CHAPTER 1

INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1: Establishment of the PACER Plus Free Trade Area

Consistent with Article XXIV of GATT 1994 and Article V of GATS, the Parties hereby establish a free trade area in accordance with the provisions of this Agreement.

Article 2: General Definitions

For the purposes of this Agreement, unless the context otherwise requires:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit, and that establishes a norm of conduct, but shall not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice;

Agreement means the *Pacific Agreement on Closer Economic Relations Plus* (PACER Plus);

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

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

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

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

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

Anti-Dumping Agreement means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, in Annex 1A to the WTO Agreement;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than the amount specified in a Party's laws, regulations or procedures governing temporary admission, or so marked, torn,

perforated or otherwise treated that they are unsuitable for sale or use except as commercial samples;

Customs Administration means the official agencies responsible for implementing the provisions of the Chapter on Rules of Origin and Verification Procedures and the Chapter on Customs Procedures;

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of a like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

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

(c) fee or any charge commensurate with the cost of services rendered;

days means calendar days, including weekends and holidays;

developed country Party means any Party that is not a Developing Country Party or a Least Developed Country Party;

developing country Party means a Party that designates itself as a developing country, and includes Least Developed Country Parties unless otherwise specified;

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

enterprise of a Party means an enterprise which is either:

(a) organised or constituted under the law of that Party, or a branch located in the territory of another Party, which is engaged in substantive business operations in the territory of that Party or any other Party; or

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

(i) natural persons of that Party; or

(ii) an enterprise of that Party identified under subparagraph (a);

Forum Island Countries means the Pacific Island Countries which are Parties to this Agreement and are Members of the Pacific Islands Forum, referred to in this Agreement collectively as the Forum Island Countries and individually as a Forum Island Country;

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

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

Harmonized System or **HS** means the Harmonized Commodity Description and Coding System established by the *International Convention on the Harmonized Description and Coding System* signed at Brussels on 14 June 1983, as amended;

IMF Articles of Agreement means the *Articles of Agreement of the International Monetary Fund*;

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

Joint Committee means the PACER Plus Joint Committee established pursuant to Article 1 of Chapter 12 (Institutional Provisions);

Least Developed Country Party means any Party that is on the United Nations List of Least Developed Countries;

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

natural person of a Party means a natural person that possesses the nationality or citizenship of, or right of permanent residence, in that Party in accordance with its laws and regulations;[1]

Negotiating Parties means Australia, the Cook Islands, the Federated States of Micronesia, the Independent and Sovereign Republic of Kiribati, the Republic of Nauru, New Zealand, Niue, the Republic of Palau, the Republic of the Marshall Islands, the Independent State of Samoa, Solomon Islands, the Kingdom of Tonga, Tuvalu, the Republic of Vanuatu, referred to in this Agreement collectively as the Negotiating Parties or individually as a Negotiating Party;

Pacific Islands Forum means the Pacific Islands Forum, as referred to in the *Agreement Establishing the Pacific Islands Forum Secretariat*;

[1] For the purposes of this Agreement, for the Cook Islands, nationality means a person belonging to the part of the Polynesian race indigenous to the Cook Islands and includes any person descended from a Cook Islander as recognised by Cook Islands law, or a permanent resident of the Cook Islands pursuant to Cook Islands law; and for Niue, a natural person is a Niuean national or permanent resident as recognised by Niuean law.

Party means any State, separate customs territory or self-governing entity for which this Agreement is in force;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise, or advertise a good or a service, or are essentially intended to advertise a good or a service, and are supplied free of charge;

regional trade agreement means an agreement for closer integration between the economies of the constituent parties composed alternatively or jointly of:

(a) a customs union or free-trade area or agreement for the formation of such a union or area consistent with Article XXIV of GATT 1994, the Understanding on the Interpretation of Article XXIV of GATT 1994 and, in the case of a customs union or free-trade area or agreement for the formation of such a union or area exclusively involving developing countries, the GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Decision of 28 November 1979, L/4903);

(b) an economic integration agreement liberalising trade in services consistent with Article V of GATS;

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

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

WTO means the World Trade Organization;

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

WTO Member means a state, separate customs territory or self-governing entity that is Party to the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

CHAPTER 2

TRADE IN GOODS

Article 1: Objectives

The objectives of this Chapter are, with respect to measures affecting goods traded between the Parties, to avoid unnecessary barriers to trade, facilitate and liberalise trade and thereby promote integration between the economies of the Parties.

Article 2: Scope

This Chapter shall apply to all goods traded between the Parties.

Article 3: Commitments on Tariffs

1. Each Party shall not apply to originating goods:

   (a) ordinary customs duties that are not specified, or are in excess of levels set forth, in Part I (Commitments on Ordinary Customs Duties) of its Schedule at Annex 2-A; or

   (b) duties or charges on or in connection with their importation (other than ordinary customs duties applied in conformity with subparagraph (a) or internal taxes or other charges, anti-dumping or countervailing duties or fees or other charges for services rendered applied in conformity with Articles 6, 7 and 10 respectively) that are not specified in, or are not in conformity with, Part II (Commitments on Other Duties or Charges) of its Schedule at Annex 2-A.

2. With respect to the levels of all duties and charges referred to in paragraph 1, any advantage granted to any good of any country or territory, other than in respect of a preference in force under a regional trade agreement on the date referred to in Article 8.1 of Chapter 15 (Final Provisions), shall be accorded immediately and unconditionally to all like goods originating in the territories of all other Parties except where:

   (a) (i) the advantage granted is accorded pursuant to Decision 36 of Annex F of the WTO Hong Kong Ministerial Declaration of 2005 on Measures in Favour of Least-Developed Countries and related WTO Decisions on duty-free and quota-free access for products originating in Least-Developed Countries; and

   (ii) the treatment of such goods pursuant to the Decisions referred to in subparagraph (a)(i) is in conformity with those Decisions;

(b) the advantage granted is in respect of a preference in force pursuant to a regional trade agreement exclusively involving Pacific Island countries and territories;[1] or

(c) the advantage granted is in respect of a preference in force pursuant to a regional trade agreement[2] exclusively involving developing countries to which at least one Party is a party and other parties are non-Parties, where:

(i) each such non-Party accounts for not more than 1 per cent of world merchandise exports; and

(ii) all non-Parties that are party to the regional trade agreement together account for not more than 4 per cent of world merchandise exports;

measured as of the date of entry into force of the regional trade agreement for each such Party and as of the date of accession of a new party to it.[3]

3. Paragraph 2 shall not require such advantage to be accorded in respect of a preference in force or implemented after the date referred to in Article 8.1 of Chapter 15 (Final Provisions) by the Federated States of Micronesia, the Republic of the Marshall Islands or Palau which is extended to the United States of America in respect of:

(a) a regional trade agreement with another non-Party pursuant to the most-favoured-nation clause in such countries' respective Compacts of Free Association or successor agreements, where the regional trade agreement concerned fulfils the requirements of paragraph 2(b) or 2(c); or

(b) a regional trade agreement established under such countries' respective Compacts of Free Association or successor agreements.

4. Nothing in this Agreement shall preclude the Parties from negotiating and entering into arrangements collectively for the acceleration or improvement of commitments in their Schedules. Such agreements shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final Provisions). Accelerated or improved commitments thereunder shall be implemented by those Parties and be extended to all Parties.

5. Two or more Parties may consult with a view to reaching an agreement on the acceleration or improvement of commitments in their Schedules. Such agreements shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final

[1] For the purposes of subparagraph (b): Pacific Island territories comprise American Samoa, French Polynesia, Guam, New Caledonia, Northern Mariana Islands, Pitcairn Islands, Tokelau, Wallis and Futuna, provided they are separate customs territories; and Pacific Island countries are Forum Island Countries and former Pacific Island territories.

[2] Where a party to a regional trade agreement under subparagraph (c) is a customs union, all parties to it shall be treated as separate countries or customs territories for the purposes of determining whether the criteria under subparagraph (c) are met.

[3] Exemptions from the obligation under paragraph 2 in respect of participation in a regional trade agreement under subparagraph (c) shall be administered in accordance with Annex 2-B.

Provisions). Accelerated or improved commitments thereunder shall be implemented by those Parties and be extended to all Parties.

6. A Party may, at any time, unilaterally accelerate the implementation of commitments in its Schedule. A Party intending to do so shall inform the other Parties in accordance with Article 14.2(a). Such accelerated implementation of commitments shall be extended to all Parties.

Modification or Withdrawal of Concessions

7. If a developing country Party faces unforeseen difficulties in implementing its tariff commitments:[4]

(a) That Party may, with the agreement of all other interested Parties, modify or withdraw a concession contained in its Schedule of Commitments on Tariffs in Annex 2-A.

(b) In order to seek to reach such agreement, the relevant Party shall engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concessions shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other interested Parties than that provided for in this Agreement prior to such negotiations.

(c) A negotiated outcome may include compensatory adjustments with respect to other goods or, where the available scope for compensatory adjustments on goods is insufficient, with respect to services or investment**.**

(d) The mutually agreed outcome of the negotiations, including any compensatory adjustments, shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final Provisions).

8. If a mutually agreed outcome under paragraph 7 cannot be reached within 60 days of the request being made, the Party proposing to modify or withdraw the concession or any interested Party may refer the matter to the Joint Committee. The Joint Committee shall, within 30 days of the referral of the matter to it, determine the level of compensation to be provided to interested Parties and then authorise the developing country Party to modify or withdraw its tariff commitments. The provision of compensation and the modification of tariff preferences by the developing country Party shall be effected at the same time.

9. The compensatory adjustments shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final Provisions).

[4] For greater certainty, nothing in this Chapter shall be construed as preventing a Party from having recourse to paragraphs 7, 8 and 9 after the final reduction of a duty under its Schedule of Commitments on Tariffs.

Article 4: Goods Re-entered after Repair and Alteration

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its own territory.

2. Notwithstanding paragraph 1, a Party may, in accordance with its relevant legislation, impose a customs duty on the cost of repair or alteration of the good. The duty imposed shall not exceed the customs duty which would be payable if the good was imported for the first time.

3. No Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

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

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

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

5. Nothing in paragraph 3 shall be construed to prevent a Party from specifying in its laws or regulations a limit on the duration of temporary entry beyond which the goods concerned become dutiable.

Article 5: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

1. With the exception of tobacco products, the Parties shall grant customs duty-free entry to commercial samples of negligible value and to printed advertising materials imported from the territory of another Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or

(b) such advertising materials are imported in packets that each contain no more than one copy of each material and that neither such materials nor packets form part of a larger consignment.

2. Nothing in this Article shall be construed to prevent a Party from requiring under its laws and regulations that a bond be paid on the temporary import of commercial samples that are not of negligible value and that such bond be released upon re-exportation of the commercial samples within a time limit provided for under its legislation.

Article 6: Internal Taxation and Regulation

In respect of internal taxes, other internal charges and laws, regulations and requirements affecting matters within the scope of Article III of GATT 1994, each Party shall accord to the goods of other Parties most-favoured-nation treatment and national treatment in accordance with Articles I and III, including the Interpretative Notes to Article III, of GATT 1994. To these ends, Articles I and III, including the Interpretative Notes to Article III, of GATT 1994 are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 7: Trade Remedies

Anti-Dumping and Countervailing Measures

1. Nothing in this Agreement shall affect the rights and obligations of WTO Members under Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.

2. When applying anti-dumping or countervailing measures, non-WTO Members shall comply with the provisions of Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.

3. Special regard shall be given by developed country Parties to the special situation of developing country Parties when considering and before making a decision on the application of anti-dumping measures under this Article. A developed country Party considering the application of an anti-dumping duty to a product of a developing country Party shall explore possibilities of constructive remedies before applying such anti-dumping duty where it would affect the essential interests of the developing country Party concerned.

4. Upon entry into force of this Agreement, each Party with legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points:

(a) its laws, regulations and administrative procedures relating to anti-dumping or countervailing measures (including *inter alia* procedures governing the initiation and conduct of investigations by its competent authorities);

(b) which of its authorities are competent to initiate and conduct its anti-dumping and countervailing investigations; and

(c) its domestic procedures governing the initiation and conduct of such investigations.

5. Upon entry into force of this Agreement, each Party without legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points that it does not have anti-dumping or countervailing legislation. Thereafter, where any such Party adopts legislation containing provisions on anti-dumping or countervailing measures, upon the adoption of such legislation it shall notify to the other

Parties through Contact Points the information required to be notified in paragraphs 4(a), 4(b) and 4(c). This information shall be notified prior to such Party initiating an anti-dumping or countervailing investigation with respect to another Party or Parties.

6. Thereafter, each Party with legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points:

(a) any changes in its anti-dumping and countervailing duty laws and regulations and in the administration of such laws and regulations; and

(b) where anti-dumping or countervailing action concerning the products of any Party has been initiated:

(i) any preliminary or final anti-dumping or countervailing determinations;

(ii) any acceptance of undertakings;

(iii) any terminations of duties or investigations; and

(iv) the explanations, findings and conclusions reached in respect of any of the above actions taken.

7. All information notifiable by a Party under paragraphs 5 and 6 shall be published in accordance with Article 13.

Global Safeguard Measures

8. Nothing in this Agreement shall affect the rights and obligations of WTO Members under Article XIX of GATT 1994 and the Agreement on Safeguards.

9. When applying a global safeguards measure, non-WTO Members shall comply with the provisions of Article XIX of GATT 1994 and the Agreement on Safeguards.

10. Upon entry into force of this Agreement, each Party with legislation containing provisions on global safeguards shall notify to the other Parties through Contact Points:

(a) its laws, regulations and administrative procedures relating to safeguards measures (including *inter alia* procedures governing the initiation and conduct of investigations by its competent authorities); and

(b) its competent authorities;

and shall thereafter notify to the other Parties through Contact Points any modifications made to information notified under subparagraphs (a) and (b).

11. Upon entry into force of this Agreement, each Party without legislation containing provisions on global safeguards shall notify to the other Parties through Contact Points that it does not have global safeguards legislation. Thereafter, when any such Party adopts or

subsequently modifies legislation containing provisions on global safeguards, upon adoption or modification of such legislation it shall promptly notify to the other Parties through Contact Points the information required to be notified under paragraph 10.

12. Thereafter, each Party with legislation containing provisions on global safeguards shall immediately notify the other Parties through Contact Points upon:

(a) initiating any investigatory process relating to serious injury or threat thereof, and the reasons for it;

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

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

13. If a decision has been taken to apply a provisional safeguard measure, a notification shall be made to the other Parties through Contact Points before that measure is applied.

14. Competent authorities shall publish promptly a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

15. All information notifiable by a Party under paragraphs 10 to 13 shall be published in accordance with Article 13.

16. To the extent possible, the developed country Parties shall consider exempting products from the developing country Parties from the application of a safeguard measure under this Article. A Party shall not apply a safeguard measure against a product originating in a developing country that is a WTO Member or a non-WTO Member as long as its share of imports of the product concerned in the importing Party does not exceed three per cent, provided that the developing countries that are a WTO Member or a non-WTO Member with less than three per cent import share collectively account for not more than nine per cent of total imports of the product concerned.

Article 8: Transitional Safeguard Measures

Definitions

1. For the purposes of this Article:

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

(b) transitional safeguard measure means a measure described in paragraphs 2 to 4 (*Imposition of a Transitional Safeguard Measure*);

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

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

(e) transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

Imposition of a Transitional Safeguard Measure

2. A developing country Party may apply a transitional safeguard measure described in paragraph 3, during the transition period only, if as a result of the staged elimination of a customs duty pursuant to this Agreement:

(a) an originating good of one other Party is being imported into the 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 the domestic industry that produces a like or directly competitive good; or

(b) an originating good of two or more Parties, collectively, is being imported into the 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 the domestic industry that produces a like or directly competitive good, provided that the Party applying the transitional safeguard measure demonstrates, with respect to the imports from each such Party against which the transitional safeguard measure is applied, that imports of the originating good from each of those Parties have increased, in absolute terms or relative to domestic production, since the date of entry into force of this Agreement for those Parties.

3. If the conditions in paragraph 2 are met, the Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment:

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

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

(i) (A) in the case of a WTO Member, the most-favoured-nation applied rate of customs duty; or

(B) in the case of a Party that is not a WTO Member, the general non-preferential applied rate of customs duty;

at the time the measure is applied; and

(ii) (A) in the case of a WTO Member, the most-favoured-nation applied rate of customs duty; or

(B) in the case of a Party that is not a WTO Member, the general non-preferential applied rate of customs duty;

in effect on the day immediately preceding the date of entry into force of this Agreement for that Party.

4. No Party shall apply a tariff rate quota or a quantitative restriction as a form of transitional safeguard measure.

Standards for a Transitional Safeguard Measure

5. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

6. That period shall not exceed two years, except that the period may be extended by up to three years, if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in paragraphs 12 and 13, that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

7. No Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

8. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

9. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Schedule of Commitments on Tariffs at Annex 2-A as if that Party had never applied the transitional safeguard measure.

10. The maximum amount of time that transitional safeguard measures can apply cumulatively to the same good is five years.

11. No Party shall apply or maintain at the same time, with respect to the same good, a transitional safeguard measure under this Article and a safeguard measure under Article XIX of GATT 1994 and the Agreement on Safeguards.

Investigation Procedures and Transparency Requirements

12. A Party shall apply a transitional safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2(c) of the

Agreement on Safeguards. To this end, Article 3 and Article 4.2(c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

13. In the investigation described in paragraph 12, the Party shall comply with the requirements of Article 4.2(a) and Article 4.2(b) of the Agreement on Safeguards; to this end, Article 4.2(a) and Article 4.2(b) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

Provisional Measures

14. (a) In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional measure, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good from another Party or Parties have caused or are threatening to cause serious injury to a domestic industry.

