance of goods and means of transport;

(d) facilitate trade between the Parties; and

(e) promote cooperation between the customs administrations, within the scope of this Chapter.

Article 46 Competent Authorities

The competent authorities for the administration of this Chapter are:

(a) in relation to New Zealand, the New Zealand Customs Service; and

(b) in relation to China, the General Administration of Customs of the People's Republic of China.

Article 47 Facilitation

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

2. Customs procedures of each Party shall, where possible and to the extent permitted by their respective customs law, conform with the trade-related instruments of the WCO to which that Party is a contracting party, including those of the *International Convention on the Simplification and Harmonization of Customs Procedures (as amended)*, known as the Revised Kyoto Convention.

3. Customs administrations of the Parties shall facilitate the clearance of goods in administering their procedures.

4. Each customs administration shall endeavour to provide a focal point, electronic or otherwise, through which its traders may submit all required regulatory information in order to obtain clearance of goods.

Article 48 Customs Valuation

The Parties shall apply Article VII of GATT 1994 and the Customs Valuation Agreement to goods traded between them.

Article 49 Tariff Classification

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* to goods traded between them.

Article 50 Customs Cooperation

To the extent permitted by their domestic laws, the customs administrations of the Parties shall assist each other, in relation to:

(a) the implementation and operation of this Chapter; and

(b) such other issues as the Parties mutually determine.

Article 51 Appeal

1. The legislation of each Party shall provide for the right of appeal without penalty in regard to customs administrative rulings, determinations or decisions by the importer, exporter or any other person affected by that administrative ruling, determination or decision.

2. An initial right of appeal by a person described in paragraph 1 may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

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

Article 52 Advance Rulings

1. Each customs administration shall provide in writing rulings in respect of the tariff classification and origin of goods to a person described in paragraph 2(a).

2. Each customs administration shall adopt or maintain procedures, which shall:

(a) provide that an exporter, importer or any person with a justifiable cause may apply, in the national language of the issuing customs administration, for a ruling at least 3 months before the date of importation of the goods that are the subject of the application. An applicant for an advance ruling on tariff classification from China Customs shall be registered with China Customs;

(b) require that an applicant for a ruling provide a detailed description of the goods and all relevant information needed to issue a ruling;

(c) provide that its customs administration may, at any time during the course of issuing a ruling, request that the applicant provide additional information within a specified period;

(d) provide that any ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and

(e) provide that the ruling be issued, in the national language of the issuing customs administration, to the applicant expeditiously on receipt of all necessary information, or in any case within:

(i) 60 days with respect to tariff classification; and

(ii) 90 days with respect to origin.

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

4. Subject to paragraph 5, each Party shall apply a ruling to all importations of goods described in that ruling into its territory through any port of entry within 3 years of the date of that ruling or such other period as required by that Party's domestic legislation.

5. A Party may modify or revoke a ruling:

(a) upon a determination that the ruling was based on an error of fact or law, or the information provided is false or inaccurate;

(b) if there is a change in domestic law consistent with this Agreement; or

(c) if there is a change in a material fact or circumstances on which the ruling is based.

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

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

Article 53 Use of Automated Systems in the Paperless Trading Environment

The customs administrations shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within the WCO.

Article 54 Risk Management

Each customs administration shall focus resource on high-risk goods and facilitate the clearance of low-risk goods in administering customs procedures.

Article 55 Publication and Enquiry Points

1. Each customs administration shall publish all customs laws and any administrative procedures it applies or enforces.

2. Each customs administration shall designate one or more enquiry points to deal with inquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other customs administration.

3. Each customs administration shall provide the other customs administration with timely notice of any significant modification of customs laws or procedures governing the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

Article 56 Express Consignments

Each customs administration shall adopt procedures to expedite the clearance of express consignments.

Article 57 Release of Goods

Each Party shall adopt or maintain procedures which allow goods to be released within 48 hours of arrival unless:

(a) the importer fails to provide any information required by the importing Party at the time of first entry;

(b) the goods are selected for closer examination by the competent authority of the importing Party through the application of risk management techniques;

(c) the goods are to be examined by any agency, other than the competent authority of the importing Party, acting under powers conferred by the domestic legislation of the importing Party; or

(d) fulfilment of all necessary customs formalities has not been able to be completed or release is otherwise delayed by virtue of *force majeure*.

Article 58 Review of Customs Procedures

1. Each customs administration shall periodically review its procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate the flow of trade between the Parties.

2. In applying a risk management approach to customs control, each customs administration shall regularly review the performance, effectiveness and efficiency of its systems.

Article 59 Consultation

1. Either customs administration may at any time request consultations with the other customs administration on any matter arising from the operation or implementation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the request, unless the customs administrations of the Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Trade in Goods for consideration.

3. Each customs administration shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. Customs administrations of the Parties shall notify each other promptly of any amendments to the details of their contact points.

4. Customs administrations may consult each other on any trade facilitation issues arising from procedures to secure trade and the movement of means of transport between the Parties.

CHAPTER 6

TRADE REMEDIES

Section 1: General Trade Remedies

Article 60 Definitions

For the purposes of this Chapter:

Safeguards Agreement means the *Agreement on Safeguards*, which is part of the WTO Agreement.

Article 61 General Provisions

1. The Parties maintain their rights and obligations under the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, the WTO *Agreement on Subsidies and Countervailing Measures*, Article XIX of GATT 1994 and the Safeguards Agreement.

2. The Parties agree to carry out any action taken pursuant to this Chapter in a transparent manner.

Article 62 Anti-Dumping

1. The Parties agree not to take any action pursuant to the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* in an arbitrary or protectionist manner.

2. Notwithstanding Article 61.1, as soon as possible following the acceptance of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of goods from the other Party, the Party that has accepted the properly documented application shall notify the relevant contact point in the other Party.

Article 63 Subsidies and Countervailing Measures

Neither Party shall introduce or maintain any form of export subsidy on any goods destined for the territory of the other Party.

Article 64 Global Safeguard Measures

1. A Party taking any measure pursuant to Article XIX of GATT 1994 and the Safeguards Agreement may exclude imports of an originating good from the other Party from the action if such imports are non-injurious.

2. A Party shall advise the relevant contact point of the other Party of any safeguard action on initiation of an investigation and the reasons for it.

Article 65 Cooperation and Consultation

1. The Parties recognise that there is a benefit in officials from both Parties cooperating and working to ensure each Party has a clear understanding of the processes and practices adopted by the other Party in the administration of actions taken pursuant to this Chapter.

2. Each Party shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

3. A Party may at any time request consultations with the other Party on any matter arising from the operation or implementation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the request, unless the Parties mutually determine otherwise.

Section 2: Bilateral Safeguard Measures

Article 66 Definitions

For the purposes of this Section:

domestic industry means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;

provisional safeguard measure means a provisional safeguard measure described in Article 70;

safeguard measure means a safeguard measure described in Article 67.2;

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

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;

transition period means the 3 year period beginning on the date of entry into force of this Agreement; except that in the case of a product where the liberalization process lasts 5 or more years, the transition period shall be the period in which such a product reaches zero tariff according to the Schedule as set out in Annex 1 plus 2 years.

Article 67 Application of a Bilateral Safeguard Measure

1. If, as a result of the reduction or elimination of a customs duty provided for in this Agreement, a product benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic production and under such conditions as to cause serious injury or threat thereof to a domestic industry producing a like or directly competitive product, the importing Party may apply a safeguard measure described in paragraph 2, during the transition period.

2. If the conditions in paragraph 1 are met, a Party may, only to the extent as may be necessary to prevent or remedy serious injury, or threat thereof, and to facilitate adjustment:

(a) suspend the further reduction of any rate of customs duty on the product provided for under this Agreement; or

(b) increase the rate of customs duty on the product to a level not exceeding the lesser of:

(i) the MFN applied rate of duty in effect on the product on the day immediately preceding the date of entry into force of this Agreement; or

(ii) the MFN applied rate of customs duty in effect on the product on the date on which the safeguard measure is applied.

Article 68 Standards for a Bilateral Safeguard Measure

1. A Party may apply a safeguard measure for an initial period of no longer than 2 years. The period of a safeguard measure may be extended for a period not exceeding 1 year provided that the competent authorities of the importing Party have determined, in accordance with the procedures set out in Article 69, that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting. Regardless of its duration, a safeguard measure shall terminate at the end of the transition period. No new safeguard measure may be applied to a product after that date.

2. A Party shall not apply a safeguard measure or provisional safeguard measure again on a product which has been subject to such a measure for a period of time equal to that during which such a measure had been previously applied, provided that the period of non-application is at least 2 years.

3. Neither Party may apply a safeguard measure on a product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a product that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

4. On the termination of a safeguard measure, the rate of duty shall be the customs duty set out in the Party's Schedule to Annex 1 as if the safeguard measure had never been applied.

Article 69 Investigation Procedures and Transparency Requirements

1. The importing Party may apply a safeguard measure under this Section only following an investigation by its competent authorities in accordance with Article 3 of the Safeguards Agreement; and to this end, Article 3 of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. In determining whether increased imports of an originating product of the other Party have caused serious injury or are threatening to cause serious injury to a domestic industry, the competent authority of the importing Party shall follow the rules in Article 4.2 of the Safeguards Agreement; and to this end, Article 4.2 of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

Article 70 Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Articles 67, 68 and 69 shall be met. Such a provisional safeguard measure shall take the form of an increase in the rate of customs duty not exceeding the lesser of the rates in Article 67.2(b), which shall be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a safeguard measure.

Article 71 Notification

1. A Party shall promptly notify the other Party, in writing, on:

   (a) initiating an investigation;

   (b) taking a provisional safeguard measure;

   (c) making a finding of serious injury or threat thereof caused by increased imports; and

   (d) taking a decision to apply or extend a safeguard measure.

2. In making the notification referred to in paragraph 1(d), the Party applying a safeguard measure shall provide the other Party with all pertinent information, such as a precise description of the product involved, the proposed safeguard measure, the grounds for introducing such a safeguard measure, the proposed date of introduction and its expected duration. In the case of an extension of a safeguard measure, the written results of the determination required by Article 68.1, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting, shall also be provided.

3. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 72.1.

4. Where a Party takes a provisional safeguard measure referred to in Article 70, on request of the other Party, consultations shall be initiated immediately after taking such a provisional safeguard measure.

Article 72 Compensation

1. A Party applying a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within 45 days after the application of the safeguard measure, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The right of suspension referred to in this paragraph shall not be exercised for the first year that a safeguard measure is in effect under the condition that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Chapter.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.

CHAPTER 7

SANITARY AND PHYTOSANITARY MEASURES

Article 73 Definitions

For the purposes of this Chapter, the definitions in Annex A of the SPS Agreement and the relevant definitions developed by the relevant international organizations and other definitions agreed between the Parties apply to the implementation of this Chapter. In addition:

Implementing Arrangements means subsidiary documents to this Chapter which set out the mutually determined mechanisms for applying, or outcomes derived from applying, the principles and processes outlined in this Chapter;

Joint Management Committee means the Committee established under Article 88;

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement.

