

THAILAND-NEW ZEALAND  
CLOSER ECONOMIC PARTNERSHIP  
AGREEMENT

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## PREAMBLE

The Kingdom of Thailand and New Zealand, hereinafter referred to as the “Parties”,

*Inspired* by the traditional links of friendship and cooperation between them and their shared regional interests and ties;

*Recognising* that the strengthening of their economic partnership will bring economic and social benefits and improve the living standards of their people;

*Recognising further* the importance of securing trade liberalisation and an outward looking approach to trade and investment in order to expand economic relations between them;

*Conscious* that open, transparent and competitive markets are the key drivers of economic efficiency, innovation, wealth creation and consumer welfare;

*Affirming* the rights of their governments to regulate in order to meet national policy objectives;

*Aware* that closer social and political relationships and economic partnerships can play an important role in promoting sustainable development;

*Building* on their rights, obligations and undertakings under the World Trade Organisation, and other relevant agreements and arrangements;

*Mindful* of their commitment to the Asia-Pacific Economic Cooperation (APEC) goals of free and open trade and investment;

*Recognising* the significance of good corporate governance and the need for a predictable, transparent and consistent business environment to enable businesses to conduct transactions freely, and use resources efficiently and take investment and planning decisions with certainty; and

*Desiring* to strengthen the cooperative framework for the conduct of economic relations to ensure it is dynamic and encourages broader and deeper economic cooperation;

Have agreed as follows:

## **CHAPTER 1: OBJECTIVES AND GENERAL DEFINITIONS**

### **ARTICLE 1.1**

#### ***Objectives***

1. The Parties hereby establish a free trade area consistent with the WTO Agreement, based upon the principles of common interest and cooperation and the goals of free and open trade and investment.
2. The objectives of the Parties in concluding this Agreement are to:
  - (a) strengthen their trade and economic relationship;
  - (b) liberalise trade and investment and to create favourable conditions for the stimulation of trade and investment flows;
  - (c) support the wider liberalisation and facilitation process in APEC;
  - (d) build upon their commitments at the World Trade Organisation, and to support its efforts to create a predictable, and more free and open global trading environment;
  - (e) encourage and facilitate cooperation in areas of mutual interest in support of the aims of the Agreement;
  - (f) improve the efficiency and competitiveness of their trade sectors by promoting conditions for fair competition, for innovation and for mutually beneficial business collaboration; and
  - (g) facilitate trade and investment by establishing a framework of transparent rules and seeking to minimise transaction costs.

### **ARTICLE 1.2**

#### ***General Definitions***

For the purposes of this Agreement, unless otherwise specified:

- (a) "Agreement" means the Thailand-New Zealand Closer Economic Partnership Agreement;
- (b) "APEC" means Asia-Pacific Economic Cooperation;

- (c) “CEP Joint Commission” means the Closer Economic Partnership Joint Commission established under Article 16.1 of this Agreement;
- (d) “customs administration” means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and policies;
- (e) “customs duties” includes any customs or import duty and a charge of any kind imposed in connection with the import of a good, including any form of surtax or surcharge in connection with such import, but does not include any:
- (i) charge equivalent to an internal tax imposed consistently with Article III.2 of GATT 1994;
  - (ii) anti-dumping or countervailing duty applied consistently with the provisions of GATT 1994, the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, and the *WTO Agreement on Subsidies and Countervailing Measures*; and
  - (iii) fee or other charge in connection with importing commensurate with the cost of services rendered;
- (f) “days” means calendar days, including weekends and holidays;
- (g) “food standards” means a mandatory requirement that is either an SPS measure or a technical regulation as defined in the TBT Agreement which relates to food and is made pursuant to relevant laws administered by a Party;
- (h) “GATS” means the *General Agreement on Trade in Services*, which is part of the WTO Agreement;
- (i) “GATT 1994” means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;
- (j) “goods” means all kinds of movable property, including animals, as understood in GATT 1994;
- (k) “goods” and “products” shall be understood to have the same meaning unless the context otherwise requires;
- (l) “originating goods” means goods that qualify as originating in accordance with the relevant provisions of Chapter 4;
- (m) “person” means a natural person or a juridical person;
- (n) “SPS Agreement” means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement;

- (o) “SPS measure” means a sanitary or phytosanitary measure and shall have the same meaning as in Annex A, paragraph 1 of the SPS Agreement;
- (p) “TBT Agreement” means the *Agreement on Technical Barriers to Trade*, which is part of the WTO Agreement;
- (q) “territory” means the territory of a Party, as well as the exclusive economic zone, seabed and subsoil over which the Party exercises sovereign rights or jurisdiction in accordance with international law, but with respect to New Zealand does not include Tokelau;
- (r) “WTO” means the World Trade Organisation;
- (s) “WTO Agreement” means the *Marrakesh Agreement Establishing the World Trade Organisation*, done on 15 April 1994.

## **CHAPTER 2: TRADE IN GOODS**

### **ARTICLE 2.1**

#### ***Scope and Coverage***

Except as otherwise provided, this Chapter applies to trade in all goods of a Party.

### **ARTICLE 2.2**

#### ***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 2.3**

#### ***Elimination of Customs Duties***

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territory of the Parties.
2. A Party shall not increase an existing customs duty or introduce a new customs duty on imports of an originating good.
3. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its Tariff Schedule at Annex 1. The base rate and the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule. Reductions shall occur upon entry into force of the Agreement and thereafter on 1 January of each year, as provided for in each Party's Schedule.
4. Each Party may adopt or maintain measures necessary to administer a tariff quota set out in its Tariff Schedule, including allocating access to that quota opportunity. Such measures shall be transparent and predictable and shall not have trade restrictive effects on imports additional to those caused by the imposition of the tariff quota.

5. On the written request of the other Party, a Party applying or intending to apply measures pursuant to Paragraph 4 shall consult to consider a review of the administration of those measures.

## **ARTICLE 2.4**

### ***Accelerated Tariff Elimination***

1. Each Party is prepared to eliminate its customs duties more rapidly than provided for in Article 2.3 or otherwise to improve the conditions of access of originating goods taking into account its general economic situation and the economic situation of the sector concerned.

2. On the request of a Party, the Parties shall promptly enter into consultations to accelerate the elimination of customs duties on originating goods as set out in its Tariff Schedule in Annex 1.

3. An Agreement by the Parties to accelerate the elimination of customs duties on originating goods shall enter into force after the Parties have exchanged written notification advising that they have completed the necessary internal legal procedures and on such date or dates as may be agreed between them.

4. 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 duties takes effect.

## **ARTICLE 2.5**

### ***Administrative Fees and Formalities***

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.

## **ARTICLE 2.6**

### ***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*.
2. The Parties share the objective of the multilateral elimination of all forms of export subsidies for agricultural goods and shall work towards an agreement in the WTO to eliminate those subsidies and prevent the introduction in any form of any new export subsidies for agricultural goods.
3. Recognising the trade-distorting nature of export subsidies and consistent with their rights and obligations under the *WTO Agreement on Agriculture*, neither Party shall introduce or maintain any form of export subsidy on any agricultural good destined for the territory of the other Party.
4. If a Party believes that a policy or measure implemented by the other Party has the effect of providing an export subsidy on any agricultural good exported to that Party, it may request consultations with the aim of preventing such subsidisation occurring on trade between the Parties.

## **ARTICLE 2.7**

### ***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 the transparency of its non-tariff measures permitted in Paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.



## **CHAPTER 3: CUSTOMS PROCEDURES AND COOPERATION**

### **ARTICLE 3.1**

#### ***Objectives***

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 the administrative policies of the Parties;
- (c) promote efficient and economical customs border administration and the expeditious clearance of goods; and
- (d) facilitate trade between the Parties and promote the security of such trade.

### **ARTICLE 3.2**

#### ***Scope***

This Chapter shall apply, in accordance with the Parties' international obligations and respective laws, rules and regulations, to customs procedures related to the clearance of goods traded between the Parties.

### **ARTICLE 3.3**

#### ***Definitions***

For the purposes of this Chapter:

- (a) “craft” includes any aircraft, ship, boat or other vehicle used or capable of being used for the carriage or transportation of persons or goods, or both, by air, land, water or over or under water;
- (b) “customs administration” means:
  - (i) in relation to Thailand, the Customs Department of the Kingdom of Thailand; and
  - (ii) in relation to New Zealand, the New Zealand Customs Service;

(c) “customs law” means the statutory and regulatory provisions relating to the importation, exportation, movement and storage of goods, the administration and enforcement of which are specially charged to the customs administration of a Party;

(d) “customs offence” means any breach or attempted breach of customs law;

(e) “customs procedures” means the treatment applied by the customs administration of each Party to goods, persons and craft that are subject to customs control.

## **ARTICLE 3.4**

### ***General Provisions***

1. The Parties recognise that the objectives of this Agreement may be promoted by the application of common, simplified customs procedures, and cooperation between the customs administrations.

2. To give effect to the provisions of this Chapter and Chapter 4 of this Agreement the customs administrations shall enter into a Cooperative Arrangement to take effect concurrently with the entry into force of this Agreement.

3. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of that information. The Parties shall not use or disclose such information except with the written consent of the requested Party or to the extent that the information may be required to be disclosed for law enforcement purposes or in the context of judicial proceedings.

4. Nothing in this Chapter shall be taken to require a Party to furnish or allow access to information the disclosure of which it considers would:

- (a) be contrary to the public interest as determined by its laws, rules or regulations;
- (b) be contrary to its laws, rules or regulations to protect personal privacy or the financial affairs and accounts of individual customers of financial institutions; or
- (c) impede law enforcement.

## **ARTICLE 3.5**

### ***Customs Procedures and Facilitation***

1. Customs procedures of the Parties shall, where possible and to the extent permitted by their respective laws, rules or regulations, conform with the standards and recommended practices of the World Customs Organisation, including the principles of the *International Convention on the Simplification and Harmonisation of Customs Procedures* 1973.
2. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade.
3. The customs administrations of both Parties shall periodically review their customs procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate bilateral trade.
4. In respect of consignments for which immediate clearance is requested, the Parties shall, insofar as permitted by their laws, follow the guidelines of the World Customs Organisation.

## **ARTICLE 3.6**

### ***Customs Valuation***

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the WTO *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*.

## **ARTICLE 3.7**

### ***Customs Cooperation***

1. The Parties shall, through their customs administrations and in accordance with this Chapter and the Cooperative Arrangement referred to in Article 3.4 (2), cooperate in achieving compliance with their customs laws, in accordance with their international obligations governing the importation and exportation of goods, relating to:
  - (a) the implementation and operation of this Agreement;
  - (b) security of trade between the Parties;
  - (c) restrictions and prohibitions on imports and exports; and
  - (d) such other issues as the Parties may determine.

2. To the extent permitted by their laws, regulations and policies, the customs administrations of both Parties shall provide each other with mutual assistance in order to prevent breaches of customs law and for the protection of the economic, fiscal, social and commercial interests of their respective countries, including ensuring appropriate and efficient customs duty collection.

3. Each Party shall endeavour to provide the other Party with advance notice of any significant modification of laws, regulations or policies governing importations that are likely to substantially affect the operation of this Agreement.

### **ARTICLE 3.8**

#### ***Review and Appeal***

1. Each Party shall, with regard to customs administrative rulings, determinations or decisions, provide the right of appeal, without penalty, by the importer, exporter or other person affected by that administrative ruling, determination or decision.