(b) The duration of such a provisional measure shall not exceed 200 days, during which time the relevant requirements of this Article (Definitions, Imposition of a Transitional Safeguard Measure, Standards for a Transitional Safeguard Measure, Investigation Procedures and Transparency Requirements, and Notification and Consultation) shall be met. The duration of any provisional measure shall be counted as part of the initial period and any extension as referred to under Imposition of a Transitional Safeguard Measure.

(c) The customs duty imposed as a result of the provisional measure shall be refunded if the subsequent investigation referred to under Investigation Procedures and Transparency Requirements does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

Notification and Consultation

15. A Party shall promptly notify the other Parties through Contact Points, in writing, if it:

(a) initiates a transitional safeguard investigation under this Article;

(b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, as set out in paragraph 2;

(c) takes a decision to apply or extend a transitional safeguard measure;

(d) takes a decision to modify a transitional safeguard measure previously undertaken.

16. A Party shall provide to the other Parties through Contact Points a copy of the public version of the report of its competent authorities that is required under paragraph 12.

17. When a Party makes a notification pursuant to paragraph 15(c) that it is applying or extending a transitional safeguard measure, that Party shall include in that notification:

(a) evidence of serious injury, or threat of serious injury, caused by increased imports of an originating good of another Party or Parties as a result of the staged elimination of a customs duty pursuant to this Agreement;

(b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the Harmonized System, on which the commitments in respect of the duty contained in its Schedule of Commitments on Tariffs at Annex 2-A are based;

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

(d) the date of the transitional safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and

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

18. On request of a Party whose good is subject to a transitional safeguard proceeding under this Chapter, the Party that conducts that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 15 or any public notice or report that the competent investigating authority has issued in connection with the proceeding.

Compensation

19. A Party applying a transitional safeguard measure shall, after consultations with each Party against whose good the transitional safeguard measure is applied, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

20. If the consultations under paragraph 19 do not result in an agreement on trade liberalising compensation within 30 days, any Party against whose good the transitional safeguard measure is applied may seek a determination on the level of compensation under the procedures of Articles 3.8 and 3.9, which shall apply *mutatis mutandis*.

21. The obligation to provide compensation under paragraph 19 or paragraph 20 terminates on the termination of the transitional safeguard measure.

Article 9: Industry Development

Recognising the limited number of industry development opportunities inherent in a regional grouping of countries characterised mostly by low populations, limited arable land

and other natural resources, small isolated economies and high vulnerability to natural disasters; and

Taking into account the high incidence of persistent gaps between Forum Island Countries' respective levels of per capita gross national income and those of the world's developed countries and larger or more advanced developing countries:

1. The Joint Committee may approve a measure known as an Industry Development Measure requested by a Forum Island Country for the purpose of enabling such requesting Party to support:

(a) the establishment of a new industry or a new branch of production in an existing industry;

(b) the substantial transformation of an existing industry;

(c) the substantial expansion of an existing industry supplying a small proportion of the domestic demand; or

(d) an industry destroyed or substantially damaged as a result of hostilities or natural disaster.

2. An Industry Development Measure:

(a) shall consist of:

(i) a delay in the scheduled reductions in the requesting Party's rate of customs duty for one or more specified goods; or

(ii) an increase in its rate of customs duty for one or more specified goods to no more than:

(A) in the case of a WTO Member, the most-favoured-nation applied rate of customs duty; or

(B) in the case of a non-WTO Member, the general non-preferential applied rate of customs duty;

effective at the time of the request;

(b) can be applied:

(i) for an initial period of seven years, which may be extended for a further three years by the Joint Committee; and

(ii) only during the period of the requesting Party's scheduled reductions in a rate of customs duty on the affected product;[5] and

(c) shall be eligible for approval if the tariff lines subject to the requested Industry Development Measure(s) and all Industry Development Measures of a Party in force at the time of such request(s) together account for not more than eight per cent of the total exports of the affected Party to the requesting Party[6] and account for not more than three per cent of tariff lines.

3. Upon conclusion of the relevant period under paragraph 2(b), the requesting Party's customs duties shall revert to levels not exceeding the scheduled rates that would have applied but for the Industry Development Measure.

4. The requesting Party shall compensate affected Parties on terms agreed among the interested Parties or otherwise determined under the procedures of Articles 3.8 to 3.9, which shall apply *mutatis mutandis*. Compensation shall be provided three years after the initial application of the Industry Development Measure. The obligation to provide compensation ceases upon the termination of the Industry Development Measure.

5. Except in the case of a new Industry Development Measure applied for the purposes of Article 9.1(d), if a new Industry Development Measure is applied to the same good:

(a) the total duration of the periods for which the requesting Party was not liable to provide compensation under previous Industry Development Measures on that good shall be counted towards the two years for which the requesting Party is not liable to provide extend compensation under paragraph 4; and

(b) not less than two years shall elapse from the date of termination of the previous Industry Development Measure to the date of initial application of the new Industry Development Measure.

6. A Party shall not simultaneously apply an Industry Development Measure and a Transitional Safeguard Measure under Article 8 to the same good. Nothing in this Article shall be construed to prevent a Party from having recourse to Articles 3.7 to 3.9 after the expiration of an Industry Development Measure.

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[5] Subparagraph 2(b)(ii) shall apply to all Forum Island Countries except Kiribati. Recognising the unique situation of Kiribati in having all base rates in its Schedule at Annex 2-A at a rate of zero per cent, Kiribati shall have recourse to an Industry Development Measure, subject to approval by the Joint Committee in response to a request from Kiribati, in the event of Kiribati adopting a general non-preferential applied rate of customs duty for the good(s) concerned in excess of the base rate. No such Industry Development Measure approved by the Joint Committee shall be applied later than 25 years from the date on which the Agreement entered into force for Kiribati under Article 8 of Chapter 15 (Final Provisions). The remaining provisions of this Article shall apply, *mutatis mutandis*.

[6] The percentage shall be calculated as the average annual percentage share of the exporting Party's exports falling to those lines in the annual value of its total merchandise exports to the requesting Party in the three calendar years that immediately precede the year in which the Industry Development Measure is requested.

Article 10: Fees and Charges Connected with Importation and Exportation

1. Each Party shall ensure that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994 and anti-dumping and countervailing duties applied pursuant to Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures) on or in connection with importation or exportation:

(a) are limited in amount to the approximate cost of services rendered;

(b) do not represent an indirect protection to domestic products or a taxation on imports or exports for fiscal purposes; and

(c) are otherwise in conformity with the WTO Agreement, including *inter alia* Articles I and VIII of GATT 1994.

2. In respect of such measures, Articles I and VIII of GATT 1994 are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 11: Import Licensing

1. In respect of import licensing procedures, the Parties, taking into account the particular trade, development and financial needs of developing country Parties:

(a) recognise the usefulness of automatic import licensing for certain purposes, and shall ensure that such licensing is not used to restrict trade between them and is otherwise in accordance with Articles 1 and 2 of the Agreement on Import Licensing Procedures;

(b) recognise that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of GATT 1994, and shall ensure that import licensing procedures employed for that purpose are not utilised in a manner contrary to the principles and obligations of GATT 1994 and are otherwise in accordance with Articles 1 and 3 of the Agreement on Import Licensing Procedures and other relevant WTO provisions; and

(c) recognise that trade could be impeded by the inappropriate use of import licensing procedures and, with a view to avoiding their inappropriate use, shall ensure that:

(i) import licensing, particularly non-automatic import licensing, is implemented in a transparent and predictable manner;

(ii) non-automatic licensing procedures are no more administratively burdensome than absolutely necessary to administer the relevant measure; and

(iii) administrative procedures and practices used in international trade are transparent, are as simple as possible and are applied and administered fairly and equitably.

2. To these ends, in respect of import licensing procedures, Articles 1 to 3 of the Agreement on Import Licensing Procedures are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. Information related to import licensing procedures under Article 1.4(a) of the Agreement on Import Licensing Procedures shall be published in such a manner as to enable governments and traders to become acquainted with it and be so published no later than the effective date of the requirement concerned. Each Party shall notify the Contact Points of other Parties where such information is found.

4. Information exchanged between the Parties on import licensing procedures shall be otherwise notified, published and kept up-to-date in accordance with Article 14 and be supplied in the format set out at Annex 2-C.

Article 12: Other Non-Tariff Measures

1. Each Party shall not:

(a) adopt or maintain any measure within the purview of Article XI of GATT 1994, including its Interpretative Notes, except in accordance with the WTO Agreement and this Agreement; or

(b) apply to traffic in transit any measure prohibited under, or any allowable measure inconsistently with, Article V of GATT 1994 or other relevant provisions of the WTO Agreement; or

(c) apply any measure prohibited under Article 4.2 of the Agreement on Agriculture or Article 11.1(b) of the Agreement on Safeguards.

2. To these ends, in respect of the aforementioned measures, GATT 1994 (including relevant Interpretative Notes of GATT 1994), the Agreement on Import Licensing Procedures, Articles 4.2 and 12 of the Agreement on Agriculture and Article 11.1(b) of the Agreement on Safeguards are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. Each Party shall not require consular transactions, including related fees, charges, formalities and requirements, in connection with the importation of a good from another Party.

Article 13: Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any Party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.

2. Agreements affecting international trade policy which are in force between the government or a governmental agency of any Party and the government or governmental agency of any other country shall also be published.

3. Paragraphs 1 and 2 shall not require any Party to disclose confidential information 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.

4. No measure of general application taken by any Party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments for those purposes, shall be enforced before such measure has been officially published.

5. Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1.

6. To these ends, Article X of GATT 1994 and other provisions of the WTO Agreement relating to the publication and administration of trade regulations are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

7. In accordance with its domestic laws and regulations, each Party shall, to the extent of its capacity, make available online laws, regulations, decisions and rulings in relation to matters within the purview of paragraphs 1, 2 and 4.

8. Each Party shall thereafter, to the extent of its capacity, ensure that all items of information that are publically available pursuant to paragraphs 1, 2, 4 and 7 are kept up-to-date in accordance with those paragraphs.

Article 14: Information Exchange in Relation to, and Publication of, Specified Measures

1. Upon entry into force of this Agreement, each Party shall provide to the other Parties through Contact Points:

   (a) the existing schedules of non-preferential and preferential applied rates of customs duty that it maintains;

(b) a list of all existing fees and charges that it imposes on or in connection with importation or exportation; and

(c) information on its new or modified import licensing procedures in the form of a completed response to the questionnaire at Annex 2-C.

2. Thereafter, each Party shall ensure that all items of information provided under paragraph 1 are kept up-to-date by transmitting to the other Parties through Contact Points any modifications or additions to them:

(a) in the case of items under paragraphs 1(a) and 1(b), no later than the date on which they take effect;

(b) in the case of information on modified or new import licensing procedures provided through completed responses to the questionnaire at Annex 2-C, to the extent possible 60 days before the modified or new procedure takes effect, but in any case no later than within 60 days of publication.

3. A WTO Member shall be deemed to be in compliance with paragraphs 1(c) and 2(b) upon fulfilment of its obligations under paragraphs 5.1 to 5.3 of the Agreement on Import Licensing Procedures and upon transmitting to the other Parties through Contact Points the relevant notifications made to the WTO.

4. Each Party shall to the extent of its capacity publish the information that it provides to other Parties under paragraphs 1, 2 and 3 online with a view to public availability and ensure that the information available online is kept up-to-date.

5. A Party may fulfil its obligations under paragraphs 1, 2 and 3 by providing to the other Parties through Contact Points the details of such websites where the requisite information is posted and readily accessible to any person.

6. This Article shall not apply to measures covered by the SPS Agreement or the TBT Agreement or to import licensing regimes governing the administration of tariff rate quotas with respect to tariff rate quotas established in the WTO Schedules of Concessions and Commitments on Goods of WTO Members.

Article 15: Contact Points and Technical Discussions

1. Each Party shall provide each other Party with a Contact Point to facilitate the distribution of requests and notifications made in accordance with this Chapter.

2. Each Party shall ensure the information provided under paragraph 1 is kept up-to-date.

3. When a Party considers that any proposed or actual measure of another Party or Parties may materially affect trade in goods between the Parties, that Party may, through Contact Points, request detailed information relating to that measure and, if necessary, request technical discussions with a view to resolving any concerns about the measure. The other

Party or Parties shall respond promptly to such requests for information and technical discussions.

4. Technical discussions held under this Article do not constitute an intention to seek formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement, or any other agreement to which both Parties are party.

Article 16: Meetings on Trade in Goods Matters

1. The Parties shall, through the Joint Committee or a relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.

2. The Parties, through the Joint Committee or a relevant subsidiary body, shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of entry into force of this Agreement.

3. The Parties, through the Joint Committee or a relevant subsidiary body, shall review the operation of Articles 3.2(c) and 3.3 and Annex 2-B two years from the date of initial application of Annex 2-B, and thereafter at ten-year intervals unless otherwise agreed by the Parties, and shall submit a report to the Joint Committee, including any recommendations, within six months of the date of commencement of each review.

Article 17: Amendments to the Harmonized System

1. When a periodic amendment to the Harmonized System is published, the Parties shall prepare technical revisions to Annex 2-A to implement that version of the Harmonized System, and shall do so in accordance with this Article and the relevant procedures for technical revisions to Annex 2-A as adopted by the Joint Committee under Chapter 12 (Institutional Provisions).

2. The Parties shall mutually decide whether any other technical revisions to Annex 2-A are necessary.

3. The Parties shall ensure that technical revisions to Annex 2-A are carried out on a neutral basis and that market access conditions are not impaired by the process or the outcomes of technical revision to the Annex.

4. The Parties, through the Joint Committee or a relevant subsidiary body established by it, shall endorse and promptly publish the technical revisions that are prepared pursuant to paragraphs 1 and 2.

Article 18: Non-Application of Articles 15 and 16 to Matters within the Scope of Other Chapters

Articles 15 and 16 shall not apply to matters within the scope of Chapter 3 (Rules of Origin and Verification Procedures), Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) or Chapter 6 (Technical Regulations, Standards and Conformity Assessment Procedures).

CHAPTER 3

RULES OF ORIGIN AND VERIFICATION PROCEDURES

Section A: Rules of Origin

Article 1: Definitions

For the purposes of this Chapter:

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

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

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;

generally accepted accounting principles means the recognised consensus or substantial authoritative support in 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;

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

indirect material means a good used in the production, testing or inspection of a 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:

(a) fuel and energy;
(b) tools, dies and moulds;
(c) spare parts and materials used in the maintenance of equipment and buildings;
(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
(e) gloves, glasses, footwear, clothing, safety equipment and supplies;
(f) equipment, devices and supplies used for testing or inspecting goods;
(g) catalysts and solvents; and
(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material means any matter or substance that is used in the production of a good;

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

originating material means a material that qualifies as originating under this Chapter;

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

preferential tariff treatment means the rate of customs duties applicable to an originating good of the exporting Party in accordance with Annex 2-A (Schedule of Commitments on Tariffs);

producer means a person who engages in the production of goods or materials;

production means methods of obtaining goods including but not limited to growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, aquaculture, processing or assembling a good; and

product specific rules are the rules set out in Annex 3-B.

Article 2: Originating Goods

For the purposes of this Chapter, a good shall be treated as an originating good if it:

(a) is wholly obtained or produced in a Party as defined in Article 3;

(b) is produced entirely in one or more of the Parties, by one or more producers, exclusively from originating materials, in accordance with this Chapter;

(c) satisfies all applicable requirements of Annex 3-B, as a result of processes performed entirely in the territory of one or more of the Parties by one or more producers; or

(d) otherwise qualifies as an originating good under this Chapter,

and meets all other applicable requirements of this Chapter.

Article 3: Goods Wholly Obtained or Produced

For the purposes of Article 2, the following goods shall be considered as wholly obtained or produced:

(a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in a Party;[1]

(b) live animals born and raised in one or more Parties;

(c) goods obtained from live animals in a Party;

(d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party;

(e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;

(f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law[2], by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;

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

(h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with international law;

(i) goods which are:

  (i) waste and scrap derived from production and or consumption in a Party provided that such goods are fit only for the recovery of raw materials; or

  (ii) used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and

(j) goods produced or obtained in a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

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[1] For the purposes of this Article "in a Party" means the land, territorial sea, Exclusive Economic Zone and Continental Shelf over which a Party exercises sovereign rights or jurisdiction in accordance with international law.

[2] "International law" in sub-paragraphs (f) and (h) refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*.

Article 4: Calculation of Regional Value Content

1. For the purposes of Article 2, if Annex 3-B requires a good to meet a regional value requirement, the formula for calculating the regional value content will be:

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

where:

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

V is the value of the good, as provided in paragraph 2; and

VNM is the value of non-originating materials, including materials of undetermined origin.

2. The value of the good referred to in paragraph 1 shall be, for exported goods, the FOB value of the good.

3. The value of non-originating materials or materials of undetermined origin referred to in paragraph 1 shall be:

(a) for imported materials, the CIF value at the time of importation of the materials; or

(b) for materials acquired within the territory of the Party in which the good is produced the earliest ascertainable price paid or payable for the materials in the territory of the Party.

4. The value of goods under this Chapter will be determined in accordance with the Agreement on Customs Valuation.

5. Each Party shall provide that, for a non-originating material or material of undetermined origin included under paragraph 1, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the Parties' territories to the location of the producer;

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

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

(d) the cost of processing incurred in the territory of one or more of the Parties in the production of the non-originating material; and

(e) the cost of originating materials used or consumed in the production of the non-originating material in the territory of one or more of the Parties.