Article 74 Objectives

The objectives of this Chapter are to:

(a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organizations;

(b) provide a mechanism for enhancing the Parties' implementation of the SPS Agreement, including risk analysis, adaptation to regional conditions, equivalence and technical assistance, and for enhancing the Parties' cooperation in these and other areas;

(c) facilitate trade between the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the territory of the Parties; and

(d) provide a means to improve communication and consultation on sanitary and phytosanitary issues.

Article 75 Scope

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

Article 76 International Obligations

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

Article 77 Implementing Arrangements

1. The Parties may conclude Implementing Arrangements setting out details for the implementation of this Chapter.

2. Each Party responsible for the implementation of an Implementing Arrangement shall take all necessary actions to do so within a reasonable period of time as mutually determined by the Parties.

3. The Implementing Arrangements referred to in paragraph 1 shall include the following:

Chapter 7 A	List of Competent Authorities and Sanitary and Phytosanitary Contact Points.
Chapter 7 B(1)	Risk Analysis – list of market access requests of each Party, in priority order.
Chapter 7 B(2)	Risk Analysis – principles and guidelines for establishing and managing timelines for completion of risk analysis.
Chapter 7 C(1)	Adaptation to Regional Conditions – principles, criteria and processes for recognition of pest or disease-free areas or areas of low pest or disease prevalence.
Chapter 7 C(2)	Adaptation to Regional Conditions – list of the prevalence of specific pests or diseases by region or area and sanitary or phytosanitary measures to ensure effective risk management.
Chapter 7 D(1)	Determination of Equivalence – principles, criteria and processes for determination of equivalence.

Chapter 7 D(2)	Determination of Equivalence – agreed equivalence decisions and related measures.
Chapter 7 E	Verification – list of conditions under which to carry out audit and verification procedures.
Chapter 7 F	Certificates – principles and/or guidelines for certification and model sanitary or phytosanitary certificates and attestations to accompany products.
Chapter 7 G	Import Checks – lists the frequency of import checks.
Chapter 7 H	Cooperation – record of understandings on technical assistance and cooperation projects.

Article 78 Competent Authorities and Contact Points

1. The competent authorities of the Parties are the authorities competent in the Parties for the implementation of the measures referred to in this Chapter, as identified in *Implementing Arrangement: Chapter 7 A*.

2. The contact point for each Party is set out in *Implementing Arrangement: Chapter 7 A*.

3. The Parties shall inform each other of any significant changes in the structure, organization and division of responsibility within its competent authorities or contact point.

Article 79 Risk Analysis

1. The Parties recognise that risk analysis is an important tool for ensuring that sanitary or phytosanitary measures have a sound scientific basis.

2. The Joint Management Committee shall establish for each Party a priority order for consideration of market access requests of the other Party including the undertaking of risk analyses. These priorities shall be recorded in *Implementing Arrangement: Chapter 7 B(1)*.

3. The Parties shall endeavour to expedite market access requests from each other and in particular any risk analysis process associated with such requests. The Parties shall jointly determine principles and guidelines for establishing and managing timelines for completion of risk analyses. Such principles and guidelines shall be included in *Implementing Arrangement: Chapter 7 B(2)* and applied accordingly.

4. To facilitate the consideration of market access requests and risk analyses:

(a) The Parties shall establish direct contact between their risk analysis units and/or experts so as to strengthen communication and understanding of each other's working procedures, applied methods and criteria. The Parties will take account of relevant risk analyses already undertaken so as to facilitate the risk analysis process.

(b) At the initial stage of the risk analysis process, the Party considering a market access request shall inform, to the maximum extent possible, the applicant Party of the technical information required. Where additional information is needed, the applicant Party shall be informed in clear terms as early as possible. To the extent possible, the risk analysis process shall be continued while additional information is being prepared and submitted by the applicant Party.

(c) To speed up the risk analysis process, good working relationships established between the Parties and their trust in each other's sanitary and phytosanitary system shall be taken into account.

Article 80 Adaptation to Regional Conditions

1. In order to facilitate trade between the Parties, where a Party objectively demonstrates an area or part of its territory to be free of a pest or disease or an area to be of low pest prevalence, following an assessment by the other Party, the Parties may agree to recognise this status.

2. The Parties shall jointly develop principles, criteria and processes regarding adaptation to regional conditions and record these in *Implementing Arrangement: Chapter 7 C(1).* Recognition of the status shall be in accordance with the principles, criteria and processes recorded in this Implementing Arrangement.

3. The Parties, through the Joint Management Committee, shall decide on the status as described in paragraph 1 and the measures to be taken to maintain this status and may also decide in advance the risk management measures that will apply to trade between the Parties in the event of a change in the status. These decisions on status and measures shall be recorded in *Implementing Arrangement: Chapter 7 C(2).*

4. Decisions recorded in *Implementing Arrangement: Chapter 7 C(2)* shall be applied to trade between the Parties.

Article 81 Equivalence

1. The Parties recognise that the application of equivalence is an important tool for trade facilitation. A determination of equivalence may be made in relation to partial or full equivalence of sanitary and phytosanitary measures and systems.

2. The determination of equivalence requires an objective, risk-based assessment or evaluation by the importing Party of the existing, revised or proposed measures. The legislative and administrative systems, other factors such as the performance of the relevant competent authorities and any other necessary assessments or tests may be considered.

3. The importing Party shall accept the sanitary and phytosanitary measures of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measures achieve the importing Party's appropriate level of sanitary and phytosanitary protection. To facilitate a determination of equivalence, a Party shall on request advise the other Party of the objective of any relevant sanitary or phytosanitary measures.

4. The Parties shall jointly develop principles, criteria and processes regarding determination of equivalence and record these in *Implementing Arrangement: Chapter 7 D(1)*. In reaching a decision on equivalence, the Parties shall apply these principles, criteria and processes.

5. The Parties shall take into account guidance provided by relevant international standard-setting organizations and by the WTO Committee on Sanitary and Phytosanitary Measures, where relevant to the particular case as well as experience already acquired.

6. *Implementing Arrangement: Chapter 7 D(2)* records equivalence decisions, including any additional conditions to be applied in the case of partial equivalence. This Implementing Arrangement may also record any action required of either Party to facilitate progress towards full equivalence.

7. Equivalence decisions recorded in *Implementing Arrangement: Chapter 7 D(2)* shall be applied to trade between the Parties.

8. The consideration by a Party of a request from the other Party for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question.

Article 82 Verification

1. In order to maintain confidence in the effective implementation of this Chapter, each Party shall have the right to carry out audit and verification

procedures of the exporting Party, which may include an assessment of all or part of the competent authorities' total control programme, including, where appropriate:

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

(b) on-site checks.

These procedures shall be carried out in accordance with *Implementing Arrangement: Chapter 7 E.*

2. Each Party shall also have the right to carry out import checks for the purposes of implementing sanitary and phytosanitary measures on consignments on importation consistent with Article 84, the results of which form part of the verification process.

3. A Party may:

(a) share the results and conclusions of its audit and verification procedures and checks with countries that are not party to this Agreement;

(b) use the results and conclusions of the audit and verification procedures and checks of countries that are not party to this Agreement.

Article 83 Certification

Each consignment of animals, animal products, plants, plant products or other related goods will be accompanied, where required, by the relevant official sanitary or phytosanitary certificate using the model in *Implementing Arrangement: Chapter 7 F* and conforming with other relevant provisions of the Implementing Arrangements. The Parties may jointly determine principles or guidelines for certification. Any such principles shall be included in *Implementing Arrangement: Chapter 7 F*.

Article 84 Import Checks

1. The import checks applied to imported animals, animal products, plants and plant products or other related goods traded between the Parties shall be based on the risk associated with such importations. They shall be carried out in a manner that is least trade-restrictive and without undue delay.

2. The frequencies of import checks on such importations shall be made available on request. The importing Party shall notify the other Party in a timely manner of any amendment to the frequency of import checks in the event of

change in the import risk. On request, an explanation regarding amendments shall be given or consultations shall be undertaken.

3. The Parties may record frequencies of import checks in *Implementing Arrangement: Chapter 7 G* and in that case they shall be applied accordingly. The Joint Management Committee may amend the frequencies of those import checks as a result of experience gained through import checks or otherwise, or as a result of actions or consultations provided for in this Chapter.

4. In the event that the import checks reveal non-conformity with the relevant standards and/or requirements, the action taken by the importing Party should be proportionate to the risk involved.

5. At the request of the exporting Party, the importing Party shall to the maximum extent ensure that officials of the exporting Party or their representatives are given the opportunity to contribute any relevant information to assist the importing Party in taking a final decision. If necessary, a joint testing of the preserved samples will be carried out by the Parties.

Article 85 Cooperation

1. Consistent with the objectives of this Chapter, the Parties shall explore opportunities for further cooperation in sanitary and phytosanitary matters of mutual interest.

2. In areas of mutual interest, the Parties through the Joint Management Committee agree to:

(a) share knowledge and experience including possible exchanges of officials;

(b) coordinate positions in the activities of regional and international organizations, and jointly develop, formulate and implement relevant standards and programmes;

(c) carry out joint research and share the results of such research in important areas, such as:

(i) animal and plant disease surveillance;

(ii) animal and plant pest and disease prevention and control;

(iii) detection methods for pathogenic micro-organisms in food;

(iv) surveillance and control of harmful substances and agri-chemical and veterinary medicine residues and other food safety issues;

(v) any other food safety, phytosanitary and zoosanitary issues of mutual interest;

(d) carry out other forms of cooperation including those in relation to activities of the enquiry points established under Annex B of the SPS Agreement.

3. The Parties recognise that it is of significant importance to carry out technical assistance and capacity building so as to further strengthen bilateral sanitary and phytosanitary cooperation, and promote bilateral trade in agricultural products and food.

4. Understandings on technical assistance and cooperation projects reached by the Joint Management Committee will be recorded in *Implementing Arrangement: Chapter 7 H* and applied accordingly.

Article 86 Notification

1. The Parties shall inform each other through the contact points in a timely and appropriate manner when:

(a) there is a significant change in health status, including the distribution and host preference of diseases or pests in *Implementing Arrangement: Chapter 7 C(2),* to ensure continued confidence in the competence of the Party with respect to the management of any risks of transmission of disease or pest to the other Party which may arise as a consequence;

(b) there are scientific findings of importance with respect to diseases or pests which are not in *Implementing Arrangement: Chapter 7 C(2)*, or new diseases or pests;

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

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

3. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, consultations regarding the situation shall, on request, take place as soon as possible, and in any case within 14 days unless otherwise agreed between the Parties. Each Party shall endeavour in such situations to

provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution.

4. Where there is a non-compliance of imported consignments for products subject to sanitary or phytosanitary measures, the importing Party shall notify as soon as possible the exporting Party of the non-compliance.

5. Without prejudice to the preceding paragraphs of this Article and in particular paragraph 3, a Party may, on serious human, animal or plant life or health grounds, take provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified in writing within 24 hours to the other Party and, on request, consultations regarding the situation shall be held within 8 days unless otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

Article 87 Exchange of Information

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

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

(a) opportunity to consider proposals for changes in regulatory standards or requirements which may affect this Chapter in advance of their finalisation. Where either Party considers it necessary, proposals may be dealt with in accordance with Article 88;

(b) briefing on current developments affecting trade;

(c) information on the results of the verification procedures provided for in Article 82;

(d) relevant sanitary and phytosanitary publications of the competent authorities.