2. An initial right of appeal without penalty 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 3.9**

#### ***Advance Rulings***

1. Subject to Paragraph 2, each Party shall provide in writing advance rulings in respect of the classification of goods to a person described in Sub-paragraph 2(a) (hereinafter referred to as “advance rulings”).

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

- (a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of goods in question;
- (b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;

- (c) provide that its customs administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;
  - (d) provide that any advance 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 an advance ruling be issued to the applicant expeditiously, or in any case within 30 working days of the receipt of all necessary information.
3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with Sub-paragraph 2(c) is not provided within the specified period.
4. Subject to Paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within three years of the date of that ruling, or such other period as required by that Party's laws, regulations or policies.
5. A Party may modify or revoke an advance ruling upon a determination that the advance ruling was based on an error of fact or law (including human error), or if there is a change in:
- (a) domestic law consistent with this Agreement;
  - (b) a material factor; or
  - (c) the circumstances on which the ruling is based.
6. Any fees charged for advance rulings shall not exceed the approximate cost of the services rendered in providing the advance ruling.

## **ARTICLE 3.10**

### ***Early Resolution of Differences between the Parties***

1. Where significant differences between the customs administrations of the Parties arise with respect to the application of the provisions of this Chapter and Chapter 4 of this Agreement, either customs administration may request to consult with the other customs administration to resolve such differences. The modalities of such consultation shall be agreed between the customs administrations.
2. Consultations under this Article are without prejudice to the rights of the Parties under Chapter 17 of this Agreement or under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

## **ARTICLE 3.11**

### ***Security of Trade and Repression of Terrorist Activity***

In the event either Party desires to adopt procedures to ensure the security of trade in goods and/or the movement of craft between the Parties, the customs administrations shall consult with a view to agreeing procedures to secure such trade and/or movement of craft.

## **ARTICLE 3.12**

### ***Paperless Trading and Use of Automated Systems***

1. The customs administrations of both Parties, in implementing initiatives that provide for the use of paperless trading, shall take into account the methods agreed in APEC and the World Customs Organisation.
2. The customs administrations of the Parties shall, as soon as practicable, adopt electronic procedures for all reporting requirements, consistent with the provisions of Chapter 10 of this Agreement.

## **ARTICLE 3.13**

### ***Risk Management***

1. The Parties shall administer customs procedures at their respective borders so as to facilitate the clearance of low-risk goods and focus on high-risk goods.
2. The Parties shall apply and develop further risk management techniques in the performance of their customs procedures.

## **ARTICLE 3.14**

### ***Publication and Enquiry Points***

1. Each Party shall publish on the Internet or in print form all statutory and regulatory provisions and any administrative procedures applicable or enforceable by its customs administration.
2. Each Party shall designate one or more enquiry points to address enquiries from interested persons of the other Party concerning customs matters, and shall make available on the Internet information concerning procedures for making such enquiries.

## CHAPTER 4: RULES OF ORIGIN

### ARTICLE 4.1

#### *Definitions*

For the purposes of this Chapter:

- (a) “CIF“ means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with the WTO Agreement on Customs Valuation;
- (b) “FOB” means the free on board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with the WTO Agreement on Customs Valuation;
- (c) “fungible goods or materials” means 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;
- (d) “generally accepted accounting principles” means the recognised consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;
- (e) “indirect material” means a good used in the production, testing or inspection of another good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:
  - (i) fuel, energy, catalysts and solvents;
  - (ii) equipment, devices and supplies used for testing or inspection of the goods;
  - (iii) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (iv) tools, dies and moulds;
  - (v) spare parts and materials used in the maintenance of equipment and buildings;
  - (vi) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

- (vii) any other goods which 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;
- (f) “material” means any matter or substance used or consumed in the production of goods, and physically incorporated into or classified with those goods;
- (g) “minimal operations or processes” are operations or processes which contribute minimally to the essential characteristics or properties of goods, including:
  - (i) operations or processes to ensure that the goods are preserved in good condition for purposes of transport or storage;
  - (ii) operations designed to facilitate shipment; and
  - (iii) operations or processes related to packaging or presentation of the goods for sale;

By way of example, the following would be such operations or processes:

- (A) aeration, ventilation, drying, refrigeration, freezing, chilling;
  - (B) cleaning, washing, sieving, sifting or shaking, selection, classification or grading, extraction;
  - (C) cutting or slitting;
  - (D) division of bulk shipments, grouping in packets, the attaching of markings, distinctive labels or logos on the products and their packing;
  - (E) packing, unpacking or repacking;
  - (F) mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from those of the goods which have been mixed;
  - (G) dilution in water or in any other aqueous solution; and
  - (H) the simple assembly or configuring of parts of products making up a complete good;
- (h) “non-originating goods” or “non-originating materials” means goods or materials which do not qualify as originating under this Chapter;
  - (i) “originating material” means a material which qualifies as originating in accordance with the provisions of this Chapter;
  - (j) “packing materials and containers for shipment” means items used to protect a good during its transport, other than containers or packaging used for retail sale;



- (k) “preferential tariff treatment” means the customs duty rate that is applicable to an originating good pursuant to Article 2.3 of Chapter 2 of this Agreement;
- (l) “producer” means a person who grows, raises, mines, harvests, farms, fishes, traps, hunts, manufactures, processes, captures, gathers, collects, breeds, extracts or assembles a good;
- (m) “production” means methods of obtaining goods, including but not limited to, growing, raising, mining, harvesting, farming, fishing, trapping, hunting, manufacturing, processing, capturing, gathering, collecting, breeding, extracting or assembling a good;
- (n) “wholly obtained goods” means:
- (i) mineral goods extracted in the territory of a Party;
  - (ii) agricultural goods harvested, picked or gathered in the territory of a Party;
  - (iii) live animals born and raised in the territory of a Party;
  - (iv) goods obtained from live animals in the territory of a Party;
  - (v) goods obtained directly from hunting, trapping, fishing, farming, gathering, or capturing in territory of a Party;
  - (vi) goods (fish, shellfish, plant and other marine life) taken within the territorial sea or the relevant maritime zone of a Party seaward of the territorial sea under that Party’s applicable laws in accordance with the provisions of the *United Nations Convention on the Law of the Sea 1982*, or taken from the high seas by a vessel flying or entitled to fly the flag of that Party;
  - (vii) goods obtained or produced on board factory ships flying or entitled to fly the flag of a Party from the goods referred to in Sub-paragraph (vi) above;
  - (viii) goods taken by a Party, or a person of a Party, from the seabed or subsoil beneath the seabed of the territorial sea or the continental shelf of that Party, in accordance with the provisions of the *United Nations Convention on the Law of the Sea 1982*;
  - (ix) waste and scrap derived from production in the territory of a Party, or used goods collected in the territory of a Party, provided that such goods are fit only for the recovery of raw materials; and
  - (x) goods produced entirely in the territory of a Party exclusively from the goods referred to in Sub-paragraphs (i) to (ix) above.
- (o) “WTO Agreement on Customs Valuation” means the *Agreement on the Implementation of Article VII of the General Agreement on Tariff and Trade, 1994*.

## ARTICLE 4.2

### *Originating Goods*

1. Particular goods shall originate in the territory of a Party if they:
  - (a) are the wholly obtained goods of the Party; or
  - (b) satisfy the requirements of Annex 2 to this Agreement as a result of processes performed entirely in the territory of one or both of the Parties and the goods did not enter the commerce of a non-party after export from the first Party and before import into the other Party.
2. Originating materials from the territory of a Party, used in the production of particular goods in the territory of the other Party, shall be considered to originate in the territory of the Party in which the production is performed.
3. Particular goods which do not satisfy a change in tariff classification required pursuant to Annex 2 are nonetheless originating goods if:
  - (a) the value of non-originating materials used in the production of the goods that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the goods; and
  - (b) the goods meet all other applicable criteria of this Article.
4. Except where goods are subject to a regional value content requirement pursuant to Annex 2, goods produced by minimal operations or processes shall not be treated as originating goods even where those minimal processes or operations meet the change in tariff classification requirements of Annex 2.
5. Accessories, spare parts, or tools delivered with originating goods that form part of the standard accessories, spare parts, or tools for those goods, shall be treated as originating goods and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification, provided that:
  - (a) the accessories, spare parts, or tools are not invoiced separately from the originating goods;
  - (b) the quantities and value of the accessories, spare parts, or tools are customary for the originating goods; and
  - (c) if the goods are subject to a regional value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the goods.

6. Paragraph 5 does not apply where the accessories, spare parts, or tools have been added solely for the purpose of artificially raising the regional value content of the goods.

7. The determination of whether fungible goods or materials are originating goods shall be made either by physical separation of each of the goods or materials or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first-out, recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

8. An inventory management method selected under Paragraph 7 for a particular fungible good or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the producer that selected the inventory management method.

9. Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have undergone the applicable change in tariff classification set out in Annex 2. However if the goods are subject to a regional value content requirement, the value of the packaging used for retail sale will be counted as originating or non originating, as the case may be, in calculating a regional value content.

10. Packaging materials and containers in which the goods are packaged for shipment shall be disregarded in determining the origin of the good.

11. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

### **ARTICLE 4.3**

#### ***Regional Value Content***

1. Subject to Paragraphs 2 and 3 of this Article, where Annex 2 requires goods to have a regional value content, the regional value content of particular goods shall be calculated as follows:

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

Where:

- (a) "RVC" is the regional value content, expressed as a percentage;
  - (b) "FOB" is the FOB value of the goods; and
  - (c) "VNM" is the CIF value of non-originating materials, in the form in which they were first acquired or supplied to the producer of the goods.
2. If the FOB or CIF values do not exist or cannot be determined pursuant to the provisions of Article 1 of the WTO Agreement on Customs Valuation, the values shall be calculated pursuant to the provisions of Articles 2 to 8, Article 15 and the interpretative notes of that Agreement.
3. Each Party shall provide that, for the purposes of calculating regional value content, the importer may use a calculation averaged over the producer's fiscal year.

#### **ARTICLE 4.4**

##### ***Recording of Costs***

For the purposes of this Chapter all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the goods are produced or manufactured.

#### **ARTICLE 4.5**

##### ***Treatment Of Goods For Which Preference Is Claimed***

1. Each Party may require a declaration as to the origin of a good from the exporter, or producer, or other competent person, public or private body for a good for which preferential tariff treatment is claimed. The declaration shall specify on the face of the invoice or any other document issued in respect of the good that the goods enumerated thereon are the origin of the exporting Party and meet the terms of this Chapter.
2. Nothing in Paragraph 1 of this Article shall be construed to require a producer who is not the exporter of the good to make a declaration as to the origin of the good.

3. Where a declaration is required in accordance with Paragraph 1, a Party shall provide that where an exporter is not the producer of the good, the exporter, or other competent person, public or private body may complete and sign a declaration as to the origin of a good on the basis of:

- (a) specific knowledge that the good qualifies as an originating good; or
- (b) a reasonable reliance on the producer's written representation that the good qualifies as an originating good.

4. The importing Party shall grant preferential tariff treatment to goods imported into its territory from the other Party only in cases where an importer claiming preferential tariff treatment:

- (a) provides a declaration as to the origin of the good pursuant to Paragraph 1 of this Article; or
- (b) provides sufficient documentary or other evidence to substantiate the origin of the goods.