6. If the cost or expense of a deduction listed in paragraph 5 is unknown or documentary evidence of the amount of the deduction is not available, then no deduction is allowable for that particular cost.

7. 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 good is produced or manufactured.

Article 5: Cumulative Rules of Origin

1. A good is originating if the good is produced in one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 2 and all other applicable requirements in this Chapter.

2. Originating goods or materials of any of the Parties used in the production of a good in another Party shall be considered to originate in the latter Party.

3. Production that occurs in the territory of one or more of the Parties by one or more producers may count as originating content in the origin determination of a good regardless of whether that production was sufficient to confer originating status to the materials themselves.

Article 6: Minimal Operations and Processes

If a claim for origin is based on a regional value content, the operations or processes listed below, when undertaken by themselves or in combination with each other, are considered to be minimal and shall not be taken into account in determining whether or not a good is originating:

(a) operations to ensure preservation of goods in good condition for the purposes of transport or storage;

(b) facilitating shipment or transportation;

(c) packaging or presenting goods for sale;

(d) affixing of marks, labels or other like distinguishing signs on products or their packaging; and

(e) disassembly.

Article 7: *De Minimis*

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3-B will nonetheless be an originating good if:

(a) the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; or alternatively

(b) for a textiles or apparel good provided for in Chapters 50 to 63 of the Harmonized System, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good.

2. The goods under paragraph 1 must meet all other applicable requirements of this Chapter.

3. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

Article 8: Accessories, Spare Parts, Tools and Instructional or other Information Materials

1. For the purposes of determining origin, accessories, spare parts, tools or instructional or other information materials provided with the good shall be considered originating goods and shall be disregarded in determining whether all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification or production process requirements.

2. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials provided with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

3. Paragraphs 1 and 2 shall only apply if:

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

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

4. If accessories, spare parts, tools and instructional or other information materials presented with the good are not customary for the good or are invoiced separately from the good, they shall be treated as separate goods for the purpose of determining origin.

Article 9: Identical and Interchangeable Goods or Materials

The determination of whether identical and interchangeable goods or materials are originating goods shall be made either:

(a) by physical segregation of each of the goods or materials; or

(b) by the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

Article 10: Treatment of Packing Materials and Containers

1. Packing materials and containers in which a good is placed exclusively for transportation and shipment shall not be taken into account in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification or process of production requirements for the good as set out in Annex 3-B.

3. If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

4. If the packaging material and container is not customary for the good, its value shall not be included as originating in a regional value content calculation for the good.

Article 11: Indirect Materials

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

Article 12: Retention of records

1. In accordance with its domestic laws and regulations, each Party shall require, that:

(a) a producer, exporter, or authorised representative of the producer or exporter shall maintain all records relating to the origin of a good for which preferential tariff

treatment is claimed in an importing Party, including the Declaration of Origin relevant to the good, or a copy thereof, for five years from the date of the exportation; and

(b) an importer claiming preferential tariff treatment shall maintain all records relating to the importation of the good, including the Declaration of Origin relevant to the good (completed pursuant to Article 15), or a copy thereof, for five years after the date of importation.

2. The records to be maintained pursuant to this Article include electronic records.

Article 13: Consignment

1. Goods directly transported among the Parties will retain their originating status under Article 2.

2. A good shall retain its originating status under Article 2 if it has been transported through a non-party provided that the good has not undergone subsequent production or any other operation in the territory of a non-party other than:

(a) unloading, reloading, storing, any other operation necessary to preserve the goods in good condition, repacking, relabelling or any other operation necessary to transport the goods to the territory of the importing Party; or

(b) if the goods have been shown in or utilised at an exhibition in a non-party.

Article 14: Goods in Storage

The Customs Administration of the importing Party shall grant preferential tariff treatment for an originating good of the exporting Party which, on the date of entry into force of this Agreement, is:

(a) in the process of being transported from the exporting Party; or

(b) has not been released from Customs control; or

(c) is in storage in a warehouse regulated by the Customs Administration of the importing Party;

provided that the good is destined for home consumption in the importing Party and satisfies all the applicable requirements of this Chapter.

Section B: Origin Procedures

Article 15: Declaration of Origin

1. A claim that goods are eligible for preferential tariff treatment shall be supported by a Declaration of Origin completed by the exporter or producer or an authorised representative of the exporter or producer.

2. The Declaration of Origin shall:

(a) contain the information detailed in Annex 3-A;

(b) be made in respect of one or more goods and may include a variety of goods;

(c) be completed in English;

(d) be in a written format, including electronic format; and

(e) be an original, except that copies may be made for subsequent transactions.

3. The Declaration of Origin may be made on the invoice for the goods or on a separate document, including on a company's letterhead.

4. Neither erasures nor superimposition shall be allowed on the Declaration of Origin. Any alteration shall be made by striking out the erroneous information and making any addition required. Such alteration shall be approved by the exporter or producer making the declaration. To the extent possible, unused spaces on the form shall be crossed out. If the Declaration of Origin is more than one page long, subsequent pages shall be numbered in sequence. For example, a three page document shall be numbered as 1 of 3, 2 of 3 and 3 of 3.

5. A Declaration of Origin shall remain valid for two years after the date on which the Declaration of Origin was signed.

6. Nothing in this Agreement shall prevent a producer or exporter from obtaining the services of a third party to assist them to complete the Declaration of Origin.

Article 16: Submission of Declaration of Origin

Except as otherwise provided in this Chapter, the original Declaration of Origin or a copy shall be submitted to the Customs Administration of the importing Party when requested by that Customs Administration.

Article 17: Circumstances When Declaration Not Required

1. In accordance with its domestic laws and regulations, the importing Party shall not require a Declaration of Origin in order to claim preferential tariff treatment for:

(a) goods for which the customs value does not exceed US$200 FOB or the equivalent amount in the importing Party's currency, or such higher amount as it may establish; or

(b) any good for which a Party has waived the requirement for a Declaration of Origin,

provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of the Declaration of Origin.

2. Notwithstanding Article 15, the importing Party may elect to waive the requirement for a Declaration of Origin or any of the requirements in Section B.

Article 18: Claim for Preferential Tariff Treatment

1. Subject to Article 22, the importing Party shall grant preferential tariff treatment to a good imported into its territory from any other Party, provided that:

(a) the good is an originating good under Article 2;

(b) the consignment criteria outlined in Article 13 have been met; and

(c) the importer claiming preferential tariff treatment has met the Declaration of Origin requirements specified in Article 15.

2. If the origin of the good is not in doubt, the discovery of minor transcription errors or discrepancies in documentation shall not by that sole fact invalidate the Declaration of Origin, if it does in fact correspond to the goods submitted.

3. For multiple goods declared under the same Declaration of Origin, a problem encountered with one of the goods listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining goods listed in the Declaration of Origin.

4. The importing Party shall require that an importer promptly makes a corrected import declaration and pays any owed duties when the importer has reason to believe that the good does not meet the origin requirements.

5. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that:

(a) the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party; and

(b) the application is made within two years of the date of importation or such longer period as the importing Party's laws and regulations allow.

Article 19: Verification of Origin

1. When there is a reasonable doubt as to the origin of a good, the Customs Administration of an importing Party may verify the eligibility of a good for preferential tariff treatment under this Agreement by means of:

(a) written requests for information to the importer;

(b) written requests for information to the exporter or producer or an authorised representative of the exporter or producer;

(c) a verification visit to the premises of the exporter or producer in the territory of another Party (under Article 20); or

(d) any other procedures as mutually agreed by the relevant Parties.

2. A written request referred to in paragraph 1 shall include:

(a) the identity of the Customs Administration making the request;

(b) the reason for the request, including the specific issue the importing Party seeks to resolve with the verification;

(c) sufficient information to identify the good that is being verified; and

(d) a copy of relevant information submitted with the good, including the Declaration of Origin.

3. Subject to the availability of resources and to the extent allowed by its laws, regulations and policies, the exporting Party shall whenever possible cooperate in any action to verify eligibility and require that producers and exporters cooperate in any action to verify eligibility.

Article 20: Verification Visit

1. If all verification actions under Article 19.1 (a), (b) and (d) have been exhausted and have failed to resolve the concerns of the Customs Administration of the importing Party, a verification visit may be conducted.

2. Prior to conducting such a visit, the Customs Administration of the importing Party shall:

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

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

3. If an exporter or producer consents to a proposed verification visit, it shall provide its written consent within 30 days of the receipt of a request for a visit.

4. The written request referred to in paragraph 2(a) shall include:

(a) the identity of the Customs Administration issuing the request;

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

(c) the date the written request is made;

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

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

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

5. The Customs Administration of the importing Party shall notify the Customs Administration of the exporting Party when it requests a verification visit in accordance with this Article.

6. Officials of the Customs Administration of the exporting Party may participate in the verification visit as observers.

7. Nothing in this Article shall affect the rights of the Customs Administration of a Party to undertake verification or compliance activities within its territory in accordance with its laws and regulations.

Article 21: Time Limits for Decision on Origin

The Customs Administration of the importing Party shall complete any action to verify eligibility for preferential tariff treatment within 130 days of the commencement of such action or within 90 days of the conclusion of a verification visit, whichever is later, and

make a decision and provide written advice as to whether the good is eligible for preferential tariff treatment to all relevant parties within the following 21 days.

Article 22: Denial of Preferential Tariff Treatment

1. An importing Party may deny a claim for preferential tariff treatment for a good if:

   (a) the good does not meet the requirements of this Chapter;

   (b) the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter; or

   (c) a verification conducted in accordance with this Chapter has failed to determine that the good is originating.

2. In the event that preferential tariff treatment is denied, the Customs Administration of the importing Party shall provide full reasons for that decision in writing to the importer, on request.

3. The Customs Administration of the importing Party shall not reject a claim for preferential tariff treatment only for the reason that the invoice is issued in a non-party or by a third party.

Article 23: Right of Appeal

1. The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its domestic laws, regulations and administrative practices.

2. If no right of appeal exists in a Party in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, those Parties will, subject to the availability of resources, endeavour to establish such rights of appeal.

Article 24: Confidentiality

Information communicated between the Parties for the purpose of verification of origin shall be used for that purpose only, and be otherwise subject to Article 6 of Chapter 15 (Final Provisions).

Article 25: Action Against Fraudulent Acts

When it is suspected that fraudulent acts in connection with the evidence of origin

requirements have been committed, the Parties concerned shall cooperate in the exchange of information in accordance with the Parties' respective laws and regulations.

Section C: Consultation and Review

Article 26: Meetings and Consultations on Rules of Origin

1. The Parties shall, through the Committee on Trade in Goods, Rules of Origin and Customs Procedures, consult regularly to ensure that this Chapter is administered in a manner consistent with the objectives and other provisions of this Chapter.

2. The government authorities of the Parties with a direct interest in any issues that arise concerning origin determination, classification of products, or other matters related to this Chapter shall consult with a view to resolving such issues and, where relevant, inform the importer of the outcome. The Joint Committee shall be notified of any significant outcomes from such consultations.

Article 27: Review of Origin Procedures

1. The Parties, through the Committee on Trade in Goods, Rules of Origin and Customs Procedures shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of the date of entry into force of this Agreement.

2. The Committee on Trade in Goods, Rules of Origin and Customs Procedures shall review the implementation of the Declaration of Origin provisions within four years of the date of entry into force of this Agreement and make appropriate recommendations to the Joint Committee.

Article 28: Consultation and Review of Product Specific Rules

1. The Parties shall consult and cooperate to ensure that Article 2(c) is applied in an effective and uniform manner.

2. If a Party considers that the regional value content, change in tariff classification or specific process requirement set out in Annex 3-B is unduly restricting, distorting or disrupting of the Party's trade of a good, then that Party may request in writing consultations with the other Parties to determine a suitable amendment to Annex 3-B. The Committee on Trade in Goods, Rules of Origin and Customs Procedures shall promptly consider the request. In the event that the Committee considers a change to one or more rules in Annex 3-B is warranted, it shall make recommendations to the Joint Committee, which shall decide whether to adopt the recommendations in accordance with Chapter 12 (Institutional Provisions).

3. The Parties shall complete a review of this Article within three years of the date of entry into force of this Agreement or a period otherwise agreed by the Parties to address any differences between the Parties arising from the operation of this Article.

Article 29: Technical Revisions of the Product Specific Rules Schedule

1. When a periodic amendment to the Harmonized System is published, the Parties shall prepare technical revisions to Annex 3-B to implement that version of the Harmonized System, and shall do so in accordance with this Article and the relevant procedures for technical revisions to Annex 3-B as adopted by the Joint Committee under Chapter 12 (Institutional Provisions).

2. The Parties shall ensure that technical revisions to Annex 3-B are carried out on a neutral basis and market access conditions are not impaired by the process or the outcomes of technical revisions to Annex 3-B.

3. The Parties, through the Joint Committee or a relevant subsidiary body established by it, shall endorse and promptly publish the technical revisions that are prepared pursuant to paragraph 1 and determine the date on which such revisions will come into effect.

CHAPTER 4

CUSTOMS PROCEDURES

Article 1: Definitions

For the purposes of this Chapter:

customs law means such laws and regulations administered and enforced by the Customs Administration of a Party concerning the importation, exportation, and transit/transhipment of goods, as they relate to customs duties, other taxes and other charges, or to prohibitions, restrictions and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of a Party;

customs procedures means the treatment applied by the Customs Administration of a Party to goods, which are subject to that Party's customs law;

Revised Kyoto Convention means the World Customs Organization's *International Convention on the Simplification and Harmonization of Customs Procedures* done on 26 June 1999; and

WCO means the World Customs Organization.

Article 2: Objectives

1. The objectives of this Chapter are:

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

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

   (c) to simplify and harmonise customs procedures;

   (d) to facilitate trade among the Parties and the security of such trade;

   (e) to enhance the implementation of the requirements of Article VII of GATT 1994, the Agreement on Customs Valuation and other relevant WTO provisions relating to customs matters; and

   (f) to promote cooperation between the Customs Administrations of the Parties.

2. Recognising the capacity constraints of the developing country Parties, and with a view to increasing their export opportunities, assistance in relation to this Chapter would be

provided under Chapter 10 (Development and Economic Cooperation) and the associated Work Programme.

Article 3: Scope

This Chapter shall apply, in accordance with the Parties' respective laws, regulations and policies, to customs procedures applied to goods traded between the Parties.

Article 4: Customs Procedures and Facilitation

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

2. Customs procedures of each Party shall, if possible and to the extent permitted by its customs law, conform to international standards and recommended practices, in particular those of the WCO.

3. The Customs Administration of each Party shall periodically review its customs procedures with a view to their simplification and the facilitation of trade.

Article 5: Customs Cooperation

1. Subject to available resources and to the extent its domestic laws permit, the Customs Administration of each Party should assist the Customs Administration of another Party in relation to:

(a) the implementation and operation of this Chapter;

(b) the development and implementation of customs best practice and risk management techniques;

(c) the provision, if possible, of prior notice of changes to laws, regulations, and relevant procedures and guidelines that would affect the operation of this Chapter;

(d) the simplification and harmonisation of customs procedures;

(e) the advancement of technical skills and the use of technology;

(f) the application of the Harmonized System;

(g) the application of the disciplines on valuation for customs purposes under Article VII of GATT 1994 and the Agreement on Customs Valuation;

(h) the movement of goods among the Parties; and

(i) customs enforcement, including *inter alia* investigation and prevention of *prima facie* customs offences.

2. Subject to available resources, the Customs Administrations of the Parties may, as deemed appropriate, explore and undertake cooperation projects, including:

(a) capacity building programmes to enhance the capability of customs personnel of Parties that are Forum Island Countries; and

(b) technical assistance programmes to facilitate the activities of Parties that are Forum Island Countries in relation to customs matters.

Article 6: Use of Automated Systems

1. The Customs Administration of each Party should have its own system that supports electronic customs transactions.

2. In implementing initiatives under paragraph 1, the Customs Administration of each Party shall take into account relevant international standards and best practices, including those recommended by the WCO, taking into consideration its available infrastructure, capabilities and needs.

Article 7: Expedited Shipments

To the extent possible, the Customs Administration of each Party shall adopt procedures to expedite the clearance of shipments while maintaining appropriate control, including:

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

(b) to permit the submission of a single document covering all goods contained in a shipment, including through electronic means; and

(c) to minimise the documentation required for the release of shipments.

Article 8: Release of Goods

1. To the extent possible, each Party shall adopt or maintain procedures allowing, goods to be released:

(a) within 48 hours of arrival or as soon as practicable; and

(b) where possible, at the point of arrival, without temporary transfer to warehouses or other locations.

2. The provisions of paragraph 1 shall not prevent the Customs Administration of a Party from holding a shipment:

(a) for the purpose of determining, in accordance with risk management techniques, whether an examination of the goods is necessary;

(b) if permits need to be obtained for restricted goods; or

(c) in any situation if it has concerns in relation to the goods.

Article 9: Valuation

1. Subject to paragraph 2, each Party shall apply the provisions of Article VII of GATT 1994 and the Agreement on Customs Valuation, including the Interpretative Notes at Annex I to that Agreement, in determining the value for customs purposes of goods traded between the Parties.

2. If a Party is a developing country and not a WTO Member, it may apply the provisions of the Agreement on Customs Valuation to the extent of its capacity, provided that if a problem arises from the application of a specific valuation procedure, it engages in bilateral consultations on request of another Party with an interest in a good to which that valuation procedure has been applied, with a view to finding a mutually agreed solution. Such consultations shall be undertaken in accordance with Article 15.