3. Each Party shall facilitate the consideration in its relevant scientific forums of scientific papers or data submitted by the other Party to substantiate that Party's views or claims. Such submissions shall be evaluated by relevant scientific forums in a timely manner, and the results of that examination shall be made available to the Parties.

Article 88 Joint Management Committee

1. The Parties shall establish a Joint Management Committee which shall include representatives from the competent authorities of the Parties. The Committee shall be co-chaired by competent authorities' representatives of each Party. At the first meeting of the Committee, it will establish its rules of procedure.

2. The objective of the Committee is to facilitate bilateral trade in goods affected by sanitary or phytosanitary measures and to achieve this by giving practical effect to this Chapter, including through the establishment and monitoring of the application of Implementing Arrangements.

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

(a) establishing, monitoring and reviewing work plans;

(b) establishing technical working groups as appropriate;

(c) initiating, developing, reviewing and modifying Implementing Arrangements which further elaborate the provisions of this Chapter;

(d) exchanging sanitary and phytosanitary information on bilateral trade;

(e) coordinating positions on important sanitary and phytosanitary issues in the WTO Committee on Sanitary and Phytosanitary Measures and in relevant international standards setting bodies;

(f) consulting with a view to resolving sanitary and phytosanitary issues arising in bilateral trade.

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

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

6. Notwithstanding paragraph 5, the competent authorities may consult on and resolve issues. Where they consider it appropriate, they may discuss the

establishment of a working group and the scope of its work for a possible recommendation to the Committee.

CHAPTER 8

TECHNICAL BARRIERS TO TRADE

Article 89 Definitions

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

competent authorities means the authorities described in *Implementing Arrangement: Chapter 8 A* that have responsibility for implementing this Chapter;

consigned directly in relation to goods means:

(a) goods that are transported without passing through the territory of a non-Party; or

(b) goods whose transport involves transit through one or more non-Parties with or without trans-shipment or temporary storage of up to 6 months in such non-Parties, provided that:

(i) the goods do not enter into trade or commerce there; and

(ii) the goods do not undergo any operation there other than unloading and reloading, repacking, or any operation required to keep them in good condition;

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

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

Article 90 Objectives

1. The objectives of this Chapter are to:

(a) increase and facilitate trade through furthering the implementation of the TBT Agreement;

(b) reduce, wherever possible, unnecessary costs associated with trade between the Parties; and

(c) promote regulatory cooperation to manage risks to health, safety and the environment.

2. These objectives will be achieved by:

(a) a framework and supporting mechanisms to address the impact of technical barriers to trade in goods;

(b) enhancing cooperation between the regulatory authorities of the Parties and standards and conformance bodies responsible for standards, technical regulations and conformity assessment procedures applicable to goods; and

(c) eliminating unnecessary technical barriers to trade in goods between the Parties**.**

Article 91 Affirmation of TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement including the rights and obligations related to special and differential treatment and technical assistance to developing country Members.

Article 92 Scope

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

2. This Chapter does not apply to purchasing specifications prepared by governmental entities for production or consumption requirements of such entities of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

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

4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its rights and obligations under the TBT Agreement, technical regulations, standards and conformity assessment procedures.

Article 93 Application

This Chapter applies to all goods that are manufactured or assembled in the territory of one or both Parties and are consigned directly between the Parties.

Article 94 International Standards

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

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

3. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on international standards and related issues in other international forums, such as the WTO Committee on Technical Barriers to Trade ("WTO TBT Committee").

Article 95 Equivalence of Technical Regulations

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

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

3. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on the equivalence of technical regulations and related issues in international forums, such as the WTO TBT Committee.

Article 96 Regulatory Cooperation

1. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties agree to seek to cooperate in the areas of standards, technical regulations, and conformity assessment to:

(a) promote good regulatory practice based on risk management principles;

(b) improve the quality and effectiveness of their technical regulations;

(c) develop joint initiatives, where the Parties consider it appropriate, for managing risks relating to health, safety, the environment and deceptive practices;

(d) build understanding and capacity to promote better regulatory compliance.

2. The Parties shall seek to implement paragraph 1 by establishing work programmes under Article 100, including to:

(a) exchange information on:

(i) regulatory systems;

(ii) incident analysis;

(iii) hazard alerts;

(iv) product bans and recalls;

(v) domestic practices and programmes for product surveillance activities;

(vi) appropriate market information material on request; and

(vii) reviews of technical regulations and their implementation.

(b) cooperate on:

(i) good regulatory practice; and

(ii) the development and implementation of risk management principles including product monitoring, safety, compliance and enforcement practices.

3. Where goods are covered by an Annex or Implementing Arrangement to this Chapter and a Party takes a measure to manage an urgent problem that it

considers those goods may pose to health, safety or the environment, it shall notify the other Party, through the contact point established under Article 100, of the measure and the reasons for the imposition of the measure, within the time limit specified in the relevant Annex or Implementing Arrangement.

Article 97 Conformity Assessment Procedures

1. The Parties agree to seek to increase efficiency, avoid duplication and ensure cost effectiveness through an appropriate range of mechanisms, including, but not limited to:

(a) facilitating recognition of cooperative arrangements between accreditation agencies from each other's territory;

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

(c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the respective territories of the Parties;

(d) recognising accreditation procedures for qualifying conformity assessment bodies;

(e) supporting government recognition of conformity assessment bodies; and

(f) accepting suppliers' declarations of conformity, where appropriate.

2. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create. Any agreements or arrangements on mutual recognition of conformity assessment concluded between the Parties under this Agreement shall be included in Annexes and Implementing Arrangements to this Chapter pursuant to Article 102.

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

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

5. Each Party shall accredit or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory.

6. If a Party accredits, or otherwise recognises a body assessing conformity with a particular technical regulation or standard and it refuses to accredit or otherwise recognise a body of the other Party assessing conformity with that technical regulation or standard, it shall, on request, explain the reasons for its refusal.

7. The Parties shall seek to cooperate in coordinating their procedures for issuing approvals of products, or otherwise recognising compliance with their mandatory requirements, with the objectives of reducing compliance and administrative costs, and for the effective monitoring of compliance with their legitimate regulatory objectives.

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

9. The Parties shall ensure that any fees imposed for assessing the conformity of products originating in the territory of the other Party are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and the costs arising from differences between location of facilities of the applicant and the conformity assessment body.

10. The Parties, on request, shall notify each other of:

(a) any fees imposed for mandatory conformity assessments; and

(b) the anticipated processing period for any mandatory conformity assessments.

Article 98 Transparency

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

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

(b) at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement, transmit the notification

electronically to the other Party through its enquiry point established under Article 10 of the TBT Agreement; and

(c) on request, make the text of any technical regulations and conformity assessment procedures based on a proposal available electronically to the other Party as soon as practicable after it becomes publicly available.

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

3. A Party making a notification shall give timely and reasonable consideration to the comments of the other Party.

4. A Party shall explain its reasons for not accepting the comments of the other Party and transmit to the other Party through the enquiry point an electronic copy of the final proposal.

5. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party electronically, through its enquiry point referred to under paragraph 1(b).

6. Where a Party makes a notification under Article J of Annex 3 of the TBT Agreement, it shall transmit the notification electronically to the other Party through its enquiry point referred to in paragraph 1(b).

7. Each Party shall notify the other Party in a timely manner of up-to-date lists of accredited and/or designated certification bodies and testing laboratories and the respective conformity assessments that they are accredited and/or designated to undertake.

8. The Parties shall, through the contact points, exchange lists, which are updated in a timely manner, of:

(a) the mandatory requirements for conformity assessment procedures under their respective technical regulations that are within the scope specified in *Implementing Arrangement: Chapter 8 B*; and

(b) the test facilities and certification bodies that are accredited and/or designated to undertake those conformity assessment procedures.

9. The Parties shall seek to develop Implementing Arrangements that set out the criteria and processes for exchanging, on request and in relation to products or mandatory requirements not covered by paragraph 8, information on any conformity assessment procedures that are required under applicable technical regulations and the list of test facilities and certification bodies that are

accredited and/or designated to undertake those conformity assessment procedures.

10. Each Party shall make available to the other Party, electronically or in any other form, up-to-date publications on technical regulations and any relevant standards or conformity assessment procedures that are cited in, or may be used to comply with, those technical regulations.

Article 99 Technical Assistance

1. Each Party recognises the rights and obligations relating to technical assistance in the TBT Agreement, especially for developing country Members. The Parties, through the Joint TBT Committee established under Article 100, shall jointly decide technical assistance projects in the field of technical barriers to trade for the purposes of implementing this Chapter. Such technical assistance projects may include, but are not limited to:

(a) providing training programmes for government officials;

(b) providing training programmes for technical personnel, including but not limited to inspection and test technical personnel, and standardisation personnel;

(c) providing technical assistance in the development and improvement of technical regulations and conformity assessment procedures;

(d) assisting to design and implement programmes to substantially improve a Party's ability to participate in international standardisation activities and the activities of international conformity assessment organizations; and

(e) any other forms of technical assistance jointly decided by the Parties.

2. The details of any technical assistance projects may be set out in *Implementing Arrangement: Chapter 8 C*.

Article 100 Implementation

1. The Parties hereby establish a Joint Technical Barriers to Trade Committee (“the Joint TBT Committee”) which shall be co-chaired by senior officials of the competent authorities.

2. The Joint TBT Committee shall:

(a) take any action it decides appropriate for the implementation of this Chapter;

(b) establish working groups to consider issues relating to:

(i) WTO enquiry and notification points;

(ii) standardisation; and

(iii) accreditation and conformity assessment;

(c) identify priority sectors for enhanced cooperation, including giving favourable consideration to any sector-specific proposal made by either Party;

(d) establish *ad hoc* working groups to develop and implement work programmes with clear targets, design structures and timelines in priority sectors;

(e) monitor the progress of work programmes and the implementation of Annexes and Implementing Arrangements;

(f) consult with a view to resolving any matter arising under this Chapter, in accordance with Article 101;

(g) review this Chapter in light of any developments under the TBT Agreement, and develop recommendations for amendments to this Chapter in light of those developments;

(h) take any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them; and

(i) report to the FTA Joint Commission on the implementation of this Chapter, as it considers appropriate.

3. After obtaining any necessary authorisation from their respective competent authorities, the Joint TBT Committee may:

(a) initiate and develop proposals for the conclusion of new Annexes to this Chapter in accordance with Article 102.1 and review existing Annexes with a view to developing proposals for their amendment, and submit any such proposals to the FTA Joint Commission for approval; and

(b) initiate, develop, conclude, review and modify Implementing Arrangements in accordance with Article 102.2.

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

5. The Parties shall ensure that the persons and organizations in their respective territories that have responsibility for relevant standards, technical regulations and conformity assessment procedures including accreditation, shall participate in working groups or other consultations decided by the Joint TBT Committee as appropriate where the Joint TBT Committee has:

(a) identified a priority sector for enhanced cooperation under paragraph 2(c);

(b) established a work programme under paragraph 2(d); or

(c) been requested to undertake technical consultations under Article 101.