5. When the customs administration of the importing Party has reasonable doubt as to the authenticity or accuracy of the declaration or other evidence as to the origin of goods, the importing Party may, in accordance with its national legislation, request additional evidence to verify the preference claimed. Such evidence may include accounting data in verification of Articles 4.2 and 4.3 of this Chapter, or such other evidence as may be required to establish the bona fides of the import declaration. In the absence of such evidence the customs administration of the importing Party may require payment of duties at non-preferential tariff rates or the deposit of a security or cash deposit equivalent to the amount of duties, taxes and charges that would be payable on the goods if preferential tariff treatment did not apply.

6. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer may, in accordance with the national legislation of the importing Party, apply for a refund of any duties paid on presentation of:

- (a) a declaration as to the origin of the good in accordance with this Article; and
- (b) such other evidence in support of the declaration as may be required.

7. In accordance with its laws, regulations and policies, the importing Party may not require a declaration for:

- (a) commercial and non-commercial importations which do not exceed a specified value as determined by the importing Party; or

- (b) any good for which a Party has waived the requirement for a declaration.

## **ARTICLE 4.6**

### ***Records***

Each Party shall require that:

- (a) a producer or an exporter shall maintain in the territory of that Party for such period as the Party may specify in its laws, regulations or policies, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party;
- (b) an importer claiming preferential tariff treatment for a good shall, in accordance with national legislation, maintain in the importing Party's territory all documents relating to the importation of that good, including a copy of the declaration as to origin made in accordance with Article 4.5 of this Chapter.

## **ARTICLE 4.7**

### ***Verification of Origin***

1. For the purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, the importing Party may, through its customs administration, conduct a verification of eligibility for preferential tariff treatment by means of:

- (a) requests for information addressed to the importer;
- (b) written questions and requests for information addressed to an exporter or producer in the territory of the other Party;
- (c) visits to the premises of an exporter or producer in the territory of the other Party to review the records referred to in Article 4.6 and to observe the facilities used in the production of the good;
- (d) requests to the exporting Party to verify the origin of the good; or
- (e) such other procedures as the Parties may agree.

2. Where a request is made by the importing Party to the exporting Party to verify the origin of the good:

- (a) such request shall only be made if the customs value for duty is sufficiently material to warrant the request;

- (b) the request shall be accompanied by sufficient information to identify the good about which the request was made;
  - (c) the exporting Party shall, within 90 days of receiving the request, advise the importing Party as to the origin of the good about which the request was made; and
  - (d) any costs incurred by the exporting Party in meeting the request to verify the origin of the good shall be mutually determined by the Parties.
3. Prior to conducting a verification visit pursuant to Sub-paragraph 1(c) of this Article the importing Party shall:
- (a) deliver a written notification of its intention to conduct the visit to:
    - (i) the exporter or producer whose premises are to be visited; and
    - (ii) the customs administration of the exporting Party; and
  - (b) obtain the written consent of the exporter or producer whose premises are to be visited.

## **ARTICLE 4.8**

### ***Suspension and Denial of Preferential Tariff Treatment***

1. Notwithstanding Paragraph 4 of Article 4.5 of this Chapter, the importing Party may suspend the application of preferential tariff treatment to goods that are the subject of origin verification action under Article 4.7 for the duration of that action, or any part thereof.
2. The importing Party may deny preferential tariff treatment to an imported good or recover unpaid duties where:
- (a) the goods do not or did not meet the requirements of this Chapter;
  - (b) the producer, exporter or importer of the goods fails to comply with any of the relevant requirements of this Chapter for obtaining preferential tariff treatment; or
  - (c) action taken under Article 4.7 failed to verify the eligibility of the goods for preferential tariff treatment.

## **CHAPTER 5: TRADE REMEDIES**

### **PART I**

#### **General Trade Remedies**

##### **ARTICLE 5.1**

###### ***Anti-Dumping Measures***

1. Each Party retains its rights and obligations under the *WTO Agreement on Implementation of Article VI of GATT 1994*.
2. Before either Party applies anti-dumping measures against imports originating from the other Party, the Party initiating the action will be mindful of the provisions relating to constructive remedies under Article 15 of the *WTO Agreement on Implementation of Article VI of the GATT 1994*.

##### **ARTICLE 5.2**

###### ***Subsidies and Countervailing Measures***

Each Party retains its rights and obligations under the *WTO Agreement on Subsidies and Countervailing Measures*.

##### **ARTICLE 5.3**

###### ***Global Safeguards***

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the *WTO Agreement on Safeguards* and any other relevant provisions in the *WTO Agreement*.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to such global safeguard measures, except that a Party taking such a measure may exclude imports of an originating good of the other Party from the action if such imports are not a cause of serious injury or threat thereof.



**PART II**  
**Bilateral Safeguards**

**ARTICLE 5.4**

***Safeguard Definitions***

For purposes of this Part:

- (a) “base rate” means the rate of customs duty for an imported good as indicated in the Tariff Schedule of the importing Party in Annex 1;
- (b) “domestic industry” means, with respect to an imported good, the producers as a whole of the like or directly competitive good or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;
- (c) “preferential tariff rate” means the rate of customs duty for an imported good pursuant to Article 2.3 of Chapter 2 of this Agreement;
- (d) “provisional measure” means a provisional safeguard measure described in Article 5.8;
- (e) “safeguard measure” means a transitional safeguard measure described in Article 5.5;
- (f) “special safeguard measure” means a special safeguard measure described in Article 5.11;
- (g) “serious injury” means a significant overall impairment in the position of a domestic industry;
- (h) “transition period”, in relation to a particular good, means the period from the entry into force of this Agreement until the date on which the customs duty on that good is to be eliminated in accordance with Annex 1.

## **ARTICLE 5.5**

### ***Application of a Transitional Safeguard Measure***

If, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of a Party is being imported into the other Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing a like or directly competitive good, the other Party may, to the minimum extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure, consisting of:

- (a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the good from the date on which the action to apply the safeguard measure is taken; or
- (b) an increase of the rate of customs duty on the good to a level not to exceed the lesser of:
  - (i) the most-favoured-nation (MFN) applied rate of customs duty in effect on the date on which the action to apply the safeguard measure is taken; or
  - (ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
  - (iii) for a new safeguard measure applied from 1 January 2009 or beyond, the preferential tariff rate in effect under this Agreement on the day four years preceding the date on which the action to apply the safeguard measure is taken.

## **ARTICLE 5.6**

### ***Scope and Duration of Transitional Safeguard Measures***

1. A Party shall apply a safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to one year provided that the conditions of this Chapter are met and that the safeguard measure continues to be applied to the minimum extent necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The total period of a safeguard measure, including any extensions thereof, shall not exceed three years. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate within two years following the end of the transition period for such good. No new safeguard measure may be applied to a good after that date.

2. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the application of the measure, including at the time of any extension.

3. A Party shall not apply a safeguard or provisional measure again on the same good until three years have elapsed since the date of the termination of the earlier safeguard or provisional measure.

4. A Party may not apply a safeguard or provisional measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the *WTO Agreement on Safeguards*, the *WTO Agreement on Textiles and Clothing*, or any other relevant provisions in the WTO Agreement, nor may a Party continue to maintain a safeguard or provisional measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the *WTO Agreement on Safeguards*, the *WTO Agreement on Textiles and Clothing*, or any other relevant provisions in the WTO Agreement.

5. A Party may not apply a safeguard measure to any good indicated by the letters SSG in its Tariff Schedule set out in Annex 1 nor to any good listed in Annex 1.3 which is subject to a tariff quota.

6. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 1 on the date of termination as if the safeguard measure had never been applied.

## **ARTICLE 5.7**

### ***Investigation***

1. A Party may apply or extend a safeguard measure only following an investigation by the Party's competent authorities to examine the effect of increased imports of an originating good of the other Party on the domestic industry, as reflected in changes in such relevant economic variables as production, productivity, levels of sales, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which is necessarily decisive. When factors other than increased imports of an originating good of the other Party resulting from the reduction or elimination of a customs duty pursuant to this Agreement are simultaneously causing injury to the domestic industry, such injury shall not be attributed to such increased imports.

2. An investigation under Paragraph 1 shall only take place pursuant to procedures previously established and made public in consonance with Chapter 14 of this Agreement. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. An investigation shall be completed expeditiously. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

3. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

## **ARTICLE 5.8**

### ***Provisional Measures***

1. In highly unusual and critical circumstances where delay would cause injury which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious injury. The duration of such a provisional measure shall not exceed 120 days, during which period the pertinent requirements of Articles 5.5, 5.6, and 5.7 shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 5.6 (1). Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 5.7 (1) does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 1 as if the provisional measure had never applied.

2. In determining whether such highly unusual and critical circumstances exist, a Party shall have regard to the rate of increase of imports of an originating good of the other Party, both in absolute and relative terms, and the overall level of the Party's imports of the good from the other Party as a share of total imports of the good, as a result of the reduction or elimination of a duty on the good pursuant to this Agreement.

## **ARTICLE 5.9**

### ***Notification and Consultation***

1. A Party shall promptly notify the other Party, in writing, on:
  - (a) initiating an investigation under Article 5.7;
  - (b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty on the good pursuant to this Agreement;
  - (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
  - (d) taking a decision to progressively liberalise a safeguard measure previously applied.
  
2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 5.7 immediately as it is available.
  
3. In making a notification pursuant to Paragraph 1, the Party applying or extending a safeguard measure shall also provide evidence of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement, a precise description of the good involved, the details of the proposed measure including as appropriate the grounds for not selecting the measure described in Article 5.5 (a), the date of introduction, duration, and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall provide additional information as the other Party may consider necessary.

4. 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 3, exchanging views on the measure and reaching an agreement on compensation as set forth in Article 5.10 (1).

5. Where a Party applies a provisional measure referred to in Article 5.8, on request of the other Party, consultations shall be initiated immediately after such application.

6. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

## **ARTICLE 5.10**

### ***Compensation***

1. A Party extending a safeguard measure for an overall period beyond two years 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 extension of the measure beyond the aforementioned two years. Such consultations shall begin within 30 days of the decision to extend the measure and, in accordance with Article 5.9 (4), shall take place prior to the extension.

2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party extending the safeguard measure.

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.

## **ARTICLE 5.11**

### ***Special Agricultural Safeguard Measures***

1. A Party may, in exceptional circumstances, apply a special safeguard measure to a limited number of specified sensitive agricultural goods as indicated by the letters SSG in its Tariff Schedule set out in Annex 1.

2. The Parties shall endeavour to apply special safeguard measures in a manner that is consistent with their commitments under this Agreement to liberalise and promote the expansion of trade in these goods between the Parties.
3. A Party may impose a special safeguard measure on a good only during the period set out in Annex 3 for that good.
4. Such a special safeguard measure may be applied to imports of an agricultural good listed in Annex 3 if the volume of imports of that originating good of the other Party entering the customs territory of the Party during any given calendar year exceeds the specified volume trigger level for that year. The applicable trigger levels are set out in Annex 3.
5. If the conditions in Paragraph 4 are met, a Party may increase the rate of customs duty applicable to the good for the remainder of that calendar year through the application of customs duty on such good at the current MFN applied rate or the base rate, whichever is lower.
6. Supplies of the good in question which were *en route* on the basis of a contract settled before the additional customs duty is imposed under the terms of this Article shall be exempted from any such additional customs duty, provided that they may be counted in the volume of imports of the good in question during the following year for the purposes of triggering the provisions of Paragraph 4 in that year.
7. A Party shall apply any special safeguard measure in a transparent manner. A Party shall ensure that the current volume of imports is published in a manner which is readily accessible to traders and the other Party. A Party applying a special safeguard measure shall give notice in writing, including relevant data, to the other Party as far in advance as may be practicable and in any event within 10 working days of the implementation of such action. A Party which decides not to apply a special safeguard measure where the specified trigger volume has been or is about to be met, shall notify the other Party promptly of its decision.
8. Upon request of a Party, the Parties shall consult promptly and cooperate in exchanging information, as appropriate, with respect to the conditions for applying a special safeguard measure.