3. A Party that is a developing country and not a WTO Member:

(a) shall to the extent of its capacity apply a system for the valuation of goods for customs purposes that:

(i) is fair, uniform and neutral;

(ii) precludes the use of arbitrary or fictitious customs values;

(iii) bases the valuation of goods for customs purposes, to the greatest extent possible, on the transaction value of the goods being valued;

(iv) bases customs value on simple and equitable criteria consistent with commercial practices;

(v) ensures that valuation procedures are of general application without distinction between sources of supply; and

(vi) does not use valuation procedures to combat dumping;

(b) shall to the greatest extent possible not determine customs value on the basis of:

(i) the selling price in the country of importation of goods produced in such country;

(ii) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(iii) the price of goods in the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6 and Article 8(2) of the Agreement on Customs Valuation*;*

(v) the price of goods for export to a country other than the country of importation;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values;

and shall seek to eliminate those measures which are so determined as soon as practicable; and

(c) shall ensure that, if the importer so requests, the importer be informed in writing of the customs value and the method used to determine such value.

Article 10: Advance Rulings

1. To the extent permitted by its domestic laws, regulations and administrative practices and its capacity, each Party upon receiving an application pursuant to paragraph 2(a), shall through its Customs Administration provide written advance rulings on tariff classification and origin of goods, and, if the Party has implemented the Agreement on Customs Valuation on questions arising from the application of that Agreement to goods.

2. Procedures for advance rulings adopted by a Party shall:

(a) provide that an importer in its territory or an exporter or producer in the territory of another Party may apply for an advance ruling before the importation of the goods in question;

(b) include a detailed description of the information required 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;

(e) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in each Party's domestic laws, regulations or administrative procedures; and

(f) provide that a written explanation of the reasons for the ruling be provided to the applicant.

3. A Party may reject a request for an advance ruling where the additional information requested by it in accordance with paragraph 2(c) is not provided within the specified period.

4. Subject to paragraphs 1 and 5, each Party that permits advance rulings under its domestic laws, regulations and administrative procedures, shall apply an advance ruling to goods described in that ruling imported into its territory beginning on the date it issues the ruling or any other date specified in the ruling for such period in accordance with its domestic laws, regulations and administrative procedures. The issuing Party shall accord the same treatment to all importations described in that ruling, if the facts and circumstances are identical in all respects.

5. A Party may modify or revoke an advance ruling if:

(a) a determination is made that the ruling was based on an error of fact or law;

(b) a determination is made that false or misleading information was provided or relevant information was withheld;

(c) there is a change in domestic law consistent with this Chapter;

(d) there is a change in a material fact or circumstance on which the ruling was based; or

(e) conflicting rulings have been issued.

6. If an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the Customs Administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

Article 11: Risk Management

1. Each Party shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across its borders, the Customs Administration of each Party shall regularly review these procedures.

2. If a Customs Administration of a Party deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, that Party shall endeavour to provide a single point for the documentary or electronic processing of those goods.

3. Each Party shall, to the extent of its capacity, work to further enhance the use of risk management techniques in the administration of its customs procedures.

Article 12: Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter, the disclosure of which it considers would:

(a) be contrary to the national and public interest as determined by its laws, rules, regulations or policies;

(b) be contrary to any of its laws, regulations or policies including, but not limited to, those protecting personal privacy or the financial affairs and accounts of individuals;

(c) prejudice legitimate commercial interests of particular enterprises, public or private; or

(d) impede law enforcement.

2. A Party shall maintain the confidentiality of information provided pursuant to this Chapter and shall not use or disclose information provided pursuant to this Chapter except for the purpose for which it was provided, unless it has the consent of the providing Customs Administration, or disclosure is required by its laws and regulations. If a Party is required or authorised by its laws and regulations to disclose information provided pursuant to this Chapter, it shall, wherever possible, give advance notice of any such disclosure to the providing Customs Administration.

Article 13: Enquiry Points and Transparency

1. Each Party shall designate one or more enquiry points to address enquiries from interested persons concerning customs matters, and shall publish online if possible and, if not, in print form, information concerning procedures for making such enquiries.

2. Each Party shall publish online if possible and, if not, in print form, all statutory and regulatory provisions and any customs administrative procedures applied or enforced by its Customs Administration, not including law enforcement procedures and internal operational guidelines.

3. Each Party that is a WTO Member or a Contracting Party to the Revised Kyoto Convention shall ensure that all items of information required to be published under paragraphs 1 and 2 are published promptly in such a manner as to enable interested Parties and persons to become acquainted with them. Each Party that is not a WTO Member or a Contracting Party to the Revised Kyoto Convention shall ensure that those items of information are published in such a manner as to enable interested Parties and persons to become acquainted with them and shall, to the extent of its capacity, ensure that those items are published promptly.

Article 14: Review and Appeal

1. In accordance with its domestic law, each Party shall provide that any person to whom its Customs Administration issues an administrative decision has access, within its territory, to:

(a) administrative review independent of the official or office that issued the decision subject to review, or administrative review by a higher authority supervising its Customs Administration; and

(b) judicial review of the determination taken at the final level of administrative review.

2. The decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 15: Consultations

The Customs Administrations of the Parties shall encourage consultation with each other regarding significant customs issues that affect goods traded between the Parties.

Article 16: Meetings on Customs Procedures

1. The Parties shall, through the Joint Committee, the Committee on Trade in Goods, Rules of Origin and Customs Procedures, or another relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.

2. The Parties, through the Joint Committee, the Committee on Trade in Goods, Rules of Origin and Customs Procedures, or another relevant subsidiary body, shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Implementation Committee, including any recommendations, within four years of entry into force of this Agreement.

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 1: Definitions

1. For the purposes of this Chapter:

Competent Authority means those authorities within each Party recognised by the national government as responsible for developing and administering sanitary and phytosanitary measures within that Party;

relevant international organisations in the field of sanitary or phytosanitary protection mean the Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE) and those operating under the framework of the International Plant Protection Convention (IPPC), as specified in paragraph 3 of Annex A to the SPS Agreement; and

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

Article 2: Objectives

1. The objectives of this Chapter are to:

   (a) facilitate trade between the Parties while protecting human, animal or plant life or health in the territory of each Party;

   (b) provide greater transparency in, and enhance understanding of, the application of each Party's sanitary and phytosanitary measures;

   (c) strengthen cooperation between the Parties on sanitary and phytosanitary matters;

   (d) enhance the practical implementation of the SPS Agreement by Parties that are WTO Members; and

   (e) promote the application of the requirements of the SPS Agreement by Parties that are not WTO Members.

2. Recognising the capacity constraints of the developing country Parties, and with a view to increasing their export opportunities, assistance in relation to this Chapter would be provided under Chapter 10 (Development and Economic Cooperation) and the associated Work Programme.

Article 3: Scope

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

Article 4: Basic Rights and Obligations of Parties under this Chapter

1. Nothing in this Chapter shall limit the rights of a Party to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with this Chapter.

2. Parties that are WTO Members affirm their rights and obligations with respect to each other under the SPS Agreement. While reserving their rights under the SPS Agreement, Parties that are WTO Members shall apply the provisions of Article 1 to Article 8 of the SPS Agreement with respect to Parties that are not WTO Members, to the extent that such provisions are not already covered in this Chapter.

3. Notwithstanding that this Chapter applies to developing country Parties that are not WTO Members, where such a Party prepares, adopts or applies a sanitary or phytosanitary measure, such measure shall be based on the SPS Agreement only to the extent of its capacity. On request of a Party with an interest in a product subject to a sanitary or phytosanitary measure applied by such a Party, those Parties shall engage promptly in bilateral technical discussions on the matter in accordance with the procedure under Article 12.

Article 5: Scientific Basis for Non-Discrimination with Respect to and Harmonization of Sanitary and Phytosanitary Measures

1. Each Party shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 5 of this Article.

2. Each Party shall ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between its own territory and that of other Parties.

3. Wherever possible, each Party shall base its sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health and be presumed to be consistent with this Chapter.

4. A Party may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, provided there is a scientific justification.

5. In cases where relevant scientific evidence is insufficient, a Party may provisionally adopt sanitary or phytosanitary measures on the basis of pertinent information. In such circumstances, Parties shall seek to obtain additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure within a reasonable period of time.

Article 6: Equivalence of Sanitary and Phytosanitary Measures

1. Each Party shall accept the sanitary and phytosanitary measures of other Parties as equivalent, even if the measures of another Party differ from its own or from those of other Parties trading in the same product, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given on request to the importing Party for inspection, testing and other relevant procedures.

2. A Party shall on request enter into negotiations within a reasonable period of time with the aim of achieving bilateral or regional recognition arrangements of the equivalence of specified sanitary or phytosanitary measures.

3. With a view to facilitating appropriate trading opportunities for all of the Parties, particularly the developing country Parties, in respect of requests for recognition of equivalence under paragraphs 1 and 2:

(a) requests should be processed as expeditiously as possible;

(b) Parties shall cooperate on the prioritisation of exporting Parties' requests in accordance with each importing Party's laws, regulations and procedures governing the prioritisation of such requests;

(c) once the importing Party has determined that the information provided by the exporting Party is sufficient, it shall begin the equivalence assessment within a reasonable period of time with a view to completing it as expeditiously as possible.

4. In respect of equivalence determinations, the Parties shall take into account the guidance provided by the relevant international organisations in the field of sanitary or phytosanitary protection.

5. If an exporting Party considers that limitations on its capacity to objectively demonstrate achievement of an importing Party's appropriate level of sanitary or phytosanitary protection constitute an obstacle to acceptance of the case for equivalence, it may request technical discussions with that importing Party in accordance with the procedure under Article 12, with a view to clarifying the matter and identifying any actions that may enhance the capacity of the exporting Party or otherwise assist the acceptance of equivalence.

6. Should the importing Party make a final decision to recognise a measure, a group of measures or a system as equivalent under this Article, the importing Party shall take the necessary actions to allow trade on the basis of the relevant measure, group of measures or system as promptly as possible.

7. Should the importing Party make a final decision to not recognise a measure, a group of measures or a system as equivalent to its own, the importing Party shall provide to the exporting Party an explanation of the reasons for its decision as promptly as possible.

8. To the extent possible, where mutually agreed, the Parties involved in a positive equivalence determination are to report the outcome to other Parties through Contact Points.

Article 7: Adaptation of Sanitary and Phytosanitary Measures to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties may, by mutual agreement, cooperate on adaptation to regional conditions in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade.

2. Importing Parties may make determinations in relation to regionalisation, pest- or disease-free areas, areas of low pest or disease prevalence, zoning and compartmentalisation which shall be consistent with the SPS Agreement, in particular Article 6 of the SPS Agreement.

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

Article 8: Publication of Regulations

1. Each Party shall ensure that all sanitary and phytosanitary regulations (sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally) which have been adopted are published promptly in such a manner as to enable interested Parties and persons to become acquainted with them.

2. Except in urgent circumstances, a Party shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products and methods of production to the requirements of the importing Party. The reasonable interval shall be a period of not less than six months.

Article 9: Competent Authorities and Contact Points

1. Each Party shall provide the other Parties with a description of its Competent Authorities and their division of responsibilities.

2. Each Party shall provide the other Parties with a Contact Point to facilitate distribution of requests and notifications made in accordance with this Chapter.

3. Each Party shall ensure that the information provided under paragraphs 1 and 2 is kept up to date.

Article 10: Notification

1. Each Party shall provide timely and appropriate information directly to the Contact Points of all other Parties where:

   (a) any new sanitary or phytosanitary measure or amendment to an existing measure that may directly or indirectly have a significant effect on the trade of an exporting Party is prepared;

   (b) a provisional sanitary or phytosanitary measure against or affecting the exports of another Party is considered necessary to protect human, animal or plant life or health within the importing Party and is applied; or

   (c) a change in animal or plant health status may affect existing trade.

2. Each exporting Party should, to the extent possible, provide relevant information to the Contact Point of an importing Party where it identifies after exportation a significant sanitary or phytosanitary risk associated with an export consignment destined for that importing Party.

3. If a Party has determined a significant, sustained or recurring pattern of non-compliance with a sanitary and phytosanitary measure, the importing Party shall notify the exporting Party as soon as possible of the non-compliance.

4. On request, the importing Party shall provide the exporting Party with relevant available information on sanitary and phytosanitary-related non-compliant consignments from the exporting Party where there is a significant, sustained or recurring pattern of non-compliance.

5. Further to paragraphs 1(a) and 1(b), if an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on the trade of other Parties, the Party preparing it shall:

   (a) publish a notice at an early stage in such a manner as to enable interested Parties to become acquainted with the proposal to introduce a particular regulation;

(b) notify other Parties, at an early stage when amendments can be still be introduced and comments taken into account, of the products to be covered by the proposed regulation, together with a brief indication of the regulation's objective and rationale;

(c) on request, provide to other Parties through Contact Points electronic copies of the proposed regulation and, whenever possible, identify the parts which deviate in substance from relevant international standards, guidelines or recommendations; and

(d) without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments on request and take these written comments and the results of these discussions into account;

but, where urgent problems of health protection arise or threaten to arise for that Party, it may omit such steps of subparagraphs (a) to (d) as it finds necessary, provided that the Party:

(e) immediately notifies other Parties of the particular regulation, the products covered and its objective and rationale, including the nature of the urgent problems, and follows up such notification in writing if necessary;

(f) on request, provides other Parties with electronic copies of the regulation; and

(g) allows other Parties to make comments in writing, discusses these comments on request, and takes the comments and the results of these discussions into account.

6. Notifications, requests, comments, responses and other communications for the purposes of paragraph 5 shall be conveyed through Contact Points.

7. Paragraphs 5 and 6 shall apply to proposed amendments to existing sanitary or phytosanitary regulations and to proposed new sanitary or phytosanitary regulations.

Article 11: Cooperation

1. The Parties acknowledge existing cooperation between them on sanitary and phytosanitary matters. Parties shall explore opportunities for further cooperation and information exchange on sanitary and phytosanitary matters of mutual interest or of significant interest to a developing country Party consistent with the objectives of this Chapter.

2. To enhance market access opportunities for the developing country Parties under this Agreement, each developing country Party may establish and maintain an updated list of prioritised products of significant export interest. The lists shall be considered by the developed country Parties in their import standards development work programmes, within the framework of their laws, regulations and procedures governing the prioritisation of market access requests, with a view to facilitating the exports of the developing country Parties.

3. The Parties recognise that capacity constraints may limit the ability of developing country Parties to comply with relevant sanitary and phytosanitary standards and make use of market access opportunities. The Parties also recognise the importance of information exchange on sanitary and phytosanitary matters pursuant to Article 10 for the timely identification of market access issues. Accordingly, where an exporter from a developing country Party is finding it difficult to address a significant, sustained or recurring pattern of non-compliance with an importing Party's requirements, cooperative actions shall be explored by the Parties to address the identified problem.

4. As appropriate in the implementation of this Chapter, each Party shall endeavour to coordinate with regard to regional or multilateral activities with the objective of avoiding unnecessary duplication and to maximise the benefits from the application of resources.

5. Each Party agrees to explore how it can strengthen cooperation on the provision of technical assistance and capacity building, especially in relation to trade facilitation.

Article 12: Technical Discussions

1. A Party may, through Contact Points, request technical discussions with another Party on any sanitary or phytosanitary measure affecting trade between it and that other Party. The other Party shall respond promptly to any such request. The two Parties shall seek to clarify any measure at issue and, where there is any remaining difference of view, shall endeavour to find a mutually acceptable solution, taking into account the objectives of trade facilitation and of minimising the negative trade effects of sanitary and phytosanitary measures. In the case of measures affecting the export interests of a developing country Party, the Parties concerned should seek to resolve any concerns in a timely manner.

2. Parties may, through Contact Points, arrange to undertake technical discussions with each other on sanitary and phytosanitary matters of mutual interest. Technical discussions should be conducted using electronic means. If this is not possible they may be conducted in person or by any other means, as mutually determined by the Parties.

3. The Parties participating in technical discussions or negotiations pursuant to this Chapter may mutually agree to invite another Party or a relevant international or regional organisation in the field of sanitary or phytosanitary protection to participate for the purposes of providing technical advice.

4. If technical discussions on a matter under Article 6.5 have taken place, an importing Party may decline a further request for technical discussions, unless the exporting Party can demonstrate at the time of the request that there has been:

(a) a material advancement in relevant science, technology or domestic processes; or

(b) a material improvement in the risk profile of the exporting Party.

5. Without prejudice to the rights and obligations of the Parties under other provisions of this Agreement, where the importing Party declines a request for technical discussions under paragraph 4 it shall provide an explanation of the reasons for its position.

6. Technical discussions held under this Article do not constitute formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement, or any other agreement to which both Parties are party.

Article 13: Meetings on Sanitary and Phytosanitary Matters

1. The Parties shall, through the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, the Joint Committee or any other relevant subsidiary body, consult as required to consider the implementation of their commitments under this Chapter.

2. The Parties, through the Joint Committee, the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, or any other relevant subsidiary body, shall commence a review of this Chapter within three years of the entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of the entry into force of this Agreement.

Article 14: Special and Differential Treatment

In the preparation and application of sanitary or phytosanitary measures, each Party shall take into account the special needs and interests of the developing country Parties. If the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Parties so as to maintain their opportunities for export. If possible, producers in the developing country Parties shall be given longer time-frames to comply with sanitary and phytosanitary measures.