6. Each Party shall establish a contact point which shall have responsibility to coordinate the implementation of this Chapter.

7. The Parties shall provide each other with the name of the governmental organization that shall be their contact points and the contact details of relevant officials in that organization, including telephone, fax, email and other relevant details.

8. The Parties shall notify each other promptly of any change of their contact points or any amendments to the details of the relevant officials.

9. For the purposes of implementing this Chapter, the contact point of each Party shall:

(a) coordinate participation in work programmes established under paragraph 2 with persons and organizations in their respective territories that have responsibility for accreditation or relevant regulations;

(b) ensure appropriate steps are taken to consider any issue that a Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;

(c) facilitate, where appropriate, sectoral cooperation between governmental and non-governmental regulatory authorities, accreditation agencies and conformity assessment bodies in the Parties' territories; and

(d) exchange information on developments in non-governmental, regional and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures.

Article 101 Technical Consultations

1. Either Party may request technical consultations in accordance with Article 100.2(f) and unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within 60 days from the request for technical consultations by email, teleconference, video-conference, or through any other means, as mutually determined by the Parties.

2. Where either Party has requested technical consultations on the application of any technical regulation or the recognition of any standard or conformity assessment procedure, the other Party shall investigate the issues that gave rise to the request for consultations, shall address any irregularities in the implementation of its technical regulations or conformity assessment procedures, and shall report back to the other Party on the outcome of its investigations, stating its reasons.

3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement).

Article 102 Annexes and Implementing Arrangements

1. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessments applicable to goods traded between them.

2. The Parties may, through the Joint TBT Committee, conclude Implementing Arrangements setting out:

(a) details for the implementation of the Annexes to this Chapter;

(b) arrangements on information exchange reached in accordance with Article 98;

(c) arrangements on technical assistance reached in accordance with Article 99; or

(d) arrangements resulting from work programmes established under Article 100.

3. The Parties acknowledge that Annexes and Implementing Arrangements concluded in accordance with this Chapter may take the form of a variety of mechanisms. This may include the use of asymmetrical approaches, where appropriate.

4. The Parties agree to maintain a programme of ongoing review and enhancement of Annexes and Implementing Arrangements concluded in accordance with this Chapter.

CHAPTER 9

TRADE IN SERVICES

Article 103 Definitions

For the purposes of this Chapter:

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

(a) the constitution, acquisition or maintenance of a juridical person, or

(b) the creation or maintenance of a branch or a representative office,

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

controlled means having the power to name a majority of directors or otherwise legally direct the legal entity's actions;

juridical person of a Party means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association, which is either:

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

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

(i) natural persons of that Party; or

(ii) juridical persons of that Party identified under subparagraph (a);

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

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

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

measures by Parties affecting trade in services include measures in respect of:

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

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

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

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

natural person of a Party means a national or permanent resident of a Party under its laws. Until such time as China enacts its domestic law on the treatment of permanent residents of foreign countries, the obligations of each Party with respect to the permanent residents of the other Party shall be limited to the extent of its obligations under GATS;

owned means holding more than 50 percent of the equity interest in the legal entity;

person of a Party means either a natural person or a juridical person of a Party;

qualification procedures means administrative procedures relating to the administration of qualification requirements;

qualification requirements means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a licence;

sector of a service means, with reference to a specific commitment one or more or all subsectors of that service, as specified in a Party's Schedule; otherwise, the whole of that service sector, including all of its subsectors;

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

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

service supplier of a Party means any person of a Party that supplies a service;[1]

[1] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the

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

trade in services is defined as the supply of a service:

(a) from the territory of one Party into the territory of the other Party ("cross-border mode");

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

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

(d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of the other Party ("presence of natural persons mode").

Article 104 Objectives

The objective of this Chapter is to facilitate expansion of trade in services on a mutually advantageous basis, under conditions of transparency and progressive liberalisation. Both Parties recognise the role of governments in regulating services, and in providing and funding public services; the need for this to take into consideration national policy objectives and local circumstances; and the asymmetries existing with respect to the degree of development of services regulation between the Parties.

Article 105 Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services.

2. This Chapter shall not apply to:

(a) laws, regulations, policies, or procedures of general application governing the procurement by government agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;

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

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juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

(c) subsidies or grants provided by a Party, except as provided for in Article 119;

(d) measures affecting natural persons seeking access to the employment market of a Party.

3. This Chapter shall not apply to measures affecting:

(a) air traffic rights, however granted; or

(b) services directly related to the exercise of air traffic rights, except as provided in paragraph 4.

4. This Chapter shall apply to measures affecting:

(a) aircraft repair and maintenance services;

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

(c) computer reservation system ("CRS") services.

Article 106 National Treatment

1. In the sectors inscribed in its schedule of commitments, and subject to any conditions and qualifications set out therein, a Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[2]

2. A Party may meet the requirement in paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

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

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

Article 107 Most-Favoured-Nation Treatment

1. In respect of the services sectors listed in Annex 9, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a third country.

2. Notwithstanding paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to third countries under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalization between the parties to such agreements**.**

Article 108 Market Access

1. With respect to market access through the modes of supply identified in the definition of trade in services contained in Article 103, a Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Commitments.[3]

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

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated

[3] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (a) of the definition of trade in services contained in Article 103, and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (c) of the definition of trade in services contained in Article 103, it is thereby committed to allow related transfers of capital into its territory.

numerical units in the form of quotas or the requirement of an economic needs test;[4]

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

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

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

Article 109 Specific Commitments

1. Each Party shall set out in a Schedule the Specific Commitments it undertakes under Articles 106, 108 and 110. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate the time-frame for implementation of such commitments.

2. Measures inconsistent with both Articles 106 and 108 shall be inscribed in the column relating to Article 108. In this case the inscription will be considered to provide a condition or qualification to Article 106 as well.

3. Schedules of Specific Commitments are annexed to this Agreement as Annex 8.[5]

[4] Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

[5] The specific commitments in respect of the presence of natural persons mode are set out in Annex 10.

Article 110 Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 106 or 108, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 111 Domestic Regulation

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

2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the supply of a service on which a specific commitment under this Agreement has been made, the competent authorities of each Party shall:

(a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

(b) at the request of the applicant, provide without undue delay information concerning the status of the application; and

(c) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. With the objective of ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall

jointly review the results of the negotiations on disciplines on these measures pursuant to Article VI.4 of GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia:*

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

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

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

5. (a) In sectors in which a Party has undertaken specific commitments, pending the incorporation of the disciplines referred to in paragraph 4, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

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

(b) In determining whether a Party is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations applied by that Party.[6]

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

Article 112 Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement

[6] The term “relevant international organizations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

between the Parties or their relevant competent bodies, or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-Party, nothing in Article 107 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

Article 113 Qualifications Recognition Cooperation

1. Both Parties acknowledge existing work on qualifications recognition taking place under the auspices of the New Zealand – China Education Joint Working Group ("JWG") and encourage the JWG to further explore cooperation in mutual recognition of respective academic degrees and qualifications.

2. The New Zealand Qualifications Authority ("NZQA") and the Ministry of Labour and Social Security of China shall establish a joint working group to strengthen cooperation and explore possibilities for mutual recognition of respective vocational qualifications.

3. Both Parties agree to encourage NZQA and the Chinese authorities responsible for issuance and recognition of professional and vocational qualifications to strengthen cooperation to explore possibilities for recognition of other qualifications and professional and vocational licences.

Article 114 Payments and Transfers

1. Except in the circumstances envisaged in Article 202, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2 Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* ("Articles of Agreement"), including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 202 or at the request of the International Monetary Fund.

Article 115 Denial of Benefits

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

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

(b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business operations in the territory of the other Party.

Article 116 Transparency

1. Each Party shall publish international agreements pertaining to or affecting trade in services to which that Party is a signatory.

2. Any information provided under this Article shall be conveyed through the contact points referred to in Article 118.

Article 117 Committee on Services

1. The Parties hereby establish a Committee on Trade in Services that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

(a) reviewing the implementation and operation of this Chapter;

(b) identification and recommendation of measures to promote increased services trade between the Parties; and

(c) considering other trade in services issues of interest to a Party.

Article 118 Contact Points

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 119 Subsidies

1. The Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Agreement.

2. At the request of a Party which considers that it is adversely affected by a subsidy of the other Party, the Parties shall enter into consultations on such matters.

Article 120 Modification of Schedules

1. A Party (referred to in this article as the "modifying Party") may modify or withdraw any commitment in its Schedule of Specific Commitments, at any time after 3 years have elapsed from the date on which that commitment entered into force provided that:

(a) it notifies the other Party (referred to in this article as the “affected Party”) of its intention to modify or withdraw a commitment no later than 3 months before the intended date of implementation of the modification or withdrawal; and

(b) upon notification of a Party’s intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is not less favourable to trade than provided for in the Schedules of Specific Commitments prior to such negotiations.

3. If agreement under paragraph 1(b) is not reached between the modifying Party and the affected Party within 3 months, the affected Party may refer the

matter to arbitration in accordance with the procedures set out in Chapter 16 (Dispute Settlement).

4. The modifying Party may not modify or withdraw its commitment until it has made the necessary adjustments in conformity with the findings of the arbitration in relation to the question of whether paragraph 1(b) is satisfied under paragraph 3.

Article 121 Safeguard Measures

The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

Article 122 Cooperation

1. The Parties shall strengthen cooperation efforts in service sectors, including sectors which are not covered by existing cooperation arrangements, such as cooperation on human resources, data study and sharing and capacity building in order to improve their domestic capacities, efficiencies and competitiveness.

2. Both Parties recognise China’s current status as a developing country, and commit to work together to explore ways to expand services trade between them in line with their different development situations.

Article 123 Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party’s obligations under its specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party’s specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, that

Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that Party shall notify the other Party no later than 3 months before the intended implementation of the grant of monopoly rights and paragraphs 1(b), 2, 3 and 4 of Article 120 shall apply.

5. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

Article 124 Review

The Parties shall consult within 2 years of entry into force of this Agreement and at least every 3 years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, including the extension of most-favoured-nation treatment to additional services sectors not listed in Annex 9, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

CHAPTER 10

MOVEMENT OF NATURAL PERSONS

Article 125 Definitions

For the purposes of this Chapter:

business visitor means a natural person of either Party who is:

(a) a service seller being a natural person who is a sales representative of a service supplier of that Party and is seeking temporary entry into the other Party for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly;

(b) an investor of a Party, as defined in Chapter 11 (Investment), or a duly authorized representative of an investor of a Party, seeking temporary entry into the territory of the other Party to establish, expand, monitor, or dispose of an investment of that investor; or

(c) a goods seller, being a natural person who is seeking temporary entry into the territory of the other Party to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public;

contractual service supplier means a natural person of a Party who:

(a) is an employee of a service supplier or an enterprise of a Party, whether a company, partnership or firm, who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract(s) between his or her employer and a service consumer(s) in the territory of the other Party;

(b) is employed by a company, partnership or firm of the Party, which has no commercial presence in the territory of the other Party where the service is to be provided;

(c) receives his or her remuneration from that employer;

(d) has appropriate educational and professional qualifications relevant to the service to be provided;

executive means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives,

the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment;

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

immigration formality means a visa, permit, pass, or other document or electronic authority granting a natural person of one Party the right to enter, reside or work in the territory of the other Party;

installer or servicer means a natural person who is an installer or servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract;

intra-corporate transferee means a manager, an executive, or a specialist, who is an employee of a service supplier or investor of a Party with a commercial presence, as defined in Chapter 9 (Trade in Services), in the territory of the other Party;

manager means a natural person within an organization who primarily directs the organization or a department or subdivision of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations;

natural person or **natural person of a Party** means a natural person of a Party as defined in Chapter 9 (Trade in Services);

skilled worker means a natural person of a Party who enters the other Party in order to work temporarily under an employment contract with a natural or juridical person of that other Party, and who is appropriately qualified and/or experienced for that employment;

specialist means a natural person within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organization’s service, research equipment, techniques or management;

temporary employment entry means entry by a natural person of a Party, including a skilled worker, into the territory of the other Party in order to temporarily work under an employment contract concluded pursuant to the law of the receiving Party, without the intent to establish permanent residence;

temporary entry means entry by a business visitor, an intra-corporate transferee, an independent professional, a contractual service supplier, or an installer or servicer, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or juridical person which employs that visitor in the visitor's home country.

Article 126 Objectives

The objective of this Chapter, which reflects the preferential trading relationship between the Parties and their mutual desire to facilitate temporary entry and temporary employment entry of natural persons, is to establish transparent criteria and streamlined procedures for temporary entry and temporary employment entry, while recognising the need to ensure border security and to protect the domestic labour force in the territories of the Parties.

Article 127 Scope

1. This Chapter applies to measures affecting the movement of natural persons of a Party into the territory of the other Party, where such persons are:

(a) business visitors;

(b) contractual services suppliers;

(c) intra-corporate transferees;

(d) skilled workers; or

(e) installers and servicers.

2. Nothing in this Chapter, Chapter 9 (Trade in Services) or Chapter 11 (Investment) shall apply to measures pertaining to citizenship, nationality, residence or employment on a permanent basis.

3. Nothing contained in this Chapter, Chapter 9 (Trade in Services) or Chapter 11 (Investment) shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided

such measures are not applied in a manner so as to nullify or impair the benefits accruing to the other Party under this Agreement.[7]

Article 128 Expeditious Application Procedures

1. Each Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement. Each Party shall notify applicants for temporary entry and temporary employment entry, either directly or through their authorized representative or their prospective employer, of the outcome of their applications, including the period of stay and other conditions.

2. Each Party shall, within 10 working days after an application requesting temporary entry or temporary employment entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application, or advise the applicant when a decision will be made. At the request of the applicant, the Party shall provide, without undue delay, information concerning the status of the application. The contact point for each Party for such queries is set out in Article 132.

3. The Parties affirm their commitments established in the *APEC Business Travel Card Operating Framework*.

4. Any fees imposed in respect of the processing of an immigration formality shall be limited to the approximate cost of services rendered.

Article 129 Grant of Temporary Entry

1. The Parties may make commitments in respect of temporary entry of natural persons.

2. Such commitments and the conditions governing them shall be inscribed in Annex 10.

3. Where a Party makes a commitment under paragraphs 1 and 2, that Party shall grant temporary entry to the extent provided for in that commitment, provided that such natural persons are otherwise qualified under all applicable immigration measures**.**

4. In respect of the commitments on temporary entry in Annex 10, unless otherwise specified therein, neither Party may:

[7] The sole fact of requiring a visa for natural persons of a Party and not for those of non-Parties shall not be regarded as nullifying or impairing trade in goods or services or conduct of investment activities under this Agreement.

(a) require labour certification tests, or other procedures of similar effect;

(b) impose or maintain any numerical restriction relating to temporary entry; or

(c) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.

5. Each Party shall limit any fees for processing applications for temporary entry of natural persons in a manner consistent with Article 128.

6. The temporary entry granted by virtue of this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary entry.

Article 130 Grant of Temporary Employment Entry

1. The Parties may make commitments in respect of the temporary employment entry of natural persons.

2. Such commitments and the conditions governing them shall be inscribed in Annex 11.

3. Where a Party makes a commitment under paragraphs 1 and 2, that Party shall grant temporary employment entry to the extent provided for in that commitment, provided that such natural persons:

(a) are otherwise qualified under all applicable immigration measures; and

(b) are in possession of a genuine employment offer from an employer in that Party.

4. In respect of temporary employment entry under paragraphs 1 and 2, the Parties shall not require labour market testing, economic needs testing or other procedures of similar effect.

5. The Parties shall limit any fees for processing applications for temporary employment entry in a manner consistent with Article 128.

6. The temporary employment entry granted by virtue of this Chapter does not replace the requirements to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary employment entry.

Article 131 Transparency

Each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter;

(b) no later than 6 months after the date of entry into force of this Agreement, prepare, publish, and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry and temporary employment entry under this Chapter in such a manner as will enable natural persons of the other Party to become acquainted with them; and

(c) upon modifying or amending an immigration measure that affects the temporary entry and temporary employment entry of natural persons, ensure that such modifications or amendments are promptly published and made available in such a manner as will enable natural persons of the other Party to become acquainted with them.

Article 132 Contact Points

Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the movement of natural persons between the Parties or on any matter covered by this Chapter, and shall provide details of this contact point to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact point. The contact point should identify and recommend areas for and ways of furthering cooperation between the Parties.

Article 133 Committee on Movement of Natural Persons

1. The Parties hereby establish a Committee on Movement of Natural Persons that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.

2. The Committee’s functions shall include:

(a) reviewing the implementation and operation of this Chapter;

(b) identification and recommendation of measures to promote increased movement of natural persons between the Parties; and

(c) considering other issues with respect to movement of natural persons of interest to a Party.

Article 134 Dispute Settlement

1. The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the movement of natural persons) that may arise from the implementation and administration of this Chapter.

2. If both Parties cannot reach agreement with regard to any specific issues raised from the implementation and administration of this Chapter as provided for in paragraph 1, Chapter 16 (Dispute Settlement) shall apply to the issues.

CHAPTER 11

INVESTMENT

Section 1: Investment

Article 135 Definitions

For the purposes of this Chapter:

Enterprise means any entity constituted or otherwise organized under applicable law, whether or not for profit, and whether privately owned or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

Enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a subsidiary located in the territory of a Party and engaged in substantive business operations there;

investment means every kind of asset invested, directly or indirectly, by the investors of a Party in the territory of the other Party including, but not limited to, the following:

(a) movable and immovable property and other property rights such as mortgages and pledges;

(b) shares, debentures, stock and any other kind of participation in companies;

(c) claims to money or to any other contractual performance having an economic value associated with an investment;

(d) intellectual property rights, in particular, copyrights, patents and industrial designs, trade-marks, trade-names, technical processes, trade and business secrets, know-how and good-will;

(e) concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources;

(f) bonds, including government issued bonds, debentures, loans and other forms of debt[8], and rights derived therefrom;

[8] Loans and other forms of debt, which have been registered to the competent authority of a Party, do not mean trade debts where the debts would be non-interest earning if paid on time without penalty.

(g) any right conferred by law or under contract and any licences and permits pursuant to law;

Any change in the form in which assets are invested does not affect their character as investments;

investments includes investments of legal persons of a third country which are owned or controlled by investors of one Party and which have been made in the territory of the other Party. The relevant provisions of this Agreement shall apply to such investments only when such third country has no right or abandons the right to claim compensation after the investments have been expropriated by the other Party;

investor of a Party means a natural person or enterprise of a Party who seeks to make, is making, or has made an investment in the territory of the other Party;[9]

natural person of a Party means a national or a permanent resident of a Party under its laws. Until such time as China enacts its domestic law on the treatment of permanent residents of foreign countries, this Chapter does not impose obligations on a Party with respect to the permanent residents of the other Party except for the obligations in Articles 142, 143, 144, 145 and 148.

Article 136 Objectives

The objectives of this Chapter are to:

(a) encourage and promote the flow of investment between the Parties and cooperation between the Parties on investment-related matters on a mutually beneficial basis;

(b) establish a framework of rules conducive to increasing investment flows between the Parties and to ensure the protection and security of investments of the other Party within each Party's territory; and

(c) promote cooperation between a Party and investors of the other Party who have investments in the territory of the former Party, on a mutually beneficial basis.

Article 137 Scope

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

[9] For greater certainty, the elements of the definition of investor of a Party that relate to the establishment of investment are only applicable to Article 139 and Article 142.

(a) investors of the other Party;

(b) investments of investors of the other Party.

2. This Chapter shall not apply to measures adopted or maintained by a Party affecting trade in services.

3. Notwithstanding paragraph 2, for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles 142,[10] 143, 144, 145 and 148 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party. Section 2 shall apply to Articles 142, 143, 144, 145 and 148 with respect to the supply of a service through commercial presence.

4. For greater certainty, the provisions of this Chapter do not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

5. This Chapter shall not apply to:

(a) subsidies or grants provided by a Party; or

(b) laws, regulations, policies or procedures of general application governing the procurement by government agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.

6. This Chapter shall apply to all investments made by investors of a Party in the territory of the other Party, whether made before or after the entry into force of this Agreement, but Section 2 shall not apply to any dispute or any claim concerning an investment which was already under judicial or arbitral process before the entry into force of this Agreement.

Article 138 National Treatment

Each Party shall accord to investments and activities associated with such investments, with respect to management, conduct, operation, maintenance, use, enjoyment or disposal, by the investors of the other Party treatment no less favourable than that accorded, in like circumstances, to the investments and associated activities by its own investors.

[10] The Parties understand that the reference to amounts necessary for establishing or expanding the investment under subparagraph (a) of Article 142.1 applies to the commercial presence mode of service supply only to the extent that there is a services market access commitment with regard to the sector.

Article 139 Most-favoured-nation Treatment

1. Each Party shall accord to investors, investments and activities associated with such investments by investors of the other Party treatment no less favourable than that accorded, in like circumstances, to the investments and associated activities by the investors of any third country with respect to admission, expansion, management, conduct, operation, maintenance, use, enjoyment and disposal.

2. For greater certainty, the obligation in this Article does not encompass a requirement to extend to investors of the other Party dispute resolution procedures other than those set out in this Chapter.

3. Notwithstanding paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to third countries under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

4. For greater certainty, paragraph 3 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

5. The Parties reserve the right to adopt or maintain any measure that accords differential treatment to third countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) fisheries; and

(b) maritime matters.

Article 140 Performance Requirements

The Parties agree that the provisions of the WTO *Agreement on Trade-Related Investment Measures* are incorporated *mutatis mutandis* into this Agreement and shall apply with respect to all investments falling within the scope of this Chapter.

Article 141 Non-Conforming Measures

1. Article 138 does not apply to:

(a) any existing non-conforming measures maintained within its territory;

(b) the continuation of any non-conforming measure referred to in subparagraph (a);

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations.