9. A Party may not apply a special safeguard measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the *WTO Agreement on Safeguards*, or any other relevant provisions in the *WTO Agreement*, or to a measure set forth in Articles 5.5 to 5.10, nor may a Party continue to maintain a special safeguard measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the *WTO Agreement on Safeguards*, or any other relevant provisions in the *WTO Agreement*, or to any measure set forth in Articles 5.5 to 5.10.

10. No later than three years following the entry into force of this Agreement, the Parties shall review the operation of this Article, including the appropriateness of the list of products set out in Annex 3 and the trigger levels, including the growth factors set out in Annex 3. The review shall take into account relevant international, regional and bilateral trade developments.

11. In the event that a Party enters into an agreement or an arrangement with a non-Party following the entry into force of this Agreement that does not provide for special safeguard measures on a good or goods covered in the relevant section of Annex 3 of this Agreement, and where the non-Party is a substantial supplier of the good or goods, the Parties shall, by mutual consent, enter into consultations on the scope for that good or those goods to be withdrawn from Annex 3.



## **CHAPTER 6: SANITARY AND PHYTOSANITARY MEASURES**

### **ARTICLE 6.1**

#### ***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 organisations;
- (b) facilitate trade in all products between the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the territory of the Parties;
- (c) provide a means to strengthen cooperation and consultation between the Parties on bilateral sanitary and phytosanitary matters and on food standards, including through the development of implementing arrangements on equivalence and other agreed matters of interest to the Parties; and
- (d) strengthen collaboration between the Parties in relevant international bodies implementing agreements or developing international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

### **ARTICLE 6.2**

#### ***Scope***

1. This Chapter shall apply to all sanitary or phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties, in particular involving agricultural and food products.
2. This Chapter shall apply to food standards which are SPS measures and Chapter 7 shall apply to food standards which are not SPS measures. Notwithstanding the above, Articles 6.5 to 6.10 of this Chapter shall apply to all food standards.

## **ARTICLE 6.3**

### ***Definitions***

For the purposes of this Chapter:

- (a) “appropriate level of sanitary or phytosanitary protection” shall have the same meaning as in Annex A, paragraph 5 of the SPS Agreement;
- (b) “relevant international organisations” include the Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE), and the relevant international and regional organisations operating within the framework of the International Plant Protection Convention (IPPC);
- (c) “sanitary or phytosanitary measure” (SPS measure) shall have the same meaning as in Annex A, paragraph 1 of the SPS Agreement;
- (d) “urgent problem of health protection” means a situation where there is a clearly identified risk of serious health effects on human, animal or plant life or health arising from the importation of a product or products into the customs territory of a Party.

## **ARTICLE 6.4**

### ***International Obligations***

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. Nothing in this Chapter shall prevent a Party from adopting, implementing or maintaining measures necessary to achieve its appropriate level of protection for human, animal or plant life or health consistent with its rights and obligations under the SPS Agreement.

## **ARTICLE 6.5**

### ***Competent Authorities and Contact Points***

1. Recognising the importance of close and effective working relationships between the Parties in giving effect to the objectives of this Chapter, the Parties shall promote communication to enhance present and future relationships between their competent authorities.
2. The competent authorities for matters within the scope of this Chapter as at the date of entry into force of this Agreement are:

- (a) in the case of New Zealand, the Ministry of Agriculture and Forestry and the New Zealand Food Safety Authority; and
- (b) in the case of Thailand, the Ministry of Agriculture and Cooperatives.

3. The competent authorities shall designate contact points for communication on all matters arising under this Chapter. Each Party shall notify the other promptly of any changes to the competent authorities or contact points. As at the date of entry into force of this Agreement, the contact point for Thailand shall be the National Bureau of Agricultural Commodity and Food Standards; and for New Zealand, the contact points shall be the New Zealand Food Safety Authority and Biosecurity New Zealand.

4. Each Party shall provide notice to the contact points of the other Party of new or proposed changes to its SPS measures and food standards, as far in advance as practicable before the changes come into effect, where these are likely to affect, directly or indirectly, trade between the Parties.

## **ARTICLE 6.6**

### ***Urgent Problems of Health Protection***

A Party may, in response to an urgent problem of health protection which arises or threatens to arise, take measures necessary for the protection of human, animal or plant life or health. In such circumstances, the Party shall provide notice to the contact points of the other Party of such changes to its SPS measures and food standards within 1 day of the changes coming into effect, where these are likely to affect, directly or indirectly, trade between the Parties. The Parties shall consult expeditiously regarding the situation with a view to minimising disruption to trade. The Parties shall take due account of any information provided through such consultations.

## **ARTICLE 6.7**

### ***Situations of Non-Compliance***

The Parties shall cooperate where there is a notification of non-compliance of imported consignments for products subject to SPS measures or food standard requirements, drawing on the guidelines of relevant international organisations where available. In particular, where such non-compliance arises, the importing Party shall notify as soon as possible the exporting Party of the consignment details. Unless specifically required by its laws, regulations or policies, the importing Party shall avoid suspending trade based on one shipment, but in the first instance shall contact the exporting Party to ascertain how the problem has occurred. The Parties shall consult on what remedial action might be taken by the exporting Party to ensure that further shipments are not affected.

## **ARTICLE 6.8**

### ***Joint SPS Committee***

The Parties shall establish a Joint SPS Committee consisting of representatives of the Parties. The Joint SPS Committee shall consider any matters relating to the implementation of this Chapter, and shall:

- (a) establish technical working groups, as required;
- (b) meet in person within one year of the entry into force of this Agreement and at least annually thereafter or as mutually agreed by the Parties. It may meet via teleconference, video conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence;
- (c) initiate, develop and review implementing arrangements on technical matters including harmonisation, equivalence, control, inspection and approval procedures which further elaborate the provisions of this Chapter in order to facilitate trade between the Parties, particularly in agricultural and food products; and
- (d) review and assess progress of each Party's priority market access interests, and, where agreed as necessary, amend implementing arrangements.

## **ARTICLE 6.9**

### ***Technical Working Groups***

Technical working groups may consist of expert-level representatives of the Parties as agreed, and shall identify, address and attempt to resolve technical and scientific issues arising from this Chapter. In cases where these issues are not able to be resolved at the level of the established technical working group, they shall be reported to the Joint SPS Committee in order to reach a mutually acceptable resolution with the least disruption to trade.

## **ARTICLE 6.10**

### ***Consultations***

1. In the event that a Party considers that an SPS measure or food standard affecting trade between it and the other Party warrants consultations, it may, through the contact point, request that consultations be held. The other Party shall respond promptly to any request for consultations.

2. The consultations shall be held within 21 days of the request, unless the Parties determine otherwise, and may be conducted via teleconference, video conference, or through any other means, as mutually determined by the Parties.

3. The purpose of such consultations is to share information and increase mutual understanding, with a view to resolving any concerns about the specific SPS measure or food standard that is the subject of the consultations, consistent with the rights and obligations of the Parties under the WTO Agreement.

## **ARTICLE 6.11**

### ***Other Cooperation***

The Parties shall explore opportunities for further cooperation, collaboration, and information exchange on SPS matters including technical assistance at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter.

## **ARTICLE 6.12**

### ***Confidentiality***

Information exchanged under this Chapter may include non-public information exempt from public disclosure under the respective laws and regulations of the Parties. Information that is not appropriate for public dissemination shall be identified by the relevant Party and is only to be shared according to the procedures and policies of the Parties as permitted by their respective laws. Neither Party shall disclose such information without the consent of the owner of that information.

## **ARTICLE 6.13**

### ***Dispute Settlement***

1. Matters arising under this Chapter that cannot be settled through consultations under Article 6.10 of this Chapter may be forwarded by either Party for consideration by the CEP Joint Commission.

2. Without prejudice to the rights of the Parties under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Chapter 17 on Dispute Settlement shall not apply to the provisions of this Chapter.

## CHAPTER 7: TECHNICAL BARRIERS TO TRADE

### ARTICLE 7.1

#### *Definitions*

All general terms concerning standards and conformity assessment procedures used in this Agreement shall have the meaning given in the definitions contained in the International Organisation for Standardisation / International Electrotechnical Commission Guide 2 (1996), which cover goods, processes and services. This Chapter deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. In addition, the following terms and definitions shall apply for the purposes of this Chapter:

- (a) “conformity assessment procedure” means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled;
- (b) “equivalence” means the state wherein mandatory requirements applied in the exporting Party, though different from the mandatory requirements applied in the importing Party, meet the legitimate objective of the mandatory requirements applied in the importing Party;
- (c) “Implementing Arrangements” are subsidiary documents that set out the details relating to the implementation of the Annexes to this Chapter;
- (d) “mandatory requirements” means all mandatory standards and technical regulations in the laws or regulations of a Party;
- (e) “standard” means a document approved by a recognised body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method;
- (f) “technical regulation” means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

## **ARTICLE 7.2**

### ***Objectives***

The objectives of this Chapter are:

- (a) to facilitate trade and investment between the Parties through collaborative efforts which minimise the impact of technical regulations and/or assessments of manufacturers or manufacturing processes on the goods traded between the Parties, in the most appropriate or cost-effective manner;
- (b) to complement bilateral agreements and arrangements between the Parties relating to technical regulations; and
- (c) to build on the mutual recognition arrangements developed by international and regional organisations including APEC.

## **ARTICLE 7.3**

### ***Scope and Obligations***

1. This Chapter applies to standards, technical regulations and conformity assessment procedures that may, directly or indirectly, affect the sale of goods between the Parties other than those that:

- (a) relate to government procurement; and
- (b) are sanitary or phytosanitary measures as defined in Annex A, paragraph 1 of the SPS Agreement.

2. This Chapter shall apply to food standards which are not SPS measures. Notwithstanding this, Articles 6.5 to 6.10 of Chapter 6 of this Agreement shall apply to food standards which are not SPS measures.

3. The Parties affirm with respect to each other their existing rights and obligations relating to technical regulations under the TBT Agreement.

4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations and the conditions set out in the TBT Agreement:

- (a) technical regulations necessary to ensure its national security requirements; and
- (b) technical regulations necessary for the protection of human health or safety, animal or plant life or health, or the environment, or for the prevention of deceptive practices.

5. Each Party shall retain all authority under its legislation to take appropriate and timely measures for goods which pose an immediate risk to health, safety or the environment.

6. The Parties affirm their intention to adopt and to apply, with such modifications as may be necessary, the principles set out in the *APEC Information Notes on Good Regulatory Practice in Technical Regulation* with respect to conformity assessment and approval procedures in meeting their international obligations under the TBT Agreement.

#### **ARTICLE 7.4**

##### ***Origin***

This Chapter applies to all goods traded between the Parties, regardless of the origin of those goods, unless otherwise specified by any technical regulations of a Party.

#### **ARTICLE 7.5**

##### ***Harmonisation and Equivalence***

1. The Parties shall, where appropriate, endeavour to work towards harmonisation of their respective technical regulations, taking into account relevant international standards, recommendations and guidelines, in accordance with their international rights and obligations.