CHAPTER 6

TECHNICAL REGULATIONS, STANDARDS AND CONFORMITY ASSESSMENT PROCEDURES

Article 1: Definitions

The definitions set out in Annex 1 of the TBT Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

Article 2: Objectives

1. The objectives of this Chapter are to:

   (a) facilitate trade among the Parties by ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade;

   (b) ensure transparency and promote understanding of each Party's technical regulations, standards and conformity assessment procedures;

   (c) strengthen information exchange and cooperation, including on the preparation, adoption and application of technical regulations, standards and conformity assessment procedures;

   (d) promote good regulatory practice and good practice in the preparation, adoption and application of standards by standardising bodies in the territory of each Party;

   (e) enhance the implementation of the TBT Agreement by Parties that are WTO Members;

   (f) promote the observance of the requirements of the TBT Agreement by Parties that are not WTO Members; and

   (g) provide a framework of supporting mechanisms to realise these objectives.

2. Recognising the capacity constraints of the developing country Parties, and with a view to increasing their export opportunities, assistance in relation to this Chapter would be provided under Chapter 10 (Development and Economic Cooperation) and the associated Work Programme.

Article 3: Scope

1. Subject to paragraphs 2 and 3, this Chapter shall apply to all technical regulations, standards and conformity assessment procedures that are prepared, adopted or applied by the

central government of a Party and that may directly or indirectly affect trade in goods between the Parties.

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies or to sanitary or phytosanitary measures under Chapter 5 (Sanitary and Phytosanitary Measures).

3. Each Party shall take such reasonable measures as may be available to it to ensure compliance in the implementation of the provisions of this Chapter by local government and non-governmental bodies within its territory.

Article 4: Rights and Obligations of Parties

1. Nothing in this Chapter shall prevent a Party from preparing, adopting or applying technical regulations necessary for the protection of human health or safety, of animal or plant life or health or of the environment, for the prevention of deceptive practices, for ensuring the quality of its exports or for the protection of its essential security interests, or standards or related conformity assessment procedures, provided that such measures are not inconsistent with this Chapter.

2. Parties that are WTO Members affirm their rights and obligations with respect to each other under the TBT Agreement. While reserving their rights under the TBT Agreement, Parties that are WTO Members shall apply the provisions of Articles 1 through 10 of the TBT Agreement with respect to Parties that are not WTO Members, to the extent that such provisions are not already covered in this Chapter.

3. Notwithstanding that the provisions of this Chapter apply to developing country Parties that are not WTO Members, where a Party that is a developing country and not a WTO Member prepares, adopts or applies a technical regulation, standard or conformity assessment procedure, such regulation, standard or procedure shall be based on the TBT Agreement only to the extent of such Party's capacity. On request of a Party with an interest in a product subject to a technical regulation, standard or conformity assessment procedure applied by such Party, those Parties shall engage promptly in bilateral technical discussions on the matter in accordance with the procedure under Article 11.

Article 5: Non-discrimination

1. Each Party shall, in respect of technical regulations and standards, ensure that products imported from any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2. In cases where a positive assurance of conformity with technical regulations or standards is required, each Party shall ensure that:

(a) conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in any Party under

conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; and

(b) such access shall, *inter alia*, entail suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of the facilities and to receive the mark of the system.

Article 6: Trade Facilitation through Information Exchange

1. Each Party shall respond to all requests for information relating to its technical regulations, standards and conformity assessment procedures and for clarification of its responses, provided that the requests are reasonable and are made in writing. Responses to written requests for information or clarification (including those made under Paragraph 3 of Article 4) shall be provided no later than 90 days after the receipt of the request or as mutually agreed between the Parties.

2. Further to Paragraph 1, if a Party:

(a) does not use an international standard, guide or recommendation or the relevant parts thereof as a basis for a technical regulation or related conformity assessment procedure; or

(b) does not accept a technical regulation of another Party as equivalent to its own; or

(c) does not accept the results of a conformity assessment procedure conducted in the territory of another Party; or

(d) recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to recognise a body assessing conformity with that technical regulation or standard in the territory of another Party; or

(e) applies a technical regulation that, in the view of another Party, is more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create; or

(f) applies a conformity assessment procedure that, in the view of another Party, is more strict or applied more strictly than necessary to give adequate confidence that products conform with the applicable technical regulation or standard, taking account of the risks that non-conformity would create; or

(g) applies a technical regulation that, in the view of another Party, is not in conformity with Article 5.1 of this Chapter; or

(h) applies conformity assessment procedures in a manner that, in the view of another Party, is not in conformity with Article 5.2 of this Chapter;

it shall on request explain its reasons in writing. If the Party requesting an explanation so desires, it may request further technical discussions in accordance with the procedure under Article 11.

Article 7: Code of Good Practice for the Preparation, Adoption and Application of Standards

Each Party in respect of central government bodies shall ensure, and in respect of local government and non-governmental bodies shall take such reasonable measures as may be available to it to ensure, that standardising bodies in its territory:

(a) in the case of a Party that is a WTO Member, accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards at Annex 3 to the TBT Agreement; and

(b) in the case of a Party that is not a WTO Member, observe to the extent of its capacity the Substantive Provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards at Annex 3 to the TBT Agreement.

Article 8: Transparency

1. Consistent with Articles 2.9, 2.10, 5.6 and 5.7 of the TBT Agreement, where a relevant international standard, guide or recommendation does not exist or the technical content of a proposed technical regulation or related conformity assessment procedure is not in accordance with the technical content of relevant international standards, guides or recommendations, and if such regulation or procedure may have a significant effect on the trade of other Parties, the Party preparing it shall:

(a) publish a notice of its proposal to introduce the regulation or procedure in a publication at an early appropriate stage, in such a manner as to enable interested Parties to become acquainted with it;

(b) notify Parties, at an early appropriate stage when amendments can still be introduced and comments taken into account, of the products to be covered by the regulation or procedure and its objective and rationale;

(c) on request, provide to other Parties through Contact Points particulars or copies in electronic format of the proposed regulation or procedure and, whenever possible, identify the parts which deviate in substance from relevant international standards, guides or recommendations; and

(d) without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments on request and take these written comments and the results of these discussions into account.

2. Where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for that Party, it may omit such steps of paragraph 1(a) to 1(d) as it finds necessary, provided that, upon adoption of the regulation or procedure, the Party:

(a) notifies other Parties in writing of the regulation or procedure, the products covered, its objective and rationale, and the nature of the urgent problems;

(b) on request, provides other Parties through Contact Points with electronic copies of the regulation or the rules of the procedure; and

(c) without discrimination, allows other Parties to present their comments in writing, discusses these comments on request, and takes these written comments and the results of these discussions into account in making an informed decision about the measure.

3. Notifications, requests, comments, responses and other communications for the purposes of paragraphs 1 and 2 shall be conveyed through Contact Points.

4. Each Party shall ensure that technical regulations and conformity assessment procedures which have been adopted are published promptly or otherwise made available in such manner as to enable any member of the public in any Party to become acquainted with them.

5. Consistent with Articles 2.12 and 5.9 of the TBT Agreement and except in the urgent circumstances specified in Articles 2.10 and 5.7 of the TBT Agreement, an importing Party shall allow a reasonable interval between the publication of a technical regulation or related conformity assessment procedure and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to its requirements. The reasonable interval shall be a period of not less than six months, except where this would be ineffective in fulfilling the legitimate objective pursued.

Article 9: **Contact Points**

1. Each Party shall provide the other Parties with a Contact Point to facilitate the distribution of requests and notifications made in accordance with this Chapter and which shall, for that Party, have responsibility for coordinating the implementation of this Chapter.

2. Each Party shall provide each other Party with the name of its Contact Point and the contact details of the relevant position in the organisation which performs its functions, including telephone, facsimile, e-mail address, mailing address and any other relevant details.

3. Each Party shall ensure that the information provided under paragraphs 1 and 2 is kept up-to-date.

4. Each Party shall ensure that its Contact Point facilitates the exchange of information between the Parties on any matters relating to the implementation of this Chapter.

5. To promote efficiency in the distribution of requests and notifications under this Chapter and ensure consistency with the performance of related functions under the TBT Agreement, each Party that is a WTO Member should consider assigning to its Enquiry Point established pursuant to Article 10 of the TBT Agreement the role of Contact Point for the purposes of this Chapter.

Article 10: Cooperation

1. The Parties shall undertake joint efforts in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties, including increasing market access opportunities for developing country Parties.

2. Each Party shall on request of another Party give positive consideration to proposals for cooperation on matters within the scope of this Chapter on mutually agreed terms and conditions, including but not limited to:

(a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations and conformity assessment procedures;

(b) cooperation between conformity assessment bodies, both governmental and non-governmental, in the territories of each of the Parties on matters such as:

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

(ii) enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, guidelines and recommendations;

(c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation, particularly of the developing country Parties, in the existing frameworks for mutual recognition developed by relevant regional and international bodies; and

(d) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures in areas such as:

(i) cooperation in the development and promotion of good regulatory practice;

(ii) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures; and

(iii) management of risks relating to health, safety, the environment and deceptive practices.

3. On request of another Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter on mutually agreed terms and conditions.

Article 11: Technical Discussions

1. If a Party considers that a technical regulation, standard or conformity assessment procedure affecting trade between it and another Party warrants further discussion, it may, through the Contact Points, request a detailed explanation of the measure and if necessary, request to hold technical discussions in an attempt to resolve any concerns on specific issues arising from the application of the measure. The other Party shall respond promptly to any requests for such explanations, and if so requested, shall enter into technical discussions within 60 days from the date of the request. The Parties to the technical discussions shall make every effort to reach a mutually satisfactory resolution through technical discussions within 90 days from the date of the request or within a timeframe mutually agreed upon by them.

2. A Party participating in technical discussions or negotiations pursuant to paragraph 3 of Article 4, paragraph 2 of Article 6 or paragraph 1 of this Article may invite another Party or a relevant international or regional organisation in the field of technical regulations, standards and conformity assessment procedures to participate for the purpose of providing technical advice.

3. Technical discussions should be conducted using electronic means. If this is not possible they may be conducted in person or by any other means, as mutually determined by the Parties.

4. The Parties shall take such reasonable measures as may be available to them to ensure that representatives of bodies responsible for the technical regulations, standards or conformity assessment procedures that are the subject of the technical discussions participate in those discussions.

5. A Party shall exercise restraint when requesting technical discussions between it and another Party on a matter that has been the subject of a previous technical discussion between the two Parties. If technical discussions on a matter under Article 6.2(b) to Article 6.2(f) have taken place, and a mutually satisfactory solution cannot be reached, an importing Party may only decline a further request for technical discussions on justifiable grounds.

6. Without prejudice to the rights and obligations of the Parties under other provisions of this Agreement, if the importing Party declines a request for technical discussions under paragraph 5 it shall provide an explanation of reasons for its position.

7. Technical discussions held pursuant to this Article do not constitute formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement or any other agreement to which both Parties are party.

Article 12: Meetings on Technical Regulations, Standards and Conformity Assessment Procedures

1. The Parties shall, through the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, the Joint Committee or any other relevant subsidiary body, consult as required to consider the implementation of their commitments under this Chapter.

2. The Parties, through the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, the Joint Committee or any other relevant subsidiary body, shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of entry into force of this Agreement.

Article 13: Special and Differential Treatment

Consistent with Articles 12.3, 12.4 and 12.9 of the TBT Agreement:

(a) Each Party shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Parties, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Parties.

(b) Parties recognise that, although international standards, guidelines or recommendations may exist, in their particular technological and socio-economic conditions, developing country Parties may adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Parties therefore recognise that developing country Parties should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

(c) During consultations, developed country Parties shall bear in mind the special difficulties experienced by developing country Parties in formulating and implementing technical regulations, standards and conformity assessment procedures and, in their desire to assist developing country Parties with their efforts in this direction, developed country Parties shall take into account the special needs of the former in regard to financing, trade and development.

CHAPTER 7

TRADE IN SERVICES

Article 1: Definitions

For the purposes of this Chapter:

aircraft repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service but does not include line maintenance;

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services does not include air navigation services;

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

(a) the constitution, acquisition or maintenance of an enterprise; or

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

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

computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

ground handling services means the supply at an airport, on a fee or contract basis, of the following: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems;

measures adopted or maintained by a Party means any measure taken by:

(a) central, state, regional or local Government and authorities; or

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

Such measures include measures in respect of:

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

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

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

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

person means either a natural person or an enterprise;

sector of a service means:

(a) with reference to a specific commitment, one or more, or all subsectors of that service, as specified in a Party's Schedule of Specific Services Commitments at Annex 7-A to this Agreement;

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

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

service of another Party means a service which is supplied:

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

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

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

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

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

services includes any service in any sector except services supplied in the exercise of governmental authority;

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

specialty air services means any non-transportation air services such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services;

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

trade in services means the supply of a service:

(a) from the territory of one Party into the territory of another Party ('Mode 1');

(b) in the territory of one Party to the service consumer of another Party ('Mode 2');

(c) by a service supplier of one Party, through commercial presence in the territory of another Party ('Mode 3');

(d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of another Party ('Mode 4');

traffic rights means the right for scheduled and non-scheduled services to operate or carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

Article 2: Scope

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

2. This Chapter shall not apply to:

(a) services supplied in the exercise of governmental authority;[2]

(b) any measures adopted or maintained by a Party with respect to government procurement;

[2] For greater certainty, nothing in this Chapter shall be construed as requiring the privatisation of public services supplied in the exercise of government authority.

(c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, or 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 services, service consumers or service suppliers;

(d) in respect of air transport services, measures affecting traffic rights however granted; or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(iv) specialty air services;

(v) ground handling services; and

(vi) airport operation services.

3. For greater certainty, the Parties recognise the right of all Parties to regulate and to introduce new regulations to regulate the supply of services within their territory in order to meet national policy objectives, provided that such regulation is not inconsistent with this Chapter.[3]

4. Nothing in this Chapter shall apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Article 3: Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.

2. A Party may maintain a measure inconsistent with Paragraph 1 provided that such a measure falls within the scope of any exemptions list in Annex I (Schedule of Most-Favoured-Nation Exemptions on Services and Investment).

Article 4: Increasing the Participation of Forum Island Countries

1. The increasing participation of Forum Island Countries in services trade shall be

[3] For greater certainty, the Parties mutually understand that Parties have the right to regulate, provided that regulation does not nullify or impair obligations and commitments of this Chapter.

facilitated through negotiated specific commitments pursuant to Article 5, Article 6, Article 7 and Article 8 relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness *inter alia* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks; and

(c) the liberalisation of market access in sectors and modes of supply of export interest to Forum Island Countries.

2. Within one year of the date of entry into force of this Agreement, each Party shall establish contact points to facilitate the access of service suppliers to information related to their respective markets in relation to commercial and technical aspects of the supply services, registration, recognition and the obtaining of professional qualifications and the availability of technology.

Article 5: Market Access

1. With respect to market access through the modes of supply identified in the definition of "trade in services" in Article 1, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions specified in its Schedule of Specific Services Commitments at Annex 7-A to this Agreement.

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

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

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

(c) limit the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, except measures of a Party which limit inputs for the supply of services;

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

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

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

3. If a Party undertakes a market access commitment in relation to the supply of a service through Mode 1, and if the cross-border movement of capital is an essential part of the service itself, it shall allow such movement of capital.

4. If a Party undertakes a market access commitment in relation to the supply of a service through Mode 3, it shall allow related transfers of capital into its territory.

Article 6: National Treatment

1. In the sectors specified in its Schedule of Specific Services Commitments at Annex 7-A to this Agreement, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

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

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

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

Article 7: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 5 and Article 6, including those regarding qualifications, standards or licensing matters. Such commitments shall be entered in a Party's Schedule of Specific Services Commitments at Annex 7-A to this Agreement.

Article 8: Specific Commitments

1. The specific commitments undertaken by each Party under Article 5 and Article 6 shall be set out in the Schedule of Specific Services Commitments under Annex 7-A to 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 related to additional commitments; and

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

2. Measures inconsistent with both Article 5 and Article 6 are inscribed in the column relating to Article 5. In this case, the inscription shall be considered to also provide a condition or qualification to Article 6.

Article 9: Modification of Schedules

1. (a) A Party (referred to in this Article as the "modifying Party") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

(b) A modifying Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Joint Committee no later than three months before the intended date of implementation of the modification or withdrawal.

2. (a) At the request of any Party whose benefits under this Agreement may be affected (referred to in this Article as an "affected Party") by a proposed modification or withdrawal notified under paragraph 1(b), the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Parties concerned shall endeavour 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.

(b) Compensatory adjustments shall be made on a most-favoured-nation basis.

3. (a) If agreement is not reached between the modifying Party and any affected Party before the end of the period provided for negotiations, such affected Party may refer the matter to the Joint Committee. Any affected Party that wishes to enforce a right that it may have to compensation must participate in meetings that may be convened by the Joint Committee to resolve this matter.

(b) If no affected Party has requested the intervention of the Joint Committee, the modifying Party shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the Joint Committee.

(b) If the modifying Party implements its proposed modification or withdrawal and does not comply with the recommendations of the Joint Committee, any affected Party that participated in the Joint Committee's meetings may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article 3, such a modification or withdrawal may be implemented solely with respect to the modifying Party.

5. The Joint Committee shall establish procedures for the rectification or modification of Schedules. Any Party which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

Article 10: Domestic Regulation

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

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

(b) Each Party shall ensure that, in any such tribunal or under any such procedures referred to in subparagraph (a), the parties to any proceedings are provided with the right to:

(i) a reasonable opportunity to support or defend their respective positions; and

(ii) a decision in accordance with the Party's laws.

(c) Each Party shall ensure, subject to appeal or further review as provided in its law, that any decision referred to in subparagraph (b) shall be implemented in accordance with its laws.