2. The Parties will endeavour to progressively remove the non-conforming measures.

3. Notwithstanding anything in paragraph 1, Article 138 shall not apply to any measure, which with respect to each Party, would not be within the scope of the national treatment obligations in any of that Party's existing bilateral investment treaties.

Article 142 Transfers

1. Except in the circumstances envisaged in Article 202, each Party shall grant to investors of the other Party the free transfer of all payments relating to an investment, including more particularly:

(a) amounts necessary for establishing, maintaining or expanding the investment;[11]

(b) returns from investments, including profits, dividends, interests and other income;

(c) royalty payments, management fees, technical assistance and other fees;

(d) proceeds obtained from the total or partial sale or liquidation of investments, or amounts obtained from the reduction in investment capital;

(e) payments made pursuant to a loan agreement in connection with investments;

(f) amounts necessary for payments under a contract, including amounts necessary for repayment of loans, royalties and other payments resulting from licences, franchises, concessions and other similar rights*;*

[11] The Parties understand that the reference to amounts necessary for establishing or expanding the investment only applies following the successful completion of the approval procedures for inward investment.

(g) earnings and other remuneration of personnel engaged from abroad in connection with that investment;

(h) payments made pursuant to Articles 144 and 145; and

(i) payments arising out of the settlement of a dispute.

2. The transfers referred to in paragraph 1 shall be made without delay in a freely convertible currency and at the prevailing market rate of exchange applicable within the Party accepting the investments on the date of transfer. In the event that the market rate of exchange does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

3. In the case of China, the obligations in paragraph 1 shall apply provided that the transfer shall comply with the relevant formalities stipulated by the present laws and regulations of China relating to exchange control provided that:

(a) these formalities shall not be used as a means of avoiding China's commitments or obligations under this Agreement;

(b) in this respect, China shall accord to investors of New Zealand treatment no less favourable than it accords to investors of any third country;

(c) the formalities shall be effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted to the relevant foreign exchange administration with full and authentic documentation and information and may on no account exceed 60 days;

(d) transfer formalities relating to an investment shall in no case be made more restrictive than formalities required at the time when the original investment was made; and

(e) to the extent that these formalities are no longer required according to the relevant laws of China, Article 142 shall apply without restrictions.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

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

5. Nothing in paragraph 3 shall affect the free transfer of compensation paid under Articles 144 and 145.

6. Neither Party may require its investors to transfer or penalize its investors that fail to transfer the income, earnings, profits or other amounts derived from or attributable to investments in the territory of the other Party.

7. In the case of China, the obligations in paragraph 6 apply only to the extent allowed by the relevant laws and regulations of China relating to exchange control, provided that paragraph 6 shall apply without restrictions to the extent that these laws and regulations no longer apply under China's law.

Article 143 Fair and Equitable Treatment

1. Investments of investors of each Party shall at all times be accorded fair and equitable treatment and shall enjoy the full protection and security in the territory of the other Party in accordance with commonly accepted rules of international law.

2. Fair and equitable treatment includes the obligation to ensure that, having regard to general principles of law, investors are not denied justice or treated unfairly or inequitably in any legal or administrative proceeding affecting the investments of the investor.

3. Full protection and security requires each Party to take such measures as may be reasonably necessary in the exercise of its authority to ensure the protection and security of the investment.

4. Neither Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Party.

5. A violation of any other article of this Chapter does not establish that there has been a violation of this Article.

Article 144 Compensation for Losses

Investors of a Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, a state of national emergency, insurrection, riot or other similar events in the territory of the latter Party shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlements no less favourable than that accorded to the investors of its own or any third country, whichever is more favourable to the investors concerned.

Article 145 Expropriation

1. Neither Party shall expropriate, nationalize or take other equivalent measures ("expropriation") against investments of investors of the other Party in its territory, unless the expropriation is:

(a) for a public purpose;

(b) in accordance with applicable domestic law;

(c) carried out in a non-discriminatory manner;

(d) not contrary to any undertaking which the Party may have given; and

(e) on payment of compensation in accordance with paragraphs 2, 3 and 4;

2. The compensation referred to above shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation measures were taken. The fair market value shall not reflect any change in value due to the expropriation becoming publicly known earlier. The compensation shall include interest at the prevailing commercial rate from the date the expropriation was done until the date of payment. It shall be paid without delay and shall be effectively realizable and freely transferable. It shall be paid in the currency of the country of the affected investor, or in any freely convertible currency accepted by the affected investor.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

Article 146 Transparency

Each Party shall publish international agreements pertaining to investment to which it is a party.

Article 147 Contact Points

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 148 Subrogation

1. If a Party or its designated agency makes a payment to an investor under an indemnity, a guarantee or a contract of insurance for a non-commercial risk granted or accorded in respect of an investment, the other Party shall recognise the assignment of any rights or claims by the investor to the Party or its designated agency and that Party's or its designated agency's entitlement by virtue of subrogation to exercise the obligations related to the investment to the same extent as the investor.

2. Where a Party (or any agency, institution, statutory body or corporation designated by it) has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party or the agency of the Party making the payment, pursue those rights and claims against the other Party.

Article 149 Denial of Benefits

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

(a) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the territory of the other Party; or

(b) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of the other Party.

Article 150 Committee on Investment

1. The Parties hereby establish a Committee on Investment that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

(a) reviewing the implementation of this Chapter;

(b) identification and recommendation of measures to promote and increase investment flows between the Parties; and

(c) consideration of the development of procedures that could contribute to greater transparency of measures described in Article 141.

Article 151 Promotion and Facilitation of Investment

The Parties affirm their desire to facilitate bilateral investment through, *inter alia*:

(a) cooperating and exchanging information aimed at improving the climate for two-way investment;

(b) building linkages between New Zealand and China's agencies with a view to promoting bilateral investment.

Section 2: Investor – State Dispute Settlement

Article 152 Consultation and Negotiation

Any legal dispute arising under this Chapter between an investor of one Party and the other Party, directly concerning an investment by that investor in the territory of that other Party, shall, as far as possible, be settled amicably through consultations and negotiations between the investor and that other Party, which may include the use of non-binding third-party procedures, where this is acceptable to both parties to the dispute. A request for consultations and negotiations shall be made in writing and shall state the nature of the dispute.

Article 153 Consent to Submission of a Claim

1. If the dispute cannot be settled as provided for in Article 152 within 6 months from the date of request for consultations and negotiations then, unless the parties to the dispute agree otherwise, it shall, by the choice of the investor, be submitted to:

(a) conciliation or arbitration by the International Centre for the Settlement of Investment Disputes ("ICSID") under the *Convention on the Settlement of Disputes between States and Nationals of Other States*, done at Washington on March 18, 1965; or

(b) arbitration under the rules of the United Nations Commission on International Trade Law ("UNCITRAL");

provided that the investor shall give the state party 3 months' notice prior to submitting the claim to arbitration under paragraph 1(a) or 1(b).

2. Upon the receipt of a notice referred to in paragraph 1, the state party may require the investor concerned to go through any applicable domestic administrative review procedures specified by the laws and regulations of the state party, which may not exceed 3 months, before the submission of the claim to arbitration under paragraph 1(a) or 1(b).

3. In case a dispute has been submitted to a competent domestic court, it may be submitted to international dispute settlement, on the condition that the investor concerned has withdrawn its case from the domestic courts before a final judgment has been reached in the case.

4. The arbitration rules applicable under paragraph 1, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Section.

5. The arbitration award shall be final and binding upon both parties to the dispute. Each party shall commit itself to the enforcement of the award.

Article 154 Admissibility of Claims and Preliminary Objections

1. No claim may be submitted to arbitration under this Chapter if more than 3 years have elapsed between the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of obligation under this Chapter causing loss or damage to the investor or its investments and the date of submission of the request for consultations and negotiations referred to in Article 152.

2. A state party may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit or is otherwise outside the jurisdiction or competence of the tribunal. The state party shall specify as precisely as possible the basis for the objection.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render a decision to that effect.

4. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the parties a reasonable opportunity to comment.

Article 155 Interpretation of Agreement

1. The tribunal shall, on request of the state party, request a joint interpretation of the Parties of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of delivery of the request.

2. A joint decision issued under paragraph 1 by the Parties shall be binding on the tribunal, and any award must be consistent with that joint decision. If the Parties fail to issue such a decision within 60 days, the tribunal shall decide the issue on its own account.

Article 156 Consolidation of Claims

Where two or more investors notify an intention to submit claims to arbitration which have a question of law or fact in common and arise out of the

same events or circumstances, the disputing parties shall consult with a view to harmonising the procedures to apply, where all disputing parties agree to the consolidation of the claims, including with respect to the forum chosen to hear the dispute.

Article 157 Publication of Information and Documents Relating to Arbitral Proceedings

1. Subject to paragraph 2, the state party may, as it considers appropriate, ensure public availability of all tribunal documents.

2. Any information that is submitted to the tribunal and that is specifically designated as confidential information shall be protected from disclosure.

Article 158 Awards

1. Where a tribunal makes a final award against a state party, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the state party may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and fees in accordance with this Chapter and the applicable arbitration rules.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. A disputing party may not seek enforcement of a final award until all applicable review procedures have been completed.

6. Subject to paragraph 5, a disputing party shall abide by and comply with an award without delay.

CHAPTER 12

INTELLECTUAL PROPERTY

Article 159 Definitions

For the purposes of this Chapter:

intellectual property rights refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and rights in plant varieties as defined in the TRIPS Agreement.

Article 160 Intellectual Property Principles

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

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

Article 161 General Provisions

1. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that:

   (a) provide certainty over the protection and enforcement of intellectual property rights;

   (b) minimise compliance costs for business; and

   (c) facilitate international trade through the dissemination of ideas, technology and creative works.

2. Each Party reaffirms its commitment to the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both are party.

3. For the purposes of this Chapter, the TRIPS Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 162 Contact Points

Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Chapter, and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 163 Notification and Exchange of Information

1. Each Party shall:

   (a) notify the other Party of any new laws that enter into effect in relation to intellectual property;

   (b) exchange information relating to developments in intellectual property policy in their respective administrations including on appropriate initiatives to promote awareness of intellectual property rights and systems;

   (c) inform the other Party of changes to, and developments in, the implementation of intellectual property systems, aimed at promoting effective and efficient registration or grant of intellectual property rights; and

   (d) exchange information regarding enhancement of intellectual property rights enforcement and related initiatives in multilateral and regional fora.

2. Any information or notification provided under this Article shall be conveyed through the contact points referred to in Article 162.

Article 164 Cooperation and Capacity Building

1. The Parties agree to cooperate with a view to increasing capacity in the development of intellectual property policy and eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives and policies.

2. Each Party shall:

   (a) encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions and other organizations with an interest in the field of intellectual property rights;

(b) work to build upon and strengthen the cooperative ties between the State Intellectual Property Office ("SIPO") and other relevant institutions of China and the Intellectual Property Office of New Zealand ("IPONZ");

(c) on mutually acceptable terms and subject to available funds, cooperate on:

(i) appropriate initiatives to promote awareness of intellectual property rights and systems;

(ii) educational and information dissemination projects on the use of intellectual property as a research and innovation tool; and

(iii) training and specialization courses for public servants on intellectual property rights.