2. 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 it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

3. 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 to its own.—

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



## ARTICLE 7.6

### ***Conformity Assessment Procedures***

1. The Parties shall, recognising the existence of differences in the structure, organisation and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.
2. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures.
3. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of the other Party, provided that it is satisfied that the procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.
4. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult, as appropriate, on such matters as the technical competence of the conformity assessment bodies involved.
5. A Party shall, on the request of the other Party, explain its reasons where it does not accept the results of a conformity assessment procedure conducted in the territory of the other Party.
6. A Party shall, on the request of the other Party, take such reasonable measures as may be available to it to facilitate access in its territory for conducting conformity assessment procedures.
7. A Party shall give appropriate consideration to a request by the other Party to negotiate Annexes to this Chapter and Implementing Arrangements for the recognition of the results of that other Party's conformity assessment procedures in agreed sectors.
8. The Parties shall utilise to the maximum extent possible existing mutual recognition arrangements in relation to the acceptance of conformity assessment procedures.
9. The Parties shall give appropriate consideration, where possible, to participation in any future mutual recognition arrangements developed within APEC.

## **ARTICLE 7.7**

### ***Regulatory Cooperation***

1. A Party that exercises the authority referred to in Article 7.3 (5) in relation to a product covered by an Annex shall advise the other Party in a timely manner of the action being taken.
2. The Parties acknowledge that either Party may enter, or have entered into, bilateral agreements with third Parties, and agree to consult on any matters that may arise due to the interaction of those bilateral agreements and arrangements on this Agreement or Implementing Arrangements.

## **ARTICLE 7.8**

### ***Technical Cooperation and Contact Points***

1. Each Party shall establish a contact point with responsibility to implement and monitor the operation of this Chapter and, in particular, to:
  - (a) identify priority sectors for enhanced cooperation;
  - (b) establish work programmes in priority areas;
  - (c) take responsibility for coordinating with relevant persons and organisations in their respective territories their participation in work programmes; and
  - (d) monitor the work programmes.
2. The contact point for each Party shall designate key advisers within each of their regulatory agencies to:
  - (a) respond to inquiries related to their technical regulations, standards and conformity assessment procedures that may affect trade in goods;
  - (b) participate in technical consultations, if so requested by a contact point; and
  - (c) cooperate in agreed work programmes.
3. In designating key advisers, the contact points shall ensure that full telephone, fax, email and other relevant details are provided. The Parties shall notify each other promptly of any amendments to the details of the contact points or key advisers.

4. If as a result of a technical consultation, the Parties consider that a work programme would assist in resolving the concerns that gave rise to the technical consultation, the Parties shall establish a work programme with a view to resolving those concerns.

5. Unless they mutually determine otherwise, the Parties shall hold technical consultations within 30 working days of the request for technical consultations via email, teleconference, video-conference, or through any other means, as mutually determined by the Parties.

6. The contact points shall conduct meetings to promote and monitor the implementation and operation of this Chapter at least once a year, or more frequently on the request of either of the Parties, via teleconference, video-conference or any other means as mutually determined by the Parties.

7. The contact points shall report jointly to the CEP Joint Commission on the implementation and operation of this Chapter.

## **ARTICLE 7.9**

### ***Annexes and Implementing Arrangements***

1. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations, standards and conformity assessment procedures.

2. The Parties may conclude Implementing Arrangements setting out the details relating to the implementation of the Annexes to this Chapter.

## **CHAPTER 8: TRADE IN SERVICES**

### **ARTICLE 8.1**

#### ***Liberalisation of Trade in Services***

1. The Parties agree to conclude an agreement which liberalises trade in services between the Parties and which is consistent with Articles V.1 and V.3 of GATS.
2. For the purposes of Paragraph 1, the Parties shall enter into negotiations on trade in services within three years from the date of entry into force of this Agreement, with the aim of concluding an agreement to liberalise trade in services between the two Parties as soon as possible.
3. If a Party enters into an agreement on trade in services with a non-Party, it shall give due consideration to a request by the other Party for the incorporation in the agreement referred to in Paragraph 2 of treatment no less favourable than that provided under the agreement with a non-Party.
4. Pending the conclusion of the negotiations specified in Paragraph 2, interim measures in respect of the Movement of Natural Persons, consistent with the provisions of the "Annex on Movement of Natural Persons Supplying Services under the Agreement" of GATS, shall be taken as specified in the exchange of letters on temporary entry.
5. Nothing in this Agreement shall affect the rights and obligations of the Parties in respect of trade in services under GATS.

## **CHAPTER 9: INVESTMENT**

### **ARTICLE 9.1**

#### ***Objectives***

The objectives of this Chapter are to:

- (a) encourage and promote the open flow of investment between the Parties;
- (b) ensure transparent rules conducive to increased investment flows between the Parties;
- (c) accord protection and security to investments of the other Party within each Party's territory; and
- (d) enhance cooperation in investment between the Parties in order to improve the efficiency, competitiveness and diversity of investment.

### **ARTICLE 9.2**

#### ***Definitions***

For the purposes of this Chapter:

- (a) "investment" means every kind of asset, owned or controlled, directly or indirectly, by an investor, including but not limited to the following:
  - (i) movable and immovable property and other property rights such as mortgages, liens or pledges;
  - (ii) shares, stocks, bonds and debentures or any other form of participation in a juridical person including government issued bonds;
  - (iii) a claim to money or a claim to performance having economic value;
  - (iv) intellectual property rights, including rights with respect to copyright, patents, trade marks, trade names, industrial designs, trade secrets; know-how; and goodwill;
  - (v) business concessions and any other rights required to conduct economic activity and having economic value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources; and
  - (vi) returns that are invested.

For the purposes of this Chapter, any alteration to the form in which assets are invested or reinvested shall not affect their character as investments, provided that such altered investment is approved by the relevant Party if so required by its laws, regulations or policies;

(b) "covered investment" means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter and which has been admitted by the latter Party in accordance with its laws, regulations and policies;

(c) "direct investment" means a direct investment as defined by the International Monetary Fund under its Balance of Payments Manual, fifth edition (BPM5), as amended;

(d) "investor of a Party" means:

- (i) a juridical person of a Party; or
- (ii) a natural person who is a national or a citizen or permanent resident of a Party;

that has made, is in the process of making or is seeking to make an investment in the territory of the other Party.

Notwithstanding Sub-paragraph (d)(ii), for the purposes of Article 9.5 of this Chapter "investor of a Party" means a natural person who is a national or a citizen of a Party that has made, is in the process of making or is seeking to make an investment in the territory of the other Party;

(e) "juridical person" means any legal entity duly incorporated, constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or otherwise, including any corporation, company, association, trust, partnership, joint venture or sole proprietorship;

(f) "freely useable currency" means a freely useable currency as determined by the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* and amendments thereafter, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;

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

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

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

(h) “permanent resident” means a natural person whose residence in a Party is not limited as to time under its law;

(i) “return” means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income.

### **ARTICLE 9.3**

#### ***Scope of Application***

1. This Chapter applies to measures adopted or maintained by a Party relating to direct investments of investors of the other Party and investors of the other Party, and to the promotion and protection of such investments and investors. Subject to Article 9.5 of this Chapter, such measures shall not include measures by that Party affecting trade in services.

2. This Chapter shall not apply to disputes arising before entry into force of this Agreement.

3. This Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments.

4. This Chapter shall not apply to laws, regulations or policies governing the procurement by governmental 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.

5. This Chapter shall not prevent an investor of one Party taking advantage of the provisions of any law, regulation or policy of the other Party which are more favourable than the provisions of this Chapter.

6. The application of this Chapter shall be subject to the provisions of Chapters 14, 15 and 18.

## **ARTICLE 9.4**

### ***Areas of Cooperation***

1. The Parties shall strengthen and develop cooperation efforts in investment including through:
  - (a) research and development;
  - (b) networking through information technology;
  - (c) human resource development;
  - (d) information exchange; and
  - (e) capacity building, including for small and medium enterprises.
  
2. The Parties shall foster the development of cooperation in key industries, including in biotechnology, software, electronic manufacturing and agro-processing.

## **ARTICLE 9.5**

### ***Scheduling of Commitments***

1. Each Party shall set out in a schedule the specific commitments in non-service sectors it undertakes under this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:
  - (a) terms, limitations and conditions on market access;
  - (b) conditions and qualifications on national treatment;
  - (c) undertakings relating to additional commitments;
  - (d) where appropriate, the time frame for implementation of such commitments; and
  - (e) the date of entry into force of such commitments.
  
2. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.



## **ARTICLE 9.6**

### ***National Treatment in respect of the Establishment and Acquisition of Investments***

In the sectors inscribed in Annex 4, and/or subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party, in relation to the establishment and acquisition of investments in its territory, treatment that is no less favourable than that which it accords in like circumstances to its own investors with respect to their investments.

## **ARTICLE 9.7**

### ***National Treatment in respect of Covered Investments and Investors***

1. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments, unless otherwise specified in Annex 4.

2. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the management, conduct, operation, and sale or other disposition of investments, unless otherwise specified in Annex 4.

## **ARTICLE 9.8**

### ***Most Favoured Nation Treatment with respect to the Promotion and Protection of Investments***

1. For the purposes of the promotion and protection of investments, with the exception of Article 9.16, each Party shall accord to:

- (a) investors of the other Party, treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party; and
- (b) all covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party.

2. Each Party shall accord to investors and investments of investors of the other Party treatment no less favourable than it accords, in like circumstances, to investors and investments of investors of any non-Party, with respect to measures for the promotion and protection of investments adopted or maintained by a Party relating to the requirements (if any) that need to be satisfied for investors and investments to receive the benefits of an agreement relating to investments.

## **ARTICLE 9.9**

### ***Denial of Benefits***

1. Subject to Paragraph 2 of this Article, a Party may, under its applicable laws and/or regulations, deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such Party and to investments of such an investor where the Party establishes that the juridical person is owned or controlled by persons of a non-Party.

2. For the purposes of promotion and protection of investment and subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such Party and to investments of such an investor where the Party establishes that the juridical person is owned or controlled by persons of a non-Party and has no substantive business operations in the territory of the other Party.

## **ARTICLE 9.10**

### ***Promotion and Protection of Investments***

1. Each Party shall accord appropriate protection to:
  - (a) covered investments which, if so required, have been specifically approved in writing by the competent authorities concerned of the other Party as being entitled to the benefits of an agreement relating to investments; and
  - (b) investors of the other Party, but only in respect of such investors' management, conduct, operation and sale or other disposition of the covered investment related to Sub-paragraph (a).
  
2. This Article shall not apply to a natural person who is a permanent resident but not a national of a Party where the investment provisions of an agreement between the other Party and the country of which the person is a national have already been invoked in respect of the same matter.

3. A juridical person of a Party shall not be treated as an investor of the other Party, but any investments in that juridical person by investors of that other Party shall be protected by this Article.

## **ARTICLE 9.11**

### ***Expropriation***

1. Neither Party shall nationalise, expropriate or subject to measures equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) the covered investments of investors of the other Party unless the following conditions are complied with:

- (a) the expropriation is for a public purpose related to the internal needs of that Party;
- (b) the expropriation is under due process of law;
- (c) the expropriation is non-discriminatory; and
- (d) the expropriation is accompanied by the payment of prompt, adequate and effective compensation.

2. The compensation referred to in Sub-paragraph 1(d) of this Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation becomes public knowledge. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account, where appropriate, the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.

3. The compensation shall be paid without undue delay, shall include interest at a commercially reasonable rate and be freely transferable between the territories of the Parties in a freely useable currency.