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

3. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the WTO negotiations on disciplines on such measures pursuant to Article VI:4 of GATS, and shall amend this Article, as appropriate, after consultations among the Parties to bring the results of those negotiations into effect under this Agreement. The Parties note that the disciplines arising from such negotiations shall aim to ensure that qualification requirements and procedures, technical standards and licensing requirements and procedures are, *inter alia*:

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

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

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

4. In sectors in which a Party has undertaken specific commitments under Article 5, Article 6 and Article 7, pending the incorporation of the disciplines referred to in paragraph 3, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments under this Agreement in a manner which:

(a) does not comply with the criteria outlined in paragraph 3(a), (b) or (c); and

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

5. In determining whether a Party is in conformity with its obligations under paragraph 3, account shall be taken of international standards of relevant international organisations applied by that Party.[4]

6. If authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall:

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

(b) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;

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

[4] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of all of the Parties.

(d) if an application is rejected, to the maximum extent possible, inform the applicant in writing, and without delay, the reasons for the rejection of the application and of the timeframe to appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

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

8. Subject to its domestic laws and regulations, each Party shall permit service suppliers of the other Parties to use the business names under which they ordinarily trade in the territories of the other Parties and otherwise ensure that the use of business names is not unduly restricted.

Article 11: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-party, nothing in Article 3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of another Party.

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

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

5. If appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

6. The Parties shall actively encourage their competent bodies to consult with each other and with relevant regional bodies after the entry into force of this Agreement to explore the possibilities for recognition of qualifications or professional recognition or registration. The Parties shall report periodically to the Joint Committee for review.

Article 12: Payments and Transfers

1. Except under the circumstances envisaged in Article 2 of Chapter 11 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of a Party as a Member of the International Monetary Fund (IMF) under the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 3 of Chapter 11 (General Provisions and Exceptions), or at the request of the IMF.

Article 13: Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 3, Article 5, Article 6 and Article 7.

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

3. If a Party has a reason to believe that a monopoly supplier of a service of another Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory.

Article 14: Emergency Safeguard Measures

1. The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non-discrimination. On

the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purposes of discussing appropriate amendments to this Chapter so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of the commitments made under this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1, that affected Party may request to hold consultations with the other Party or Parties. The requested Party or Parties shall respond to such a request in good faith.

3. In undertaking such consultations, the Parties shall endeavour to reach a mutually agreed solution within a reasonable period of time.

4. The consulting parties shall notify the agreed solution to all other Parties as soon as practicable and by no later than the next meeting of the Joint Committee.

Article 15: Subsidies

1. Notwithstanding Article 2.2(c), where one Party considers that subsidies provided by another Party affecting trade in services nullify or impair any benefits it expected to receive under this Chapter, the Parties agree to consult with a view to reaching a mutually satisfactory solution.

2. Notwithstanding Article 2.2(c), following the conclusion of the negotiations on trade distorting subsidies on trade in services under Article XV of the GATS, the Parties agree to review the operation of this Article with a view to considering the possible modification or elimination of this Article.

Article 16: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party where the Party establishes that:

(a) the service is being supplied by an enterprise that is owned or controlled by persons of a non-party and the enterprise has no substantive business operations in the territory of any Party; or

(b) the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of any Party.

2. In the case of the supply of maritime transport services, a Party may deny the benefits of this Chapter to a service supplier of another Party if it establishes that the service is supplied by a vessel registered under the laws of a non-party, and by a person who operates or uses the vessel in whole or in part but is of a non-party.

Article 17: Contact Points and Transparency

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

2. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in services to which it is a signatory.

3. To the extent of its capacity, each Party shall ensure that all measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are published promptly through printed or electronic means, or otherwise. Information regarding these measures shall include, where applicable:

(a) requirements for authorisation, including for application and periodic renewal of such authorisation, and generally applicable terms and conditions of such authorisation;

(b) licensing requirements and procedures, including requirements, criteria and procedures for application and renewal, and applicable fees;

(c) qualification requirements and procedures, including requirements, criteria and procedures for application and renewal, and procedures for verification and assessment of qualifications, and applicable fees;

(d) technical standards;

(e) procedures relating to appeals or reviews of decisions concerning applications;

(f) procedures for monitoring or enforcing compliance with the terms and conditions of licences;

(g) an established timeframe for the processing of an application.

4. Each Party shall respond promptly to all requests by another Party for specific information on any measures of general application which pertain to or affect the operation of this Chapter or international agreements within the meaning of paragraph 2.

Article 18: Review of Commitments

1. The Parties shall review commitments on trade in services, with the first review within three years of entry into force of this Agreement and periodically thereafter as determined by the Joint Committee, with the aim of improving the overall commitments undertaken by the Parties under this Chapter so as to progressively liberalise trade in services among the Parties.

2. The Parties recognise the limited capacities of developing country Parties which will be taken into account in the review process. When improving the overall commitments undertaken by the Parties, appropriate flexibility will be given to the developing country Parties to opening fewer sectors, liberalising fewer types of transaction, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article 4.

Article 19: Joint Committee

The Parties shall, through the Joint Committee or a relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.

CHAPTER 8

MOVEMENT OF NATURAL PERSONS

Article 1: Definitions

For the purposes of this Chapter:

temporary entry means entry into the territory of a Party by a natural person covered by this Chapter, without the intent to establish permanent residence; and

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

Article 2: Objectives

1. The objectives of this Chapter, which reflect the preferential trading relationship between the Parties, are to:

(a) provide for rights and obligations additional to those set out in Chapter 7 (Trade in Services) and Chapter 9 (Investment) in relation to the temporary entry of natural persons;

(b) facilitate the temporary entry of natural persons;

(c) establish transparent criteria and streamlined immigration formality application procedures for the temporary entry of natural persons to whom this Chapter applies; and

(d) protect the integrity of the Parties' borders, and protect the domestic labour force and permanent employment in the territories of the Parties.

Article 3: Scope

1. This Chapter shall apply, as set out in each Party's schedule of specific commitments in Annex 8-A (Schedules of Commitments on Movement of Natural Persons), to measures affecting the temporary entry of natural persons of a Party into the territory of any other Party.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of any other Party in its territory, including those

measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to nullify or impair the benefits accruing to any other Party under this Agreement.[1]

Article 4: Grant of Temporary Entry

1. Each Party shall set out in Annex 8-A a schedule containing the specific commitments it undertakes for each of the categories of natural persons specified therein. These schedules shall specify the conditions and limitations[2] governing those commitments, including the requirements and length of stay, for each category of natural persons included in each Party's schedule of specific commitments.

2. If a Party makes a commitment under paragraph 1, that Party shall grant temporary entry to natural persons of another Party provided that those natural persons:

(a) follow the prescribed application procedures for the immigration formality sought; and

(b) meet all relevant eligibility requirements for entry to the granting Party.

A Party may deny temporary entry to natural persons of another Party who do not comply with paragraph 2(a) and (b).

3. Temporary entry granted pursuant to this Chapter does not replace the requirements needed to carry out a profession or activity according to the domestic laws and regulations, and any applicable mandatory codes of practice made pursuant to domestic law, in force in the territory of the Party authorising the temporary entry.

Article 5: Requirements and Procedures Relating to the Movement of Natural Persons

1. In relation to the natural persons covered by Article 3, each Party shall endeavour to:

(a) establish or maintain immigration formalities, which can be granted prior to arrival in its territory, to allow natural persons of another Party entry into and temporary stay in its territory;

(b) expeditiously process complete applications for immigration formalities received from natural persons of another Party, including further immigration formality requests or extensions thereof;

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

[2] For greater certainty, the terms 'conditions and limitations' include limitations on the total number of visas or the requirement of a labour market test.

(c) on request, and within a reasonable period after an application by a natural person of another Party requesting temporary entry is lodged, notify the applicant of:

(i) receipt of the application;

(ii) the status of the application; and

(iii) the decision concerning the application, including:

(A) if approved, the period of stay and other conditions; or

(B) if refused, the reasons for refusal and any avenues for review.

Article 6: Mutual Recognition

If the requirements for an immigration formality include requirements relating to authorisation, licensing or certification of natural persons, Article 11 of Chapter 7 (Trade in Services) shall apply, *mutatis mutandis*, to such authorisation, licensing or certification, but that obligation shall only apply to a Party in relation to the commitments they have made under Article 4.

Article 7: Contact Points

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

Article 8: Application of Chapter 14 (Consultations and Dispute Settlement)

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.

2. A Party shall not have recourse to Chapter 14 (Consultations and Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

(a) the matter involves a pattern of practice on the part of the granting Party; and

(b) the natural persons affected have exhausted all available domestic remedies regarding the particular matter.

3. The remedies referred to in paragraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued within one year after the date of the institution of proceedings for such remedy, and the failure to issue a determination is not attributable to delays caused by the natural persons concerned.

Article 9: Review of Commitments

The Parties shall review commitments for the temporary entry of natural persons, with the first review taking place within three years of entry into force of this Agreement and periodically thereafter as determined by the Joint Committee, with the aim of improving the overall commitments undertaken by the Parties under this Chapter so as to progressively liberalise the movement of natural persons among the Parties.

CHAPTER 9

INVESTMENT

Article 1: Definitions

For the purposes of this Chapter, the term:

covered investment means with respect to a Party, an investment in its territory of an investor of another Party, in existence as of the date of entry into force of this Agreement, or established, acquired or expanded thereafter, which has been admitted by the host Party subject to its relevant laws, regulations and policies;

freely usable currency means freely usable currency as determined under the IMF Articles of Agreement and amendments thereafter, or any currency that is used to make international payments and is widely traded in international principal exchange markets;

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

(a) an enterprise;

(b) tangible or intangible, movable or immovable property and related property rights such as mortgages, liens or pledges;[1]

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

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

(e) futures, options, and other derivatives;

(f) intellectual property rights;

(g) turnkey, construction, management, production and revenue sharing contracts, concessions and other similar contracts; and

(h) licences, authorisations, permits and similar rights conferred pursuant to a Party's domestic law.[3]

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[1] For greater certainty, market share, market access, expected gains and opportunities for profit-making are not, by themselves, investments.

[2] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics. Loans issued by one Party to another Party are not investments.

[3] Whether a particular type of licence, authorisation, permit or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on factors

An investment does not, however, include:

(a) claims to payment resulting solely from the commercial sale of goods and services unless it is a loan that has the characteristics of an investment;

(b) a bank letter of credit; or

(c) the extension of credit in connection with a commercial transaction, such as trade financing.

For the purposes of the definition of investment in this chapter, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

investor of a Party means a Party, or a natural person or an enterprise of a Party that has made or seeks to make an investment in the territory of another Party;[4]

measures adopted or maintained by a Party means any measure taken by:

(a) central, state, regional or local Government or authorities; or

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

permanent resident of a Party means a natural person who has permanent residence status in a Party in accordance with its laws and regulations;

TRIMS Agreement means the *Agreement on Trade-Related Investment Measures*, in Annex 1A to the WTO Agreement; and

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property*, in Annex 1C to the WTO Agreement.

Article 2: Objectives

This Chapter is intended to encourage a stable and predictable environment to attract and promote the flow of investment between the Parties with due respect to national policy objectives and to the right of each Party to regulate.

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such as the nature and extent of the rights that the holder has under the law of the Party that granted such rights. Among the licences, authorisations, permits and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the licence, authorisation, permit or similar instrument has the characteristics of an investment.

[4] For greater certainty, the Parties understand that, for the purposes of the definition of "investor" of a Party, an investor "seeks to make" an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or obtained a permit or licence.

Article 3: Scope

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

   (a) investors of other Parties;

   (b) covered investments; and

   (c) with respect to Article 11 all investments in the territory of the Party.

2. This Chapter shall not apply to:

   (a) procurement by a Party; and

   (b) subsidies or grants provided by a Party, except subsidies provided in connection with measures prohibited under Article 11.

Article 4: Relation to Other Chapters

1. This Chapter shall not apply to measures adopted or maintained by a Party affecting trade in services.[5]

2. Notwithstanding paragraph 1, Article 9, Article 10, Article 12, Article 13, Article 14, and Article 17 shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of any other Party pursuant to Chapter 7 (Trade in Services), but only to the extent that any such measures relate to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in a Party's Schedules of Specific Commitments in Annex 7-A (Schedule of Specific Services Commitments).

Article 5: Obligation to Comply with Domestic Law and Corporate Social Responsibility

1. The Parties acknowledge that investors of a Party and their investments are subject to the laws, regulations and standards of the host state Party.

2. The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

[5] For the purposes of this Chapter, the definition of Trade in Services in Article 1 of Chapter 7 (Trade in Services) shall apply.

Article 6: National Treatment

1. In the sectors specified in Annex 9-A of this Agreement, and subject to any conditions and qualifications set out therein, each Party shall accord to investors and covered investments of investors of any other Party treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. In respect of intellectual property rights, a Party may derogate from the obligations set out in this Article provided this is not inconsistent with the TRIPS Agreement.

Article 7: Most-Favoured-Nation Treatment

1. Each Party shall accord to investors and covered investments of investors of any other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-party or to their investments with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. A Party may maintain a measure inconsistent with paragraph 1 provided that such a measure falls within the scope of exemptions lists in Annex I (Schedule of Most-Favoured-Nation Exemptions on Services and Investment).

3. In respect of intellectual property rights, a Party may derogate from the obligations set out in this Article provided this is not inconsistent with the TRIPS Agreement.

Article 8: Scheduling of Commitments

1. Each Party shall set out in Annex 9-A the sectors where it undertakes specific commitments with respect to Article 6. With respect to sectors where such commitments are undertaken, each Schedule shall specify any conditions or qualifications on national treatment.

2. Schedules of specific commitments are annexed to this Agreement and shall form an integral part thereof.

Article 9: Minimum Standard of Treatment

1. Each Party shall accord to covered investments of investors of any other Party the customary international law minimum standard of treatment of aliens including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law[6] minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" shall not require treatment in addition to or beyond that which is required by that standard, and shall not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 10: Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is a covered investment appoint to Senior Management positions natural persons of any particular nationality.

2. No Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the Party.

3. A Party may maintain a measure inconsistent with this Article provided that such a measure falls within the scope of any exemptions listed in Annex 9-B.

Article 11: Prohibition of Performance Requirements

1. If a Party is a WTO Member, it shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, ensure that any measure taken is consistent with the TRIMS Agreement.

2. (a) If a Party is not a WTO Member, it shall, to the extent of its capacity, strive to ensure that, in connection with the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of an investment of an

[6]The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 9 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 9, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

investor of a Party or of a non-Party in its territory, any measure taken is consistent with the TRIMS Agreement.

(b) For greater certainty, if a Party is not a WTO Member, a list of that Party's measures that do not comply with the TRIMS Agreement shall be listed in Annex 9-D within two years of the date of entry into force of this Agreement. After the expiry of this date, new measures that are inconsistent with the TRIMS Agreement may not be introduced.

Article 12: Compensation for Losses

1. Each Party shall accord to investors of any other Party and to their covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

(a) its own investors and their investments; and

(b) investors of any other Party or non-Party and their investments.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor with restitution, compensation, or both as appropriate, for such loss.[7] Any compensation shall be made in accordance with Articles 13.2, 13.3 and 13.4 which shall apply *mutatis mutandis*.

Article 13: Expropriation and Compensation

1. A Party shall not expropriate or nationalise a covered investment of an investor from another Party, either directly or indirectly through measures equivalent to expropriation or nationalisation, except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

[7] For greater certainty, in the event of providing both restitution and compensation, their combined value shall not exceed the loss suffered.

(c) in accordance with due process of law; and

(d) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2, 3 and 4.

2. Compensation shall be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. Compensation shall be determined in accordance with the generally recognised principles of valuation and equitable principles, taking into account, *inter alia*, the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. Compensation shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without undue delay. Such compensation shall be in a freely usable currency and include interest at a commercially reasonable rate, taking into account the length of time before payment occurs. It shall be effectively realisable and freely transferable.

4. An investor of a Party affected by a direct expropriation may seek, under the law of the host state making the expropriation, a review, by a judicial or other independent authority of the host country, of the decision to expropriate and of the valuation of its investment in accordance with the principles set out in this Article.

5. For those Parties that are WTO Members, this Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement or the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

6. For those Parties that are not currently WTO Members, this Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with relevant international agreements or the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is in accordance with relevant international agreements on intellectual property rights.

Article 14: Free Transfer of Funds

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

(a) contributions to capital, including the initial contribution;

(b) profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of any covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 12 and Article 13;

(f) payments arising out of the settlement of a dispute or an agreement between the disputing parties; and

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

2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

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

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

(c) criminal or penal offences and the recovery of the proceeds of crime;

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

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

(f) taxation;

(g) social security, public retirement, or compulsory savings schemes; and

(h) severance entitlements of employees.

Article 15: Transparency

1. On request by a Party, information shall be exchanged relating to measures of another Party that may have a material impact on any covered investment under this Chapter.

2. A Party may request, in writing, consultations with another Party regarding any actual or proposed measure or any other matter that it considers might materially affect the operation of this Chapter. The other Party shall engage in consultations in accordance with Article 5 of Chapter 14 (Consultations and Dispute Settlement).

Article 16: Special Formalities and Disclosure of Information

1. Nothing in Article 6 or Article 7 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of any other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 6, a Party may require an investor of another Party to provide information concerning an investment solely for informational or statistical purposes. The Party shall protect, to the extent possible, any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 17: 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 or other form of indemnity it has granted on non-commercial risk in respect of an investment, other Parties shall recognise the subrogation or transfer of any right or claim 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. If a Party or an agency of a Party has made a payment to an investor of that Party and has taken over the investor's rights and claims, that investor shall not, unless authorised to act on behalf of the Party or the agency making the payment, pursue those rights and claims against any other Party.