Article 165 Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

Article 166 Consultation

1. A Party may at any time request consultations with the other Party, with a view to seeking a timely and mutually satisfactory resolution of any intellectual property issue within the scope of this Chapter.

2. Such consultation shall be conducted through the Parties' designated contact points, and shall commence within 60 days of the receipt of the request for consultation, unless the Parties mutually determine otherwise. Each Party shall ensure its contact point is able to coordinate and facilitate a response on the issue under consideration.

3. Only in the case that such consultation fails to resolve any such issue, can a Party take actions pursuant to Chapter 16 (Dispute Settlement).

4. Notwithstanding paragraph 3, after the commencement of such consultation, if a Party considers that the consultation fails to resolve the issue, it may take actions pursuant to Chapter 16 (Dispute Settlement) after notifying the other Party of such a decision.

5. Notwithstanding paragraph 1, a Party may deny the request for consultations by the other Party under this Article or the continuance of those

consultations with the other Party on any issue, with respect to which, the other Party has taken actions pursuant to Chapter 16 (Dispute Settlement) or the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

CHAPTER 13

TRANSPARENCY

Article 167 Definitions

For the purposes of this Chapter:

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

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

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

Article 168 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, but in no case later than 90 days after implementation or enforcement, published or otherwise made available in such a manner as to enable interested persons of the other Party and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

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

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

Article 169 Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures affecting matters covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 168.1 to particular persons, goods, or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in question;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 170 Review and Appeal

1. Each Party shall, where warranted, establish or maintain judicial, quasi-judicial or administrative tribunals, or procedures for the purpose of the prompt review and correction of final administrative actions regarding matters covered by this Agreement, other than those taken for prudential reasons. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue**.**

Article 171 Contact Points

1. Each Party shall designate a contact point or points, and provide details of such contact points to the other Party, to facilitate communications between the Parties on any matter covered by this Agreement.

2. The Parties shall notify each other promptly of any amendments to the

details of their contact points.

3. Each Party shall ensure its contact points are able to coordinate and facilitate a response on any matter covered by this Agreement, including any enquiries referred to in Article 172.

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

Article 172 Notification and Provision of Information

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

2. On request of the other Party, a Party shall within 30 days of receipt of the request provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

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

4. Notwithstanding paragraph 3, the notification referred to in paragraph 1 shall be regarded to have been conveyed when it has been made available by appropriate notification to the WTO.

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

CHAPTER 14

COOPERATION

Article 173 Objectives

The objectives of this Chapter are to facilitate the establishment of close cooperation aimed, *inter alia,* at:

(a) strengthening and building on existing cooperative relationships between the Parties;

(b) creating new opportunities for trade and investment;

(c) creating new opportunities to encourage small and medium-sized enterprise ("SME") business growth and management development;

(d) supporting the important role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development;

(e) encouraging the presence of the Parties and their goods and services in the respective markets of Asia and Pacific; and

(f) increasing the level of and deepening cooperation activities between the Parties in areas of mutual interest.

Article 174 Scope

1. The Parties affirm the importance of all forms of cooperation in contributing towards implementation of the objectives and principles of this Agreement.

2. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement.

Article 175 Economic Cooperation

1. The aims of economic cooperation under this Chapter are:

(a) to build on existing agreements or arrangements already in place for trade and economic cooperation, including those established under the *Trade and Economic Cooperation Framework between New Zealand and the People's Republic of China*; and

(b) to advance and strengthen trade and economic relations between the Parties.

2. In pursuit of the objectives in paragraph 1, the Parties will encourage and facilitate, as appropriate, the following activities, including, but not limited to:

(a) policy dialogue and regular exchanges of information and views on ways to promote and expand trade and investment between the Parties;

(b) keeping each other informed of important economic and trade issues, and any impediments to furthering their economic cooperation;

(c) providing assistance and facilities to business persons and trade missions that visit each other's country with the knowledge and support of the relevant agencies;

(d) supporting dialogue and exchanges of experience among the respective business communities of the Parties;

(e) stimulating and facilitating activities of public and/or private sectors in areas of economic interest.

Article 176 Small and Medium-Sized Enterprises

1. The aims of cooperation on SMEs are:

(a) to build on existing agreements or arrangements already in place for trade and economic cooperation;

(b) to promote a favourable trading environment for the development of SMEs; and

(c) to build the capacity of SMEs to trade effectively under this Agreement.

2. In pursuit of the objectives in paragraph 1, the Parties will encourage and facilitate, as appropriate, *inter alia,* the following activities:

(a) promoting cooperation and information exchange between government institutions, business groups and industrial associations;

(b) exploring jointly effective strategies and support policies for the development of SMEs, including financial support and intermediary services;

(c) holding trade fairs and investment marts and promoting other mechanisms for exchanging goods and services involving SMEs of both Parties; and

(d) promoting training and personnel exchange between SMEs of both Parties and relevant business advisors and industrial associations.

3. Cooperation activities will be oriented to improve knowledge and good practices among SMEs and to facilitate bilateral trade by SMEs, including through exchanges of information about regulatory regimes, local markets and regional and national economies of both Parties.

Article 177 Labour and Environmental Cooperation

The Parties shall enhance their communication and cooperation on labour and environment matters through both the *Memorandum of Understanding on Labour Cooperation* and the *Environment Cooperation Agreement* between the Parties.

Article 178 Mechanisms for Cooperation

1. The Parties will designate a contact point to facilitate communication on possible cooperation activities. The contact points will work with government agencies, private sector representatives and educational and research institutions in the operation of this Chapter.

2. The Parties will make maximum use of diplomatic channels to promote dialogue and cooperation consistent with this Agreement.

CHAPTER 15

ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 179 Establishment of the New Zealand – China Free Trade Area Joint Commission

The Parties hereby establish the New Zealand – China Free Trade Area Joint Commission ("FTA Joint Commission") which may meet at the level of senior officials, Vice Ministers or Ministers, in accordance with the provisions of this Agreement.

Article 180 Functions of the FTA Joint Commission

1. The FTA Joint Commission shall:

   (a) consider matters relating to the implementation of this Agreement;

   (b) review within 2 years of entry into force of this Agreement and at least every 3 years thereafter the operation and implementation of this Agreement, consider any proposal to amend this Agreement or its Annexes and otherwise oversee the further elaboration of this Agreement;

   (c) consider issues referred to it by the Committees and working groups established under this Agreement or by either Party;

   (d) in accordance with the objectives of this Agreement, explore measures for the further expansion of trade and investment between the Parties; and

   (e) consider any other matter that may affect the operation of this Agreement.

2. The FTA Joint Commission may:

   (a) establish additional committees and *ad hoc* working groups as necessary and refer matters to any committee or working group for advice;

   (b) further the implementation of this Agreement's objectives by approving any modifications of, *inter alia:*

      (i) the schedules contained in Annex 1, by accelerating the elimination of customs duties;

      (ii) the rules of origin established in Annex 5; or

(iii) the Schedules of Specific Commitments on services contained in Annex 8;

(c) further the implementation of this Agreement through Implementing Arrangements;

(d) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(e) seek the advice of interested parties on any matter falling within its responsibilities where this would assist the FTA Joint Commission in discharging its responsibilities; and

(f) take such other action in the exercise of its functions as the Parties may agree.

3. The acceptance by a Party of any modification of this Agreement is subject to the completion of any necessary domestic legal procedures of that Party.

Article 181 Rules of Procedure of the FTA Joint Commission

1. The FTA Joint Commission shall take decisions on any matter within its functions as set out in Article 180 by mutual agreement.

2. The FTA Joint Commission shall convene in regular session once per year and at other times at the request of either Party. Regular sessions of the FTA Joint Commission shall be chaired successively by each Party. Other sessions of the FTA Joint Commission shall be chaired by the Party hosting the meeting.

3. The FTA Joint Commission shall ordinarily meet at the level of senior officials, unless there is a request by either Party to convene the meeting at the level of Vice Ministers or Ministers, in which case the FTA Joint Commission shall meet at the level of Vice Ministers or Ministers.

4. Subject to paragraph 3 above, each Party shall be responsible for the composition of its own delegation to the FTA Joint Commission.

5. The Party chairing a session of the FTA Joint Commission shall provide any necessary administrative support for such session, and shall record any decisions taken by the FTA Joint Commission, copies of which will be provided to the other Party.

Article 182 Joint Trade and Economic Commission and Joint Ministerial Commission

1. The Parties reaffirm the roles of the Joint Ministerial Commission as established under paragraph 4 of the *Trade and Economic Cooperation Framework between New Zealand and the People's Republic of China* and the Joint Trade and Economic Commission as referenced in paragraph 5 of that Framework.

2. The Parties agree that the Joint Trade and Economic Commission and the Joint Ministerial Commission may each meet in special session to consider matters arising under this Agreement. In such cases the Joint Trade and Economic Commission and Joint Ministerial Commission shall exercise the functions and have the powers of the FTA Joint Commission meeting at Vice Ministerial level and Ministerial level respectively.

CHAPTER 16

DISPUTE SETTLEMENT

Article 183 Objectives

1. The objectives of this Chapter are:

   (a) to encourage the Parties at all times to endeavour to reach a mutually satisfactory resolution of disputes arising under this Agreement through cooperation and consultations; and

   (b) to provide an effective, efficient and transparent process for consultations and settlement of disputes between the Parties concerning their rights and obligations under this Agreement.

2. Notwithstanding anything else in this Chapter, the Parties may, at any time, reach a mutually satisfactory resolution of the dispute.

Article 184 Scope of Application

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement, except for Chapter 14 (Cooperation).

2. Any action taken pursuant to Articles 59 or 65.3 shall be without prejudice to the rights and obligations of the Parties under this Chapter.

Article 185 Choice of Forum

1. Except as provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are party.

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

3. Once the complaining Party has requested a particular forum, the forum selected shall be used to the exclusion of other possible fora.

4. For the purposes of this Article, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel or arbitral tribunal.

Article 186 Consultations

1. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. Each Party shall accord adequate opportunity for consultations with the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall as far as possible be settled through consultation between the Parties.

2. A request for consultations shall be submitted in writing and shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint. The complaining Party shall deliver the request to the other Party.

3. If a request for consultations is made, the Party to which the request is made shall reply to the request in writing within 10 days after the date of its receipt and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory solution, within a period of no more than:

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

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

4. If the Party complained against does not respond within the aforesaid 10 days, or does not enter into consultations within the timeframe specified in paragraph 3(a) or 3(b), then the complaining Party may proceed directly to request the establishment of an arbitral tribunal.

5. The consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

6. In conducting the consultations, the Parties shall:

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

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

7. The complaining Party may request the responding Party to make available for the consultations personnel of its government agencies or other regulatory bodies who have expertise in the matter under consultation.

Article 187 Good Offices, Mediation and Conciliation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.

2. If both Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal convened under Article 188.

3. If both Parties agree, they may seek assistance of the FTA Joint Commission regarding good offices, mediation and conciliation.