## **ARTICLE 9.12**

### ***Compensation for Losses***

When a Party adopts any measures relating to losses in respect of covered investments in its territory by persons of any other country owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar events, the treatment accorded to investors of the other Party as regards restitution, indemnification, compensation or other settlement shall be no less favourable than that which the first Party accords to persons of any non-Party.

## ARTICLE 9.13

### *Payments and Transfers*

1. Subject to Article 15.5, each Party shall, on a non-discriminatory basis, permit all funds of that investor related to an investment in its territory to be transferred freely and without undue delay in a freely useable currency into and out of its territory.<sup>1</sup> Such funds include the following:

- (a) the initial capital plus any additional capital used to maintain or expand the investment;
- (b) returns;
- (c) proceeds from the sale or partial sale or liquidation of the investment;
- (d) repayments of a claim to money;
- (e) payment for the losses referred to in Article 9.12; and
- (f) earnings and other remuneration of personnel engaged from abroad in connection with that investment.

2. Unless otherwise agreed by the investor and the Party concerned, transfers shall be made at the market exchange rate prevailing on the date of transfer.

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

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) ensuring the satisfaction of judgments, orders or awards in adjudicatory proceedings; or
- (c) criminal matters including but not limited to money laundering, and the recovery of proceeds from crime.

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<sup>1</sup> This includes funds of an investor of the other Party that are to be used to establish or acquire an investment in the territory of a Party where such a transfer would be required so as not to nullify or impair a commitment of a Party covered by this Chapter.

## **ARTICLE 9.14**

### ***Subrogation***

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance against non-commercial risks or other form of indemnity it has granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency of a Party 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 authorised 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 9.15**

### ***Access to Competent Judicial or Administrative Bodies***

Each Party shall within its territory accord to investors of the other Party treatment no less favorable than the treatment, which it accords in like circumstances, to its own investors with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.

## **ARTICLE 9.16**

### ***Settlement of Disputes between a Party and an Investor of the other Party***

1. In case of a dispute with respect to a covered investment between a Party and an investor of the other Party, consultations shall take place between the parties concerned with a view to solving the case amicably.

2. If these consultations do not result in a solution within three months from the date of request for settlement, the parties concerned may agree to submit the dispute, for settlement to:

- (a) the competent courts of the Party in the territory of which the investment has been made; or
- (b) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), provided that the other Party does not withhold its consent; or

- (c) the International Centre for Settlement of Investment Disputes in case both Contracting Parties are Contracting States to the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, opened for signature at Washington DC on March 18, 1965, provided that the other Party does not withhold its consent.
3. Once an action referred to in Paragraph 2 of this Article has been taken, neither Party shall pursue the dispute through diplomatic channels unless:
- (a) the relevant dispute settlement body has decided that it has no jurisdiction in relation to the dispute in question; or
  - (b) the other Party has failed to abide by or comply with any judgment, award, order or other determination made by the relevant dispute settlement body.
4. In any proceeding involving a dispute relating to a covered investment, a Party shall not assert, at any stage of proceedings referred to in Sub-paragraph 2 (b) or (c), that the investor concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.
5. An arbitral tribunal established under this Article shall reach its decision on the basis of national laws and regulations of the Party which is a party to the dispute, the provisions of the present Agreement, as well as applicable rules of international law.
6. All arbitral awards shall be final and binding on the parties to the dispute and shall be enforced in accordance with the laws of the Party to the dispute.
7. All sums received or payable as a result of a settlement shall be freely transferable in a freely usable currency.
8. This Article shall not be construed to allow an investor of a Party to pursue a claim against the other Party in relation to any decision that any foreign investment authority of that Party makes in relation to, or conditions that any foreign investment authority of that Party may have placed on, the establishment, acquisition or expansion of an investment by that investor, or in relation to the enforcement of any such conditions.

## **ARTICLE 9.17**

### ***Modification of Commitments***

By giving three months' written notification to the other Party, a Party may modify its commitments under Article 9.5. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary adjustment required to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in schedules of specific commitments prior to such negotiations. If agreement is not reached, the matter may be referred to arbitration in accordance with Chapter 17.

## **ARTICLE 9.18**

### ***Review of Commitments***

If, after this Agreement enters into force, a Party further liberalises any of its measures applying to investors or investments, it shall give due consideration to a request by the other Party for the incorporation in this Agreement of such unilateral liberalisation.

## **CHAPTER 10: ELECTRONIC COMMERCE**

### **ARTICLE 10.1**

#### ***Objectives and Definitions***

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of avoiding barriers to its use and development, and the applicability of relevant WTO rules.
2. The objective of this Chapter is to promote electronic commerce between the Parties.
3. For the purposes of this Chapter:
  - (a) “electronic version” means a document in an electronic format prescribed by a Party, including a document sent by facsimile transmission;
  - (b) “trade administration documents” means paper forms issued or controlled by the Government of a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

### **ARTICLE 10.2**

#### ***Customs Duties***

Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between Thailand and New Zealand.

### **ARTICLE 10.3**

#### ***Domestic Regulatory Frameworks***

1. Each Party shall maintain domestic legal frameworks governing electronic transactions based on the *UNCITRAL Model Law on Electronic Commerce* 1996.
2. Each Party shall:
  - (a) minimise the regulatory burden on electronic commerce; and
  - (b) ensure that regulatory frameworks support industry-led development of electronic commerce.



## **ARTICLE 10.4**

### ***Online Consumer Protection***

Each Party shall, to the extent possible and in a manner considered appropriate by each Party, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under their respective laws, regulations and policies.

## **ARTICLE 10.5**

### ***Online Personal Data Protection***

1. Notwithstanding the differences in existing systems for personal data protection in the territories of the Parties, each Party shall take such measures as it considers appropriate and necessary to protect the personal data of users of electronic commerce.

2. In the development of data protection standards, each Party shall, to the extent possible, take into account international standards and the criteria of relevant international organisations.

## **ARTICLE 10.6**

### ***Paperless Trading***

1. Each Party shall accept the electronic format of trade administration documents as the legal equivalent of paper documents except where:

- (a) there is a domestic or international legal requirement to the contrary; or
- (b) doing so would reduce the effectiveness of the trade administration process.

2. The Parties shall cooperate bilaterally and in international fora to enhance acceptance of electronic versions of trade administration documents.

## **ARTICLE 10.7**

### ***Cooperation on Electronic Commerce***

1. The Parties shall encourage cooperation in research and training activities that would enhance the development of electronic commerce, including by sharing best practices on electronic commerce development.

2. The Parties shall encourage cooperative activities to promote electronic commerce, including those that would improve the effectiveness and efficiency of electronic commerce.

## **ARTICLE 10.8**

### ***Non-Application of Dispute Settlement Provisions***

Except for Article 10.2, Chapter 17 shall not apply to the provisions of this Chapter.

## **CHAPTER 11: COMPETITION POLICY**

### **ARTICLE 11.1**

#### ***Objectives and Definitions***

1. The aim of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of:
  - (a) fair competition;
  - (b) the APEC principles of non-discrimination, comprehensiveness, transparency and accountability as contained in the 1999 APEC Economic Leaders Declaration (the APEC Principles); and
  - (c) the curtailment of anti-competitive practices.
2. For the purposes of this Chapter, “anti-competitive practices” means business conduct or transactions that adversely affect competition, such as:
  - (a) anti-competitive horizontal arrangements between competitors;
  - (b) misuse of market power, including predatory pricing;
  - (c) anti-competitive vertical arrangements; and
  - (d) anti-competitive mergers and acquisitions.

### **ARTICLE 11.2**

#### ***Competition Principles***

The Parties recognise the strategic importance of creating and maintaining open and competitive markets which promote economic efficiency and consumer welfare, and reaffirm their desire to promote competition and to implement the APEC Principles having regard to the different economic circumstances of the Parties. This is with a view to protecting the competitive process rather than competitors and minimising distortions to competition.

### **ARTICLE 11.3**

#### ***Promotion of Competition***

Each Party shall promote competition by:

- (a) addressing anti-competitive practices in its territory and by adopting and enforcing such means or measures as it deems appropriate and effective to counter such practices;

- (b) using its best efforts to reduce transaction costs and compliance costs for business;
- (c) applying the APEC Principles to all forms of commercial activity in a manner that does not discriminate between or among economic entities in like circumstances; and
- (d) promoting effective coordination on competition policy and law between the Parties.

#### **ARTICLE 11.4**

##### ***Application of Competition Laws***

1. The Parties shall ensure that all commercial activities are subject to such generic or relevant sectoral competition laws as may be in force in their respective territories.
2. Any measures taken by a Party to proscribe anti-competitive practices, and the enforcement actions taken pursuant to those measures, shall be consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

#### **ARTICLE 11.5**

##### ***Exemptions***

Either Party may exempt specific measures or sectors from the application of their general competition law provided that such exemptions are transparent and undertaken on the grounds of public policy or public interest.

#### **ARTICLE 11.6**

##### ***Cooperation and Exchange of Information***

The Parties recognise the importance of cooperation and coordination in achieving effective enforcement outcomes under their respective competition laws. The Parties also recognise the importance of confidentiality in respect of these arrangements. Accordingly, the Parties shall cooperate, where appropriate, on issues of competition law enforcement, including through the exchange of information, notification, consultation, and coordination of enforcement matters that are cross-border in nature.

## **ARTICLE 11.7**

### ***Technical Cooperation***

1. The Parties agree that it is in their common interest for their competition authorities to work together on technical cooperation activities related to the implementation of competition law and policy.
2. The technical cooperation activities between their competition authorities are subject to reasonably available resources and may include:
  - (a) exchange of personnel for training purposes;
  - (b) participation of personnel as lecturers or consultants at training courses of competition law and policy co-organised and co-sponsored by the competition authorities of the Parties; and
  - (c) any other form of technical assistance as mutually decided by the competition authorities of the Parties.

## **ARTICLE 11.8**

### ***Consultation***

1. At the request of either Party, the Parties shall consult on particular anti-competitive practices and other competition issues adversely affecting trade or investment between the Parties, consistent with the aims of this Chapter.
2. Any information or documents exchanged between the Parties in relation to any mutual consultation conducted pursuant to the provisions of this Chapter shall be kept confidential. Neither Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party that provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party before such disclosure is made.

## **ARTICLE 11.9**

### ***Transparency***

The Parties shall publish or otherwise make publicly available their laws promoting fair competition and their laws addressing anti-competitive practices.

## **ARTICLE 11.10**

### ***General***

1. Chapter 17 shall not apply to the provisions of this Chapter.
2. In the event of any inconsistency or conflict between any provision in this Chapter and any provision contained in any other Chapter of this Agreement, the latter shall prevail to the extent of such inconsistency or conflict.

## **CHAPTER 12: INTELLECTUAL PROPERTY**

### **ARTICLE 12.1**

#### ***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, rights in plant varieties, and rights in undisclosed information, as defined and described in the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*.

### **ARTICLE 12.2**

#### ***Observance of International Obligations***

The Parties shall fully respect the provisions of the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)* and any other multilateral agreement relating to intellectual property to which both are party.

### **ARTICLE 12.3**

#### ***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 are committed to the maintenance of intellectual property rights regimes that promote innovation through protecting the rights of intellectual property right holders and the legitimate interests of the community in accordance with the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*.