Article 188 Establishment of an Arbitral Tribunal

1. If the consultations fail to resolve a dispute within:

   (a) 30 days after the date of receipt of the request for consultations regarding a matter concerning perishable goods; or

   (b) 60 days after the date of receipt of the request for consultations regarding any other matter;

the Party that made the request for consultations may request in writing the establishment of an arbitral tribunal to consider the matter.

2. The request to establish an arbitral tribunal shall identify:

   (a) the specific measures at issue; and

   (b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions, sufficient to present the problem clearly.

3. An arbitral tribunal shall be established upon receipt of a request.

Article 189 Composition of an Arbitral Tribunal

1. An arbitral tribunal shall comprise 3 members.

2. Within 15 days after the establishment of a tribunal, both Parties shall designate one member of that arbitral tribunal respectively.

3. The Parties shall designate by common agreement the appointment of the third arbitrator within 30 days after the establishment of a tribunal. The arbitrator thus appointed shall chair the arbitral tribunal.

4. If any member of the arbitral tribunal has not been designated or appointed within 30 days after the establishment of a tribunal, either Party may request that the Director-General of the WTO designate a member within 30 days of that request.

5. All arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;

(c) be independent of, and not be affiliated with or take instructions from, either Party; and

(d) comply with the WTO *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes.*[12]

6. The chair of the arbitral tribunal shall:

(a) not be a national of either Party;

(b) not have his or her usual place of residence in the territory of either Party; and

(c) not have dealt with the matter in any capacity.

7. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

Article 190 Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement, and make such factual findings necessary for the resolution of the dispute.

2. Where the tribunal makes a finding that a measure is inconsistent with this Agreement, that finding shall be binding on the Parties and the responding Party shall have the obligation to remove the non-conformity.

[12] Document WT/DSB/RC/1

3. For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be clarified in accordance with the customary rules of treaty interpretation of public international law.

4. The arbitral tribunal, in its findings, cannot add to or diminish the rights and obligations provided in this Agreement.

Article 191 Rules of Procedure of an Arbitral Tribunal

1. Within 14 days of its composition, the arbitral tribunal shall establish rules of procedure, which shall, *inter alia*, ensure:

(a) a right to at least 1, but no more than 2, hearings before the tribunal;

(b) an opportunity for the complaining and responding Parties to provide initial and rebuttal submissions;

(c) that any other procedural elements referred to in this Chapter or mutually agreed by the Parties to the dispute are provided for;

(d) the protection of business confidential information, including in the final report.

2. Each Party has the right to make public its written submissions, written versions of its oral statements and written responses to a request or questions from the tribunal, subject to paragraph 3.

3. Each Party shall treat as confidential information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential.

4. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations or further information, either in the course of a meeting or in writing. A Party shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under its consideration.

5. The arbitral tribunal shall have the right to seek information and technical advice from any individual or body which it deems appropriate. The arbitral tribunal shall provide the Parties with a copy of the information or technical advice received and an opportunity to provide comments. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

6. Unless the Parties otherwise agree within 20 days from the date of the establishment of the arbitral tribunal, the terms of reference shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 188 and to make findings of law and fact together with the reasons therefor for the resolution of the dispute."

7. The arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus, it may take its decisions by majority vote. Any opinions expressed in the tribunal report by individual arbitrators shall be anonymous.

8. The arbitral tribunal shall, apart from the matters set out in this Article, regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations, in consultation with the Parties.

Article 192 Expenses

Unless the Parties determine otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.

Article 193 Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse, unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found. In such event the Parties shall jointly notify the chair of the arbitral tribunal.

Article 194 Report of Arbitral Tribunal

1. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made to the arbitral tribunal.

2. In order to enable the Parties to have an opportunity for review and comment, the arbitral tribunal shall present the Parties its initial report within 90

days of the tribunal's formation setting out its findings of facts and its determination as to whether a disputing Party has conformed with its obligations under this Agreement. In exceptional cases, if the arbitral tribunal considers it cannot release its initial report within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days, unless the Parties otherwise agree.

3. A Party may submit written comments to the arbitral tribunal within 10 days of receiving the initial report. After considering these written comments by the Parties and making any further examination it considers appropriate, the arbitral tribunal shall present the Parties its final report within 30 days of presentation of the initial report, unless the Parties otherwise agree. The final report of the arbitral tribunal shall be made available as a public document after the lapse of 10 days from the date of its release.

4. The arbitral report is final.

Article 195 Implementation of Arbitral Report

1. The Party concerned shall comply with the findings of the tribunal. If it is not practicable to comply immediately, the Party concerned shall implement the findings contained in the report of the arbitral tribunal within a reasonable period of time.

2. Where the tribunal makes a finding that a measure is inconsistent with this Agreement, the Party concerned shall have the obligation to eliminate the non-conformity.

Article 196 Reasonable Period of Time

1. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral tribunal's report, either Party may refer the matter to the original arbitral tribunal (to the extent this is possible), which shall determine the reasonable period of time following consultation with the Parties.

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

Article 197 Compliance Review

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the findings of the arbitral tribunal, such dispute shall be referred to an arbitral tribunal proceeding under this Chapter, including wherever possible by resort to the original arbitral tribunal.

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

Article 198 Compensation and Suspension of Concessions and Obligations

1. If the Party concerned fails to bring the measure found to be inconsistent with this Agreement into compliance with the findings of the arbitral tribunal within the reasonable period of time or if the Party complained against expresses in writing that it will not implement the findings, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensation.

2. If the Parties do not reach agreement on compensation as set forth by paragraph 1 within 30 days, the complaining Party may suspend the application of concessions and obligations of equivalent effect to the responding Party, with 30 days' notice in writing after the end of the reasonable period of time established in accordance with Article 196. Concessions and obligations may not be suspended while the complaining Party is pursuing negotiations under paragraph 1.

3. Any suspension of concessions and obligations shall be restricted to benefits accruing to the other Party under this Agreement.

4. In considering what concessions and obligations to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend concessions and obligations in the same sector(s) as that affected by the measure that the arbitral tribunal has found to be inconsistent with the obligations of this Agreement; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions and obligations in the same sector(s), it may suspend concessions and obligations in other

sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's findings has done so, or a mutually satisfactory solution is reached.

6. Upon written request of the Party concerned, the original arbitral tribunal shall determine whether the level of concessions and obligations to be suspended by the complaining Party pursuant to paragraph 2 is excessive. If the arbitral tribunal cannot be established with its original members, the proceeding set out in Article 189 shall be applied.

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

Article 199 Post Suspension

1. Without prejudice to the procedures in Article 198, if the responding Party considers that it has eliminated the non-conformity that the arbitral tribunal has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original arbitral tribunal within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions and obligations.

2. The arbitral tribunal shall release its report within 60 days after the referral of the matter. If the arbitral tribunal concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions and obligations.

CHAPTER 17

EXCEPTIONS

Article 200 General Exceptions

1. For the purposes of this Agreement, Article XX of GATT 1994 and its interpretative notes and Article XIV of GATS (including its footnotes) are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of GATS, as incorporated into this Agreement, can include environmental measures necessary to protect human, animal or plant life or health, and Article XX(g) of GATT 1994, as incorporated into this Agreement, applies to measures relating to the conservation of living and non-living exhaustible natural resources, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in goods or services or investment.

3. For the purposes of this Agreement, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods or services or investment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national works or specific sites of historical or archaeological value, or to support creative arts of national value.[13]

4. Nothing in this Agreement shall prevent the Parties from taking any necessary measures to restrict the illicit import of cultural property from the other Party under the framework of the United Nations Educational, Scientific and Cultural Organization ("UNESCO") *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,* done at Paris on 14 November 1970.

Article 201 Security Exceptions

1. Nothing in this Agreement shall be construed:

[13] "Creative arts" include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative online content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities.

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;

(ii) taken in time of war or other emergency in international relations;

(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.

2. The FTA Joint Commission shall be informed to the extent possible of measures taken under subparagraphs 1(b) and 1(c) and of their termination.

Article 202 Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the WTO *Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, adopt restrictive import measures;

(b) in the case of services, in accordance with GATS, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments;

(c) in the case of investments, adopt or maintain restrictions with regard to the transfer of funds related to investment, including those on capital account.

2. Restrictions adopted or maintained under subparagraph 1(b) or 1(c) shall:

(a) be consistent with the *Articles of Agreement of the International Monetary Fund*;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and

(e) be applied on an equitable, non-discriminatory and good faith basis and such that the other Party is treated no less favourably than any non-Party.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified to the other Party within 30 days from the date such measures are taken.

5. The Party adopting or maintaining any restrictions under paragraph 1 shall commence consultations with the other Party within 45 days from the date of notification in order to review the measures adopted or maintained by it.

Article 203 Prudential Measures

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

Article 204 Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures:

(a) where corresponding rights or obligations are also granted or imposed under the WTO Agreement; or

(b) under Article 145.

3. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention relating to the avoidance of double taxation in force between the Parties.

4. If there is a dispute described in Article 152 that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 153 shall accept a decision of the Parties as to whether the measure in question is a taxation measure.

5. In the event of any inconsistency relating to a taxation measure between this Agreement and the *Agreement between the Government of New Zealand and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,* done at Wellington on 16 September 1986, with Protocols, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall include representatives of the tax administration of each Party.[14]

Article 205 Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 16 (Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established under Article 188 may be requested by China to determine only

[14] Nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement on the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

whether any measure referred to in paragraph 1 is inconsistent with their rights under this Agreement**.**

Article 206 Disclosure of Information

Nothing in this Agreement shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers:

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

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

(c) would impede law enforcement; or

(d) would prejudice legitimate commercial interests of particular enterprises, public or private.

CHAPTER 18

FINAL PROVISIONS

Article 207 Annexes and Footnotes

The Annexes and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 208 Succession of Treaties or International Agreements

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to any amendment or successor treaty or international agreement that binds both Parties.

Article 209 Application

1. This Agreement shall apply to the entire customs territory of China.

2. This Agreement shall apply to the territory of New Zealand, but shall not include Tokelau.

3. Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by local government and authorities in its territory.

Article 210 Confidentiality

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except as required by domestic legal or constitutional requirements and only for the purpose of judicial proceedings.

Article 211 Financial Provisions

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.

Article 212 Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force 60 days after the Parties exchange written notification that the necessary domestic legal procedures for entry into force have been completed, or after such other period as the Parties may agree in the written notification.

Article 213 Entry into Force, Duration and Termination

1. Entry into force of this Agreement shall be subject to the completion of the necessary domestic legal procedures of both Parties.

2. This Agreement shall enter into force 60 days after the Parties exchange written notification that such procedures have been completed, or after such other period as the Parties may agree in the written notification.

3. This Agreement shall remain in force until one Party gives written notice of its intention to terminate it, in which case this Agreement shall terminate 180 days after the date of the notice of termination.

Article 214 Authentic Texts

This Agreement shall be done in English and Chinese. The two texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at _____ this _____ day of _____ two thousand and eight.

_____	_____
For the Government of New Zealand	For the Government of the People's Republic of China