## **ARTICLE 12.4**

### ***Cooperation on Enforcement***

The Parties shall cooperate and collaborate with a view to ensuring effective protection of intellectual property rights and the prevention of trade in goods and services infringing intellectual property rights, subject to their respective laws, rules, regulations and government policies. Such cooperation may include:

- (a) the notification of contact points for the enforcement of intellectual property rights;
- (b) the exchange, between relevant agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;
- (c) policy dialogue on matters relating to the enforcement of intellectual property rights, including such dialogue in multilateral and regional fora; and
- (d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually determined between the Parties.

## **ARTICLE 12.5**

### ***Other Cooperation***

1. Recognising that intellectual property rights can facilitate international trade through the dissemination of ideas, technology and creative works, the Parties, through their respective agencies responsible for intellectual property, shall:

- (a) exchange information relating to developments in intellectual property policy;
- (b) encourage and facilitate the development of contacts and cooperation between their respective agencies, educational institutions, organisations and other entities concerning the protection of intellectual property rights with a view to improving and strengthening intellectual property administrative systems in areas such as patents and trade marks;
- (c) facilitate the sharing of information and cooperate on appropriate initiatives to promote awareness of intellectual property rights and systems; and



- (d) cooperate to enhance understanding in new areas of intellectual property such as traditional knowledge, genetic resources, and folklore,<sup>2</sup> recognising that each Party may wish, consistent with its obligations under the WTO Agreement, to establish appropriate measures to protect traditional knowledge, genetic resources and folklore.

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<sup>2</sup> As referred to in the World Intellectual Property Organisation Inter-Governmental Committee on Traditional Knowledge, Genetic Resources and Folklore.

## **CHAPTER 13: GOVERNMENT PROCUREMENT**

### **ARTICLE 13.1**

#### ***Objectives***

1. The Parties recognise that government procurement laws, regulations, policies, practices, and procedures can be an impediment to trade in goods and services between the Parties inconsistent with the objectives of this Agreement.
2. The Parties shall work progressively to reduce and eliminate barriers to the supply of goods and services between the Parties arising from government procurement laws, regulations, policies, practices and procedures, and to increase transparency in government procurement.

### **ARTICLE 13.2**

#### ***Procurement Principles***

The Parties reaffirm their desire to promote and implement, to the extent possible:

- (a) the APEC Non-Binding Principles on Government Procurement relating to transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination; and
- (b) the APEC Transparency Standard for Government Procurement.<sup>3</sup>

### **ARTICLE 13.3**

#### ***Exchange of Information on Government Procurement***

1. The Parties shall exchange information in a timely manner on their respective government procurement policies, practices and procedures, including on any proposed reforms or alterations to their existing government procurement regimes.

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<sup>3</sup> As endorsed by the APEC Ministers Responsible for Trade in June 2004, and APEC Leaders in November 2004.

2. The Parties designate the following bodies to act as contact points for the exchange of information:

Thailand: Ministry of Finance, Comptroller General's Department, Public Procurement Management Office; and

New Zealand: Ministry of Economic Development, Regulatory and Competition Policy Branch.

3. The designated bodies shall also act as contact points for the exchange of information with suppliers of the other Party interested in procurement opportunities in particular sectors.

#### **ARTICLE 13.4**

##### ***Working Group***

1. The Parties shall establish a Working Group consisting of government representatives of the Parties having responsibility for government procurement.

2. The Working Group shall meet or correspond regularly to discuss all relevant issues relating to government procurement, including the review of this Chapter.

#### **ARTICLE 13.5**

##### ***Future Negotiations***

The Working Group shall report to the CEP Joint Commission within 12 months of the entry into force of this Agreement with recommendations on the commencement of bilateral negotiations to expand the application of this Chapter.

#### **ARTICLE 13.6**

##### ***Dispute Settlement***

Chapter 17 shall not apply to this Chapter unless specifically authorised by the further negotiations mandated by Article 13.5.

## **CHAPTER 14: TRANSPARENT ADMINISTRATION OF LAWS AND REGULATIONS**

### **ARTICLE 14.1**

#### ***Publication***

1. Each Party shall ensure that its laws, regulations, administrative rulings, procedures and policies and any amendment thereto of general application pertaining to trade in goods, services and investment are promptly published or otherwise made available in such a manner as to enable interested persons from the other Party to become acquainted with them.
2. 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.
3. When possible, a Party shall publish in advance any measure referred to in Paragraph 1 that it proposes to adopt and shall provide, where applicable, interested persons with a reasonable opportunity to comment on such proposed measures.
4. Each Party shall endeavour promptly to provide information and to respond to questions from the other Party pertaining to any measure referred to in Paragraph 1.

### **ARTICLE 14.2**

#### ***Administrative Proceedings***

Each Party shall ensure in its administrative proceedings applying to any measure referred to in Article 14.1 that:

- (a) wherever possible, persons of the other Party who 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 the issues in question;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions before 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 14.3**

### ***Review and Appeal***

A Party shall ensure that, where warranted, appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for prudential reasons, regarding matters covered by this Chapter, that:

- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
- (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
- (c) provide parties to any proceeding with a decision based on the evidence and submissions of record, or, where required by domestic law, the record compiled by the administrative authority; and
- (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

## CHAPTER 15: GENERAL EXCEPTIONS

### ARTICLE 15.1

#### *General Exceptions for Trade in Goods*

For the purposes of Chapters 2 to 7, 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 the same conditions prevail, or a disguised restriction on international trade in goods, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of GATT 1994, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) necessary to protect national treasures or specific sites of historical or archaeological value, or to support creative arts of national value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;

- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

## **ARTICLE 15.2**

### ***General Exceptions for Investment and Trade in Services***<sup>4</sup>

For the purposes of Chapters 8 and 9, 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 services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order;<sup>5</sup>
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;

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<sup>4</sup> This Article shall come into effect with respect to trade in services on entry into force of any commitments to liberalise trade in services under this Agreement.

<sup>5</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (d) relating to the products of prison labour;
- (e) necessary to protect national treasures or specific sites of historical or archaeological value, or to support creative arts of national value;
- (f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (g) inconsistent with the requirement for national treatment provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>6</sup> imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

### **ARTICLE 15.3**

#### ***Security Exceptions***

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to fissionable materials or the materials from which they are derived;

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<sup>6</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (g) of this Article and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.



- (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
  - (iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (iv) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### **ARTICLE 15.4**

##### ***Disclosure of Information***

Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

#### **ARTICLE 15.5**

##### ***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 the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, adopt restrictive import measures;
  - (b) in the case of services, 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;<sup>7</sup>
  - (c) in the case of investments, adopt or maintain restrictions with regard to payments relating to the transfer of proceeds from investment.

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<sup>7</sup> This Sub-paragraph shall come into effect with respect to trade in services on entry into force of any commitments to liberalise trade in services under this Agreement.

2. Restrictions adopted or maintained under Sub-paragraph (b) or (c) of Paragraph 1 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 a national treatment 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 promptly notified to the other Party.

5. The Party adopting or maintaining any restrictions under Paragraph 1 shall commence consultations with the other Party as soon as possible from the date of notification in order to review the measures adopted or maintained by it.

## ARTICLE 15.6

### ***Measures for Macro-Economic and Financial Stability***

Notwithstanding any other provision 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 or the stability of the macroeconomy.<sup>8</sup> Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

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<sup>8</sup> These include measures to prevent currency manipulation or to ensure the stability of the exchange rate or the financial system. Such measures shall be no more than necessary to meet the objectives of ensuring the integrity and stability of the financial system or the stability of the macroeconomy.

## ARTICLE 15.7

### *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 where:
  - (a) corresponding rights or obligations are also granted or imposed under the WTO Agreement; or
  - (b) under Article 9.11.
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 9.16 (1) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 9.16 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 Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, done at Wellington on 22 October 1998, 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.<sup>9</sup>

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<sup>9</sup> 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.

## **ARTICLE 15.8**

### ***Treaty of Waitangi***

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in 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 17 shall otherwise apply to this Article. An arbitral tribunal appointed under Article 17.4 may be requested by Thailand to determine only whether any measure (referred to in Paragraph 1) is inconsistent with its rights under this Agreement.

## **CHAPTER 16: INSTITUTIONAL PROVISIONS**

### **ARTICLE 16.1**

#### ***Establishment of the Closer Economic Partnership Joint Commission***

A Closer Economic Partnership Joint Commission (CEP Joint Commission) shall be established to ensure the proper implementation of this Agreement and to review periodically the economic relationship and partnership between the Parties. The CEP Joint Commission may meet at the level of Ministers or senior officials, as mutually determined by the Parties. Each Party shall be responsible for the composition of its delegation.

### **ARTICLE 16.2**

#### ***Mandate of the Closer Economic Partnership Joint Commission***

1. The CEP Joint Commission shall:
  - (a) review the general functioning of this Agreement;
  - (b) review and consider specific matters related to the operation and implementation of this Agreement;
  - (c) consider any proposal to amend this Agreement;
  - (d) establish, as required, permanent and ad hoc subsidiary bodies and refer matters to them for advice and consider matters raised by all subsidiary bodies created under this Agreement;
  - (e) seek advice from non-governmental persons or groups on any matter falling within its responsibilities where this would help the CEP Joint Commission make an informed decision;
  - (f) explore measures for the further expansion of trade and investment between the Parties and identify appropriate areas of commercial, industrial and technical cooperation between relevant enterprises and organisations of the Parties; and
  - (g) take such other action as the Parties may mutually determine.
2. The CEP Joint Commission shall develop procedures governing the extent to which representatives from the private sector may participate in its deliberations.

### **ARTICLE 16.3**

#### ***Meetings of the Closer Economic Partnership Joint Commission***

1. The CEP Joint Commission shall meet within one year of the date of entry into force of this Agreement and then each year, or as otherwise mutually determined by the Parties.
2. Sessions of the CEP Joint Commission shall be held alternately in the territory of each Party.

### **ARTICLE 16.4**

#### ***Contact Point***

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement and for which a contact point has not been designated under Chapter 6, Chapter 7, Chapter 12 or Chapter 13 of this Agreement.
2. Upon request, the contact point shall identify the office responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

### **ARTICLE 16.5**

#### ***General Reviews***

1. The Parties shall undertake a general review at ministerial level of the Agreement, including matters relating to liberalisation, cooperation and trade facilitation, within five years of its entry into force and at least every five years thereafter.
2. The conduct of general reviews shall normally coincide with regular meetings of the CEP Joint commission.

## **CHAPTER 17: CONSULTATIONS AND DISPUTE SETTLEMENT**

### **ARTICLE 17.1**

#### **Scope**

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance and settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement.
2. Subject to Paragraph 4, and notwithstanding Paragraph 1, nothing in this Chapter shall affect the rights of the Parties to have recourse to a dispute settlement procedure available under any other international agreement to which they are parties.
3. If a Party decides to have recourse to a dispute settlement procedure under another international agreement, it shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.
4. Once a dispute settlement procedure has been initiated between the Parties with respect to a particular dispute under this Chapter or under any other international agreement to which the Parties are party, that procedure shall be used to the exclusion of any other procedure for that particular dispute. This paragraph does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.
5. Paragraph 4 shall not apply where the Parties expressly agree to have recourse to dispute settlement procedures under this Chapter and another international agreement.
6. For the purposes of this Article, a dispute settlement procedure under the WTO Agreement shall be regarded as initiated by a Party's request for a panel under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

### **ARTICLE 17.2**

#### **Consultations**

1. A Party shall accord adequate opportunity for consultations requested by the other Party with respect to any matter affecting the interpretation, implementation or application of this Agreement.

2. If a request for consultations is made, the Party to which the request is made shall reply to the request within 7 days after the date of its receipt and shall enter into consultations within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations on any matter raised in accordance with this Article.

### **ARTICLE 17.3**

#### ***Good Offices, Conciliation and Mediation***

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.

2. Good offices, conciliation or mediation may continue while procedures of an arbitral tribunal established in accordance with this Chapter are in progress.

### **ARTICLE 17.4**

#### ***Request to Establish an Arbitral Tribunal***

1. If the consultations referred to in Article 17.2 fail to settle a dispute within 60 days of the date after receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to establish an arbitral tribunal.

2. The request to establish an arbitral tribunal shall identify:

- (a) the specific measures at issue;
- (b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
- (c) the factual basis for the complaint.



## ARTICLE 17.5

### *Establishment of an Arbitral Tribunal*

1. An arbitral tribunal shall consist of three members. Each Party shall appoint a member within 30 days after the receipt of the request under Article 17.4. The two members appointed shall, within 30 days after the appointment of the second of them, designate by common agreement the third member.
2. The Parties shall, within 7 days after the date of the designation of the third member, approve or disapprove the appointment of that member, who shall, if approved, chair the tribunal.
3. If within the periods specified in Paragraphs 1 and 2 of this Article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Party, shall be invited to make the necessary appointments.
4. An arbitral tribunal shall be regarded as established on the day on which the appointment of the third member of the tribunal has been approved or agreed by the Parties in accordance with this Article.
5. If a member appointed under this Article resigns or becomes unable to act, a successor member shall be appointed in the same manner as prescribed for the appointment of the member being replaced and the successor shall have all the powers and duties of the member being replaced.
6. A person appointed as a member of an arbitral tribunal:
  - (a) shall have expertise or experience in law, international trade, other matters covered by this Agreement or the settlement of disputes arising under international trade agreements;
  - (b) shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence; and
  - (c) shall be independent of, and not be affiliated with or take instructions from, either Party.
7. A person appointed as chair of an arbitral tribunal shall not be a national of, nor have his or her usual place of residence in the territory of, nor be employed by, either Party nor have dealt with the dispute in any capacity.

## **ARTICLE 17.6**

### ***Functions of Arbitral Tribunals***

1. An arbitral tribunal established under Article 17.4:
  - (a) shall consult the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory settlement of the dispute;
  - (b) shall make its award in accordance with this Agreement and applicable rules of international law;
  - (c) shall set out, in its award, its findings of law and fact, together with its reasons; and
  - (d) may, in addition to its findings of law and fact, include in its award options for the Parties to consider in implementing the award.
2. The award of an arbitral tribunal shall be final and binding on the Parties.
3. An arbitral tribunal shall attempt to make its decision, including its award, by consensus but may also make such decisions by majority vote.

## **ARTICLE 17.7**

### ***Proceedings of Arbitral Tribunals***

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by an arbitral tribunal to appear before it.
2. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall not disclose information submitted by the other Party to an arbitral tribunal which the latter Party has designated as confidential.
3. The Parties shall transmit to the tribunal written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:
  - (a) for the Party which requested the establishment of the arbitral tribunal, within 21 days after the date of the establishment of that tribunal; and
  - (b) for the other Party, within 21 days after the date of the transmission of the written submission of the Party which requested the establishment of the arbitral tribunal.

4. At its first substantive meeting with the Parties, an arbitral tribunal shall ask the Party which requested the establishment of the tribunal to present its submission. At the same meeting, the arbitral tribunal shall ask the other Party to present its submission.

5. Formal rebuttals shall be made at the second substantive meeting of an arbitral tribunal. The Party which did not request the establishment of the tribunal shall have the right to present its submission first. Before the meeting, the Parties shall submit written rebuttals to the tribunal.

6. An arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting or in writing. The responding Party shall respond fully and without undue delay.

7. The Parties shall make available to an arbitral tribunal a written version of their oral statements.

8. The submissions, rebuttals and statements referred to in Paragraphs 4 to 6 shall be made in the presence of the Parties. Each Party's written submissions, including any comments on the draft award made in accordance with Article 17.9 (2), written versions of oral statements and responses to questions put by an arbitral tribunal, shall be made available to the other Party.

9. An arbitral tribunal shall have no *ex parte* communications concerning a dispute it is considering.

10. At the request of a Party, or on its own initiative, an arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. Where information or technical advice is sought by an arbitral tribunal, the Parties may set terms and conditions on the provision of confidential information and technical advice. 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. This Paragraph does not apply to information and technical advice provided by any person or body as part of the submissions referred to in Paragraphs 4 to 6.

11. An arbitral tribunal shall, in consultation with the Parties, regulate its own procedures governing the rights of Parties to be heard and its own deliberations where such procedures are not otherwise set out in this Chapter.

## **ARTICLE 17.8**

### ***Suspension or Termination of Proceedings***

1. Where the Parties agree, an arbitral tribunal may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitral tribunal has been suspended for more than 12 months, the tribunal's authority for considering the dispute shall lapse unless the Parties agree otherwise.
2. The Parties may agree at any time to terminate the proceedings of an arbitral tribunal established under this Agreement by jointly notifying the chair of that arbitral tribunal.
3. An arbitral tribunal may, at any stage of the proceedings prior to release of its final award, propose that the Parties seek to settle the dispute amicably.

## **ARTICLE 17.9**

### ***Awards of Arbitral Tribunals***

1. Unless the Parties otherwise agree, an arbitral tribunal shall base its award on the submissions and arguments of the Parties and on any information it has obtained in accordance with Article 17.7 (10).
2. An arbitral tribunal shall prepare a draft award and accord adequate opportunity for the Parties to review this draft. The Parties may submit to the tribunal written comments on the draft award within 14 days after the date of its receipt. The tribunal shall consider any comments received from the Parties in finalising its award.
3. An arbitral tribunal shall release to the Parties its final award on a dispute within 120 days after the date of its establishment. If the tribunal considers it cannot release its final award within 120 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 award.
4. The final award of an arbitral tribunal shall become a public document within 10 days of its release to the Parties.

## **ARTICLE 17.10**

### ***Implementation***

1. The Parties shall promptly comply with an award of an arbitral tribunal.

2. A Party shall notify the other Party in writing of any action it proposes to take to implement an award of an arbitral tribunal within 30 days after the date of the receipt of the final award by the Parties.

3. If a Party considers that prompt compliance with an award of an arbitral tribunal is impracticable, or if a Party which requested the establishment of an arbitral tribunal considers that an action proposed or subsequently taken by the other Party does not implement the award of the tribunal, the Parties shall immediately enter into consultations with a view to developing a mutually acceptable resolution, such as compensation or any alternative arrangement and agreeing on a reasonable period to implement any such resolution. Compensation and any alternative arrangement are temporary measures, neither of which is preferred to full implementation of the original award.

## **ARTICLE 17.11**

### ***Compensation and Suspension of Benefits***

1. If:

- (a) the Party which requested the establishment of an arbitral tribunal has not received any notice from the other Party under Article 17.10 (2); or
- (b) the Parties are unable to agree on a mutually acceptable resolution under Article 17.10 (3) within 30 days of the commencement of consultations under Article 17.10 (3); or
- (c) the Parties have agreed on a mutually acceptable resolution under Article 17.10 (3) and the Party which requested the establishment of the arbitral tribunal considers that the other Party has failed to observe the terms of such agreement,

the Party which requested the establishment of an arbitral tribunal may at any time thereafter provide written notice to the other Party that it intends to suspend the application of benefits of equivalent effect to the non-conformity found by the tribunal. The notice shall specify the level of benefits that the Party proposes to suspend. The Party which requested the establishment of an arbitral tribunal may begin suspending benefits 30 days after the date on which it provides notice to the other Party.

2. In considering what benefits to suspend under this Article:

- (a) the Party which requested the establishment of an arbitral tribunal shall first seek to suspend the application of benefits in the same sector or sectors as affected by the matter that the tribunal has found to be inconsistent with this Agreement;

- (b) the Party which requested the establishment of an arbitral tribunal may suspend the application of benefits in other sectors if it considers that it is not practicable or effective to suspend the application of benefits in the same sector; and
- (c) the Party which requested the establishment of the arbitral tribunal shall aim to ensure that the level of suspension of benefits is of equivalent effect to the non-conformity found by the tribunal.

Any suspension of benefits under this Article shall be temporary and shall only be applied until such time as the Party that must implement an arbitral tribunal's award has done so, or until a mutually satisfactory solution is reached.

3. If the Party complained against considers that:

- (a) the level of benefits that the other Party has proposed to suspend under Paragraph 2 is excessive; or
- (b) it has eliminated the non-conformity found by the arbitral tribunal,

it may, within 30 days after the other Party provides notice under Paragraph 1, request that the tribunal be reconvened to consider this matter. The Party complained against shall deliver its request in writing to the other Party. The tribunal shall reconvene within 30 days after delivery of the request to the other Party and shall present its determination to the Parties within 90 days after it reconvenes. If the tribunal determines that the level of benefits proposed to be or actually suspended is excessive, it shall determine the level of benefits it considers to be of equivalent effect to the non-conformity found by the tribunal, adjusted to reflect any loss sustained by a Party as a result of excessive suspension.

4. The tribunal's award under Paragraph 3 shall be final and binding on the Parties.

## **ARTICLE 17.12**

### ***Expenses***

Each Party shall bear the costs of its appointed member and its own expenses. The costs of the chair of an arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

## **CHAPTER 18: FINAL PROVISIONS**

### **ARTICLE 18.1**

#### ***Headings***

The headings of the Chapters and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

### **ARTICLE 18.2**

#### ***Annexes and Footnotes***

The Annexes and Footnotes to this Agreement shall form an integral part of this Agreement.

### **ARTICLE 18.3**

#### ***Amendments***

This Agreement may be amended by agreement in writing by the Parties, and such amendments shall enter into force on such date or dates as may be agreed between them.

### **ARTICLE 18.4**

#### ***Application***

Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities.

### **ARTICLE 18.5**

#### ***Association with the Agreement***

This Agreement is open to accession or association, on terms to be agreed between the Parties, by any member of the WTO, or by any other State or separate customs territory.

## **ARTICLE 18.6**

### ***Consultations on Inconsistencies with other Agreements***

If either Party considers there is any inconsistency between this Agreement and any other Agreement to which both Parties are parties, the Parties shall consult each other with a view to finding a mutually satisfactory solution.

## **ARTICLE 18.7**

### ***Preferences under other Agreements***

Except for Articles 9.8 (2) and 15.5, nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or any future customs union, free trade area, free trade arrangement, common market, monetary union or similar international agreement or other similar forms of bilateral or regional cooperation to which either of the Parties is or may become party; or as preventing the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement or market.<sup>10</sup>

## **ARTICLE 18.8**

### ***Termination of 1981 Trade Agreement***

The *Trade Agreement Between the Government of the Kingdom of Thailand and the Government of New Zealand*, done at Wellington on 10 February 1981, shall terminate on the day of entry into force of this Agreement.

## **ARTICLE 18.9**

### ***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.

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<sup>10</sup> Nothing in this Article shall prejudice any future negotiations between the Parties on Trade in Services or the Review of Commitments in Chapter 2 or Chapter 9 of this Agreement.



## ARTICLE 18.10

### *Entry into Force, Duration and Termination*

1. This Agreement shall enter into force on the date of the latter notification by either Party to the other Party that it has completed its internal procedures for entry into force of this Agreement.
2. 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 twelve months after the date of the notice of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_,  
two-thousand and five, in the English language.