3. In any proceedings involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 18: Denial of Benefits

1. Following notification through the contact point of a Party, a Party may deny the benefits of this Chapter:

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

(b) to an investor of another Party where the covered investment is being made by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operation in the territory of any other Party.

Article 19: Investment and Environment, Health and Other Regulatory Objectives

1 Parties recognise that it is inappropriate to encourage investment by investors of another Party and of non-Parties by not enforcing their own environmental, health, labour, safety or other regulatory standards.

2 Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to its environmental, health, or other regulatory objectives.

Article 20: Promotion and Facilitation of Investment

Taking into account the different levels of economic development of the Parties, the developed country Parties shall aim to assist the developing country Parties in the promotion and facilitation of foreign investment to their countries. In that regard, the Parties shall aim to explore through Chapter 10 (Development and Economic Cooperation) and the *Implementing Arrangement for Development And Economic Cooperation under the Pacific Agreement on Closer Economic Relations Plus* how the developing country Parties may be assisted to attract investment into their territories.

Article 21: Competent Authorities and Contact Points

1. Each Party shall provide all other Parties with a description of its competent authorities and their division of responsibilities.

2. Each Party shall provide all other Parties with a Contact Point to facilitate distribution of requests and notifications made in accordance with this Chapter.

3. Each Party shall ensure that the information provided under paragraphs 1 and 2 is kept up to date.

Article 22: Technical Discussions

1. A Party may, through Contact Points, request technical discussions with another Party on any measure affecting investment between them. The Party to which the request was made shall respond promptly to any such request. The Parties shall seek to clarify any measure at issue and, where there is any remaining difference of view, they shall endeavour to find a mutually acceptable solution, taking into account the objectives of this Chapter. In the case of

measures affecting the investment interests of a developing country Party, the Parties shall endeavour to resolve any concerns in a timely manner.

2. A Party may, through Contact Points, arrange to undertake technical discussions with other Parties on investment matters of mutual interest. Technical discussions should be conducted using electronic means. If this is not possible, they may be conducted in person or by any other means, as mutually determined by the Parties.

3. The Parties participating in technical discussions pursuant to this Chapter may mutually agree to invite another Party or a relevant international or regional organisation in the field of investment to participate for the purpose of providing technical advice.

Article 23: Review of Commitments

1. The Parties shall review commitments on investment, with the first review to be undertaken within three years of the date of entry into force of this Agreement and periodically thereafter as determined by the Joint Committee, with the aim of improving the overall commitments undertaken by the Parties under this Chapter.

2. The Parties recognise the limited capacities of developing country Parties which will be taken into account in the review process.

CHAPTER 10

DEVELOPMENT AND ECONOMIC COOPERATION

Article 1: Definitions

For the purposes of this Chapter:

development assistance coordination agency means the agency of a Party with primary responsibility for the coordination and management of Official Development Assistance within that Party;

implementing Party or **implementing Parties** means, for each component of the Work Programme, the Party or Parties primarily responsible for the implementation of that component;

participating Party or **participating Parties** means, for each component of the Work Programme, the Party or Parties participating in that component; and

Work Programme means the programme of development and economic cooperation activities mutually prioritised and determined by the Parties taking into account the needs identified by the developing country Parties, under the relevant components.

Article 2: Scope and Objectives

1. The Parties reaffirm the importance of ongoing development and economic cooperation between them, including existing bilateral and regional cooperation through the Australian and New Zealand Aid Programmes that support the Forum Island Countries' increased participation in international trade, including the expansion and diversification of their exports.

2. The Parties agree to improve and complement their existing development and economic cooperative partnerships in trade and investment related areas, taking into account the needs that are identified by the developing country Parties; and mutually prioritised and determined by the participating Parties. In elaborating areas of partnership, the Parties shall take account of the different levels of development and capacities of the Parties.

3. The Parties take due note of the provisions in various Chapters of this Agreement that encourage and facilitate cooperation and consultation. The Parties agree to adopt targeted measures to address the capacity constraints of the developing country Parties through cooperation and consultation as determined in the various Chapters.

4. The development and economic cooperation objectives under this Chapter will be achieved through the Work Programme and broader trade and investment related assistance as set out in the *Implementing Arrangement for Development and Economic Cooperation under Pacific Agreement on Closer Economic Relations Plus*, in particular, paragraph 6 thereof.

Article 3: Resources for the Work Programme

1. The Parties shall contribute appropriately to the implementation of the Work Programme. In that regard, the financial resources to be provided by the developed country Parties are set out in the *Implementing Arrangement for Development and Economic Cooperation under Pacific Agreement on Closer Economic Relations Plus*.

2. In determining the appropriate level of contribution to the Work Programme, the Parties shall take into account:

(a) the different levels of development and capacities of the Parties;

(b) any in-kind contributions that Parties are able to make to Work Programme components;

(c) any contributions that non-Parties are able to make to Work Programme components, directly or indirectly; and

(d) that the appropriate level of contribution enhances the relevance and sustainability of cooperation, strengthens partnerships between Parties and builds Parties' shared commitment to the effective implementation and oversight of Work Programme components.

Article 4: Development and Economic Cooperation Work Programme

1. Each Work Programme component shall:

(a) be trade- or investment-related and support the implementation of this Agreement,

(b) be specified in the Work Programme;

(c) involve a minimum of two Forum Island Countries, and Australia or New Zealand;

(d) address the needs of the developing country Parties as mutually prioritised and determined by the participating Parties; and

(e) wherever possible, avoid duplication in relation to, and build on and complement, existing economic cooperation activities and delivery mechanisms.

2. The description of each Work Programme component shall specify the details necessary to provide clarity to the Parties regarding the scope and purpose of such component.

Article 5: Focal Points for Implementation

1. Each Party shall designate a focal point for all matters relating to the implementation of the Work Programme and shall keep all Parties updated on its focal point's details.

2. The focal points shall be responsible for overseeing and reporting on the implementation of the Work Programme in accordance with Article 6 and Article 7 and for responding to enquiries from any Party regarding the Work Programme.

3. The focal point of a Party shall coordinate the Work Programme with the development assistance coordination agency of that Party.

Article 6: Implementation and Evaluation of Work Programme Components

1. Prior to the commencement of each Work Programme component, the implementing Party or Parties, in consultation with the relevant participating Parties, shall develop an implementation plan for that Work Programme component and provide that plan to each Party.

2. The implementing Party or Parties for a Work Programme component shall use existing mechanisms for the implementation of that component, unless otherwise agreed by those Parties.

3. Until the completion of a Work Programme component, the implementing Party or Parties shall regularly monitor and evaluate the relevant component and provide periodic reports to each Party including a final component completion report.

Article 7: Review and Modification of Work Programme

1. At the direction of the Joint Committee, the Work Programme shall be reviewed within three years of the commencement of its implementation, and thereafter at regular intervals to assess its overall effectiveness in terms of assisting the developing country Parties to implement their PACER Plus obligations.

2. The Joint Committee shall, where appropriate, modify, renew or terminate the Work Programme, taking into account outcomes of reviews and the needs of the developing country Parties as mutually prioritised and determined by Participating Parties and available resources.

Article 8: Non-Application of Chapter 14 (Consultations and Dispute Settlement)

Chapter 14 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

CHAPTER 11

GENERAL PROVISIONS AND EXCEPTIONS

Article 1: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Verification Procedures), Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Technical Regulations, Standards and Conformity Assessment Procedures), Article XX of the GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, that measures referred to in Article XX(f) of the GATT 1994 include measures necessary to protect national works or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value,[1] and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapter 7 (Trade in Services), Article XIV of the GATS including its footnotes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

4. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal or plant life or health.

5. For the purposes of Chapter 9 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments and investors of the Parties or of a non-Party where like conditions prevail, or a disguised restriction on international trade or investment flows, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:

(a) necessary to protect public morals or to maintain public order;[2]

(b) necessary to protect human, animal or plant life or health;

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[1] "Creative arts" include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities.

[2] 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.

(c) necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement, including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;

(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; or

(iii) safety; or

(d) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

6. The Parties understand that the measures referred to in paragraph 5(b) of this Article include environmental measures to protect human, animal or plant life or health, and that the measures referred to in paragraph 5(d) of this Article include environmental measures relating to the conservation of living and non-living exhaustible natural resources.

7. For the purposes of Chapter 7 (Trade in Services) and Chapter 9 (Investment), and 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 or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:

(a) necessary to protect national works or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value;[3] or

(b) relating to the conservation of living or non-living exhaustible natural resources.

Article 2: Security Exceptions

1. 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; or

[3] "Creative arts" include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities.

(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 and fusionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) taken so as to protect critical public infrastructures[4] including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;

(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.

2. A Party taking action under this Article shall, to the fullest extent possible, inform the Joint Committee of measures that have been taken and of their termination.

Article 3: Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with the GATT 1994, including Article XVIII:B, and the WTO Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(b) in the case of trade in services, adopt or maintain restrictions on trade in services for which it has undertaken commitments, including payments or transfers for transactions related to such commitments; and

(c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 1 (Definitions) of Chapter 9 (Investment).

2. Restrictions adopted or maintained under paragraph 1(b) or 1(c) shall:

[4] For greater certainty, this includes critical public infrastructures whether publicly or privately owned.

(a) be consistent with the IMF Articles of Agreement;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves;

(e) be applied on a non-discriminatory basis such that the other Parties are treated no less favourably than any non-Party; and

(f) take into account that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

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 of this Article, or any changes therein, shall be notified promptly to the other Parties from the date such measures are taken.

5. The Party adopting or maintaining any restrictions under paragraph 1 of this Article shall promptly commence consultations with any interested Parties if requested in order to review the restrictions adopted or maintained by it.

Article 4: Prudential Measures

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons,[5] 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. If such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

[5] For greater certainty, it is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety and financial and operational integrity of payment and clearing systems.

Article 5: Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures. For the purposes of this Article, taxes and taxation measures include excise duties, but do not include:

(a) a "Customs duty" as defined in Article 2 of Chapter 1 (Initial Provisions and General Definitions); or

(b) the measures listed in subparagraphs (ii) and (iii) of that definition.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement; or

(b) they are granted or imposed under Article 11 of Chapter 9 (Investment).

3. Notwithstanding paragraph 2, nothing in the Articles referred to in that paragraph shall apply to:

(a) any non-conforming provision of any existing taxation measure;

(b) the continuation or prompt renewal of any non-conforming provision of any existing taxation measure;

(c) an amendment to any non-conforming provision of any existing taxation measure, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with any of those Articles;

(d) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence or incorporation, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties;[6] or

(e) a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Article 13 of Chapter 9 (Investment) shall apply to taxation measures.

[6]The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention.[7] In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention that convention shall prevail to the extent of the inconsistency.

6. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention between two or more Parties, the issue shall be referred to the competent authorities of the Parties. The competent authorities of the Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of the inconsistency. If the competent authorities agree, such a period may be extended up to twelve months from the date of referral of the issue. No procedure concerning the measure giving rise to the issue may be initiated under Chapter 14 (Consultations and Dispute Settlement) or Chapter 9 (Investment) until the expiry of the six month period, or such other period as may have been agreed by the competent authorities pursuant to the previous sentence. A panel established to consider a dispute related to a taxation measure shall accept as binding a determination of the competent authorities of the Parties made under this paragraph. For the purpose of this Article, competent authorities shall include representatives of the tax administration of each Party.

7. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference or privilege arising from any tax convention by which the Party is bound.

Article 6: Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of any other Party or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 14 (Consultations and Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 11 of Chapter 14 (Consultations and Dispute Settlement) may be requested by any other Party to determine only whether any measure (referred to in paragraph 1 of this Article) is inconsistent with its rights under this Agreement.

[7] For greater certainty, "tax convention" means a convention for the avoidance of double taxation or other international taxation agreement.

CHAPTER 12

INSTITUTIONAL PROVISIONS

Article 1: PACER Plus Joint Committee

1. The Parties hereby establish a Joint Committee consisting of representatives of the Parties.

2. The functions of the Joint Committee shall be to:

   (a) consider any matter relating to the implementation and operation of this Agreement and the associated Development and Economic Work Programme;

   (b) consider and recommend to the Parties any amendments to this Agreement;

   (c) supervise and coordinate the work of all subsidiary bodies established pursuant to this Agreement;

   (d) adopt, where appropriate, decisions and recommendations of subsidiary bodies established pursuant to this Agreement;

   (e) identify areas to be improved for promoting and facilitating trade in goods, services and investment among the Parties;

   (f) adopt procedures for the transposition of the tariff schedules in Annex 2-A (Schedules of Commitments on Tariffs) and technical revisions to Annex 3-B (Schedule of Product Specific Rules);

   (g) adopt recommendations on modifications of the rules of origin under Chapter 3 (Rules of Origin and Verification Procedures);

   (h) as appropriate, decide on specific matters relating to the operation, application and implementation of this Agreement;

   (i) consider any other matter that may affect the operation of this Agreement or that is entrusted to the Joint Committee by the Parties;

   (j) carry out any other functions as the Parties may agree; and

   (k) undertake a general review of this Agreement with a view to furthering its objectives in three years from the date of entry into force, and every five years thereafter, unless otherwise agreed by the Parties.

3. The Joint Committee shall establish its rules and procedures at its first meeting.

4. Unless the Parties agree otherwise, the Joint Committee shall convene its first meeting within one year after the date of entry into force of this Agreement. Its subsequent meetings shall be convened at such frequency as the Parties may mutually determine, and as necessary to discharge its functions under this Agreement. Special meetings of the Joint Committee may be convened, as mutually agreed by the Parties within 60 days of the request of a Party.

5. The Joint Committee shall report regularly to relevant Ministers of Parties to this Agreement.

Article 2: Subsidiary Bodies

1. (a) The Parties hereby establish:

(i) a Committee on Trade in Goods, Rules of Origin and Customs Procedures to consider any matter arising under Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Verification Procedures) and Chapter 4 (Customs Procedures);

(ii) a Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade to consider any matter arising under Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Technical Regulations, Standards and Conformity Assessment Procedures); and

(iii) a Committee on Services, Movement of Natural Persons and Investment to consider any matter arising under Chapter 7 (Trade in Services), Chapter 8 (Movement of Natural Persons) and Chapter 9 (Investment);

that shall comprise representatives of the Parties including those who retain the technical skills relevant to the matters under discussion.

(b) The terms of reference of each Committee shall be proposed by that Committee, in accordance with the Chapter(s) or Annexes of the Agreement within its mandate and be subject to the approval of and review by the Joint Committee.

(c) The Joint Committee may delegate any of its functions outlined in Article 1.2 to any of the Committees established under paragraph 1(a). Such delegated functions shall be added to the relevant Committee's terms of reference.

(d) Each Committee shall review the implementation by the Parties of the relevant Chapters or Annexes as that Committee considers appropriate and shall make recommendations to the Joint Committee to support the implementation of this Agreement through the Development and Economic Cooperation Work Programme.

(e) Unless otherwise provided for in this Agreement, each Committee shall commence an initial review of the relevant Chapters and Annexes within two years of the date of entry into force of this Agreement and submit a final report to

the Joint Committee, including any recommendations, within three years of the date of entry into force of this Agreement.

2. In the fulfilment of its functions, the Joint Committee may establish additional subsidiary bodies, including ad hoc bodies, and assign them with tasks on specific matters, or delegate its responsibilities to any subsidiary body established pursuant to this Agreement.

3. Unless the Parties agree otherwise, each subsidiary body established under this Article shall meet within one year of the date of entry into force of this Agreement or the establishment of that body, and thereafter, as and when required, as determined by the Joint Committee or by mutual agreement of the Parties. Meetings shall, wherever possible, be held in the margins of other relevant regional meetings, or following the meetings of the Joint Committee. Meetings may be held by teleconference or through any other means as mutually determined by the Parties.

Article 3: Mutual Agreement

1. All decisions of the Joint Committee and any subsidiary bodies shall be taken by mutual agreement.

2. Except as otherwise provided in this Agreement, the Joint Committee or subsidiary body shall be deemed to have acted by mutual agreement if no Party present at any meeting when a decision is taken formally objects to the proposed decision.

Article 4: Support for Attendance at Meetings

Consistent with the commitment of the developed country Parties to support the implementation of this Agreement, appropriate funding will be made available under Chapter 10 (Development and Economic Cooperation) for the participation of officials from Forum Island Countries to attend meetings of the Joint Committee and other subsidiary bodies. In determining the number of officials to be funded from the Forum Island Countries, account shall be taken of the issues on the agenda to be considered by the Joint Committee or the subsidiary bodies.

Article 5: Communications

1. Each Party shall designate a contact point to facilitate communications among the Parties on any matter relating to this Agreement. All official communications in this regard shall be in the English language.

2. On the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

ANNEX 12-A: SUBSIDIARY BODIES

Committee on Trade In Goods, Rules of Origin and Customs Procedures

The functions of the Committee on Trade in Goods, Rules of Origin and Customs Procedures may include:

(a) reviewing the implementation of, and measures taken pursuant to, the Chapters referred to in Article 2.1(a)(i);

(b) considering any matter related to the implementation of the Chapters referred to in Article 2.1(a)(i) or of interest to a Party;

(c) identifying and recommending measures to promote and facilitate improved market access;

(d) reviewing, where appropriate, the implementation of the Development and Economic Cooperation Work Programme for the Chapters listed in Article 2.1(a)(i);

(e) adopting procedures for the technical revision of the tariff schedules in Annex 2-A (Schedules of Commitments on Tariffs) and technical revisions to Annex 3-B (Schedule of Product Specific Rules);

(f) discussing any proposed modifications of the rules of origin under Chapter 3 (Rules of Origin and Verification Procedures);

(g) consulting on issues relating to rules of origin, customs procedures and administrative cooperation; and

(h) reporting outcomes of discussions to the Joint Committee within a reasonable time after the conclusion of each meeting.

Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade

The functions of the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade may include:

(a) reviewing the implementation of, and measures taken pursuant to, the Chapters referred to in Article 2.1(a)(ii);

(b) considering any matter related to the implementation of the Chapters referred to in Article 2.1(a)(ii);

(c) reviewing, where appropriate, the implementation of the Work Programme for the Chapters listed in Article 2.1(a)(ii); and

(d) reporting outcomes of discussions to the Joint Committee within a reasonable time after the conclusion of each meeting.

Committee on Trade in Services, Movement of Natural Persons and Investment

The functions of the Committee on Trade in Services, Investment, and the Movement of Natural Persons may include:

(a) reviewing the implementation of, and measures taken pursuant to, the Chapters referred to in Article 2.1(a)(iii);

(b) considering any matter related to the implementation of the Chapters referred to in Article 2.1(a)(iii), or of interest to a Party;

(c) identifying and recommending measures to promote further expansion of cross-border trade in services, investment, and the movement of natural persons among the Parties;

(d) reviewing, where appropriate, the implementation of the Development and Economic Cooperation Work Programme for the Chapters listed in Article 2.1(a)(iii); and

(e) reporting outcomes of discussions to the Joint Committee within a reasonable time after the conclusion of each meeting.

CHAPTER 13

TRANSPARENCY

Article 1: Scope

1. This Chapter provides minimum standards on transparency that shall apply to any matters covered by this Agreement. Other Chapters may include higher or more specific standards that apply to their subject matter.

2. Any provisions in other Chapters addressing the same subject matter as this Chapter shall apply in addition to and shall supplement the provisions of this Chapter.

Article 2: Publication

1. Each Party shall ensure, wherever possible, that its laws, regulations, procedures, and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly accessible to interested persons.

2. To the extent possible, each Party shall make the measures referred to in paragraph 1 available in electronic form, or online.

3. To the extent possible, each Party shall:

   (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and

   (b) where appropriate, provide all Parties with a reasonable opportunity to comment on such proposed measures.[1]

Article 3: Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Parties of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement.

2. On request of another Party, a Party shall provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

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[1] For greater certainty, a proposed measure may include a policy discussion document, a summary of proposed regulations or the draft text of a law or regulation.

3. Parties shall provide any notification, request, information or response made under this Article to the other Party through the relevant contact points.

4. Any notification, information or response provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

CHAPTER 14

CONSULTATIONS AND DISPUTE SETTLEMENT

Article 1: Definitions

For the purposes of this Chapter:

Parties to the dispute means the complaining Party or Parties and the Party complained against; and

third Party means any Party which has joined the proceedings under Article 5.8 or Article 10.1.

Article 2: Objectives

The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and the settlement of disputes arising under this Agreement.

Article 3: Scope

1. Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning the operation, implementation or application of this Agreement including wherever a Party considers that:

   (a) a measure of another Party is inconsistent with its obligations under this Agreement;

   (b) another Party has failed to carry out its obligations under this Agreement; or

   (c) a benefit that the Party could reasonably have expected to accrue to it directly or indirectly under this Agreement is being nullified or impaired.

2. This Chapter shall not apply to the settlement of disputes arising under Chapter 10 (Development and Economic Cooperation).

Article 4: General Provisions

1. This Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The Parties to the dispute shall, at every stage of a dispute, make every effort to reach a mutually satisfactory solution. Where a mutually satisfactory solution is reached, the terms and conditions of the agreement shall be notified to the other Parties.

4. In consultations and the settlement of disputes involving developing country Parties**,** particular consideration shall be given to the special situation of those Parties. In this regard, Parties shall exercise due restraint in raising matters under this Chapter.

5. Any time periods or other rules provided for in this Chapter, including Annex 14-A on Model Rules of Procedure, may be modified by mutual agreement of the Parties to the dispute. In this regard, special consideration shall be given to requests for the extension of timeframes by developing country Parties.

Article 5: Consultations

1. Any Party may request consultations with any other Party with respect to any matter referred to in Article 3.

2. During consultations, Parties should give special attention to the particular problems and interests of developing country Parties.

3. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

4. A copy of all requests for consultations shall be simultaneously provided to all Parties.

5. If a Party requests consultations, the other Party shall reply to the request for consultations and circulate the reply to all Parties within 10 days of the request for consultations, and enter into the consultations in good faith within 30 days of the request**.** In cases of urgency, including perishable goods, the other Party shall reply and circulate the reply to all Parties within 10 days, and enter into consultations in good faith within 10 days.

6. Consultations may be held in person or by any technological means available to the consulting Parties. If in person, consultations shall be held in the capital of the Party to which the request for consultations was made under paragraph 1, unless the consulting Parties agree otherwise.

7. The Parties shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations confidentially, in accordance with each Party's domestic legislative requirements; and

(c) endeavour to make personnel from its government agencies or other regulatory bodies who have responsibility for or expertise in the matter under consultation available for the consultations.

8. If a Party other than the Parties engaged in the consultations (Third Party) considers that it has a substantial or systemic interest in the consultations, it may be joined in the consultations upon notifying the Parties engaged in the consultations within 10 days of the request for consultations of its desire to be joined in the consultations. Such notification shall include an explanation of the Party's substantial or systemic interest in the matter and be provided simultaneously to all Parties. Such Party shall be joined in the consultations if the consulting Parties agree.

9. Consultations shall be confidential and without prejudice to any proceedings under this Chapter.

Article 6: Good Offices, Conciliation and Mediation

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

2. If the Parties to the dispute agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by a Panel established or re-convened under this Chapter.

3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties to the dispute during these proceedings shall be confidential and without prejudice to the rights of any Parties to the dispute in any further or other proceedings.

4. The Secretary-General of the Pacific Islands Forum Secretariat or their nominee may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with a view to assisting Parties to reach a mutually satisfactory solution.

Article 7: Choice of Forum

1. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties to the dispute are party, the complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter.

2. For the purposes of this Article, the complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of a Panel pursuant to Article 8.1 or requested the establishment of, or referred a matter to, a similar dispute settlement panel under another international agreement.

Article 8: Request for the Establishment of a Panel

1. The complaining Party may make a request to the Party complained against for the establishment of a Panel to consider the dispute if:

(a) the Party complained against does not enter into consultations in accordance with Article 5; or

(b) the consultations fail to resolve a dispute within 60 days, or 20 days in cases of urgency including perishable goods, or such other period as the Parties may agree.

2. A request made pursuant to paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the Panel) to present the problem clearly.

3. A copy of all such requests shall be provided simultaneously to all Parties. The Party complained against shall immediately acknowledge receipt of the request by way of notification to all Parties indicating the date on which the request was received.

Article 9: Procedures for Multiple Complainants

1. Where more than one Party requests the establishment of a Panel related to the same dispute, a single Panel shall be established to examine these complaints, unless the Parties to the dispute agree otherwise.

2. The single Panel shall organise its examination and present its findings in such a manner that the rights which the Parties to the dispute would have enjoyed, had separate panels examined the complaints, are in no way impaired.

Article 10: Third Parties

1. Any Party having a substantial interest in a matter before a Panel may notify the Parties to the dispute of this interest within 14 days of the date of receipt by the Party complained against of the request for the establishment of the Panel or the date of a request for a Compliance Review Panel pursuant to Article 16. Such notification shall be simultaneously provided to all Parties. Any Party notifying its substantial interest shall have the rights and obligations of a Third Party as outlined in Annex 14-A on Model Rules of Procedure.

2. The Parties to the dispute may agree to provide additional or supplemental rights to Third Parties regarding participation in Panel proceedings. In providing additional or supplemental rights, the Parties to the dispute may impose agreed conditions. Unless agreed otherwise by the Parties to the dispute, the Panel shall not grant any additional or supplemental rights to any Third Parties regarding participation in Panel proceedings.

Article 11: Establishment of Panels

1. Unless the Parties agree otherwise, a Panel requested pursuant to Article 8.1 shall be established in accordance with this Article.

2. The Panel shall consist of three panellists, including a chair.

3. Each Party to the dispute shall within 30 days of the date of the request for the establishment of a Panel under Article 8.1, appoint one panellist who may be a national of the Party to the dispute and propose up to three candidates to serve as the chair. If there is more than one complaining Party, the complaining Parties shall jointly appoint one panellist. The complaining Parties shall jointly propose up to three candidates to serve as the chair. The chair of the Panel shall not be a national of a Party to the dispute and shall not have their usual place of residence in the territory of a Party to the dispute.

4. The Parties to the dispute shall agree on and appoint the chair within 45 days of the date of the request for the establishment of a Panel, taking into account the candidates proposed in accordance with paragraph 3. If appropriate, the Parties to the dispute may jointly consult the panellists appointed in accordance with paragraph 3.

5. If any of the three appointments have not been made within 45 days of the date of the request for the establishment of a Panel, on request of any Party to the dispute, any remaining panellists shall be appointed by lot from the list of the candidates proposed in accordance with paragraph 3. The appointment by lot shall be undertaken within seven days of the date of the request for appointment by lot, unless the Parties to the dispute agree otherwise. If more than one panellist including a chair is to be selected by lot, the chair shall be selected first.

6. The date of establishment of the Panel shall be the date on which the last panellist is appointed.

7. All panellists shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;

(c) be independent of, and not be employed by, affiliated with or take instructions from, any Party to the dispute or Third Party;

(d) not have dealt with the matter in any capacity;

(e) disclose, to the Parties to the dispute or Third Party, information which may give rise to justifiable doubts as to their independence or impartiality; and

(f) serve in their individual capacities and not as government representatives, nor as representatives of any organisation.

8. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist. The work of the Panel shall be suspended during the appointment of the successor panellist.

9. If a Panel is reconvened under Article 16 or Article 17 the reconvened Panel shall, if possible, have the same panellists as the original Panel. If this is not possible, the replacement panellist(s) shall be appointed in the same manner as prescribed for the appointment of the original panellist(s), and shall have all the powers and duties of the original panellist(s).

Article 12: Functions of Panels

1. The Panel shall consult the Parties to the dispute, as appropriate, and provide adequate opportunities for the development of a mutually satisfactory solution.

2. The Panel shall make an objective assessment of the dispute before it, including an objective assessment of:

(a) the facts of the case;

(b) the applicability of the provisions of this Agreement cited by the Parties to the dispute;

(c) whether:

(i) the Party complained against has failed to carry out its obligations under this Agreement;

(ii) the measure at issue is inconsistent with the obligations of this Agreement;

(iii) the measure at issue applied by the Party complained against is causing the nullification or impairment of any benefit described in Article 3.1(c); and

(d) any other matter that the Parties to the dispute have jointly requested that the Panel address.

3. If the Panel makes a finding under paragraph 2(c), it shall issue a determination of the reasonable period of time that the Party complained against shall have to comply with the finding of the Panel, and the reasons for its determination, in accordance with Article 15.4.

4. The Panel shall take into account the interests of Third Parties as presented during written or oral submissions.

5. Any Panel established or reconvened under this Chapter shall:

(a) make its findings by consensus; except where a Panel is unable to reach consensus, it may make its findings by majority vote; and

(b) report its findings and recommendations in writing in accordance with this Agreement. The findings and recommendations of the Panel cannot add to or diminish the rights and obligations provided in this Agreement or any other international agreement.

6. Unless the Parties agree otherwise within 20 days of the date of the delivery of the request for the establishment of the Panel, the Panel's terms of reference shall be:

> "To examine, in light of the relevant provisions of this Agreement cited by the Parties, the matter referenced in the request for the establishment of the Panel, to make findings as provided by Article 12.5(a) and to report its findings and recommendations in writing in accordance with Article 12.5(b)."

Article 13: Panel Procedures

1. The Panel proceedings shall be conducted in accordance with the provisions of this Chapter and, unless the Parties to the dispute agree otherwise, shall follow the Model Rules of Procedure set out in Annex 14-A.

2. In examining a complaint against a developing country Party, the Panel shall accord sufficient time for the developing country Party to prepare and present its arguments.

3. The Panel may, in consultation with the Parties to the dispute, adopt additional rules of procedure which do not conflict with this Chapter or with Annex 14-A (Model Rules of Procedure).

4. A Panel reconvened under Article 16 or Article 17 may establish its own procedures, in consultation with the Parties to the dispute, which do not conflict with this Chapter or Annex 14-A.

Article 14: Suspension and Termination of Proceedings

1. The Parties to the dispute may at any time agree that the Panel suspend its work for a period not exceeding 12 months from the date of such agreement. In such an event the Parties to the dispute shall jointly notify the chair of the Panel. The suspended Panel proceeding shall be resumed on the request of any Party to the dispute. If the work of the Panel has been continuously suspended for more than 12 months, the authority for establishment of the Panel shall lapse, unless the Parties to the dispute agree otherwise.

2. The Parties to the dispute may agree to terminate the proceedings of a Panel in the event that a mutually satisfactory solution has been found. In such event the Parties shall jointly notify the chair of the Panel.

Article 14*bis:* Interim Reports

1. The Panel shall circulate the entirety of its interim report to the Parties to the dispute, with a view to the correction of factual or clerical errors, 30 days prior to the presentation of the final report of the Panel, or a period otherwise agreed by the Panel and the Parties to the dispute. The Parties to the dispute shall provide written submissions to the Panel 30 days after the interim report has been circulated if necessary.

2. After written submissions have been lodged with the Panel, a Party to the dispute may request that the Panel hold meetings with the Parties to the dispute on the interim report within 60 days, unless agreed otherwise by the Parties to the dispute. The Panel shall meet with the Parties to the dispute at a time to be agreed by the Parties to the dispute.

3. The Panel shall consider the submissions by the Parties to the dispute and the outcomes of any meetings before proceeding to finalise the report in accordance with Article 15. The findings of the final report shall include a discussion of any comments made by the Parties to the dispute.

Article 15: Implementation

1. The findings of the Panel shall be final and binding on the Parties to the dispute.

2. If the report of a Panel finds that:

   (a) a measure is inconsistent with the obligations of this Agreement or the Party complained against has failed to carry out its obligations under this Agreement, the Party complained against has an obligation to bring that measure into conformity with the Agreement; or

   (b) the measure is causing nullification and impairment in the sense of Article 3.1(c), the Party complained against has an obligation to eliminate the nullification and impairment or reach a mutually satisfactory solution with the complaining Party.

3. When implementing the findings of the Panel, particular attention should be paid to matters affecting the interests[1] of developing country Parties with respect to measures which have been subject to dispute settlement.

4. Within 30 days of the date of the presentation of the Panel's final report to the Parties to the dispute, the Party complained against shall notify the complaining Party:

[1]For greater certainty, interest may include the essential export interests of a developing country Party.

(a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligations in paragraph 1; and

(b) whether such implementation can take place immediately.

5. Unless the Parties to the dispute agree otherwise within 45 days of the presentation of the final report, the determination made by the Panel in respect of the reasonable period of time shall apply.

6. If a Party which requested the establishment of a Panel considers that an action proposed or subsequently taken by the Party complained against does not comply with the findings and recommendations of the Panel, the Parties shall enter into consultations with a view to developing a mutually satisfactory solution.

Article 16: Compliance Review

1. If the Parties have entered into consultations in accordance with Article 15.6 and have failed to agree on a mutually satisfactory solution within 30 days, or the Parties have not entered into such consultations within 30 days of the request for consultations, the dispute shall be decided through recourse to a Panel reconvened for this purpose (Compliance Review Panel) in accordance with Article 11.9.

2. A Compliance Review Panel shall consult the Parties to the dispute, as appropriate, and provide adequate opportunities for the development of a mutually satisfactory solution.

3. A Compliance Review Panel shall make an objective assessment of the matter or complaint before it, including an objective assessment of:

(a) the factual aspects of any implementation action taken by the Party complained against; and

(b) whether the Party complained against has complied with the obligation in Article 15.1.

4. If a Compliance Review Panel is requested to reconvene in accordance with paragraph 1, it shall reconvene within 30 days of the date of the request and fix the timetable for the compliance review process, taking into account the time periods specified in this Chapter and Annex 14-A.

Article 17: Compensation and Suspension of Concessions or Other Obligations

1. Neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under Article 15.1. Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. The Party complained against shall, if so requested by the complaining Party, enter into negotiations within 20 days of the date of the request with a view to agreeing upon mutually satisfactory compensation if:

(a) the Party complained against has notified the complaining Party under Article 15.2 that it does not intend to comply with the obligation in Article 15.1;

(b) the Party complained against has not implemented the obligation in Article 15.1 within a reasonable period of time in accordance with Article 15.3; or

(c) a failure to comply with the obligation in Article 15.1 has been established in accordance with Article 16.

3. If no satisfactory compensation has been agreed within 30 days of the date of a request made under paragraph 2, the complaining Party may at any time thereafter notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations, and shall have the right to begin suspending concessions or other obligations 30 days after the date of notification.

4. The right to suspend concessions or other obligations arising under paragraph 3 shall not be exercised if:

(a) a review is being undertaken pursuant to paragraph 9; or

(b) a mutually satisfactory solution has been agreed.

5. A notification made under paragraph 3 shall specify the level of concessions or other obligations that the complaining Party proposes to suspend, and the relevant Chapter and sector or sectors to which the concessions or other obligations are related. Any suspension of benefits shall be restricted to benefits accruing to the Party complained against under this Agreement.

6. In considering which concessions or other obligations to suspend, the complaining Party shall apply the following principles:

(a) the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors affected by the measure; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector, it may suspend concessions or other obligations in other sectors.

7. The level of suspension of concessions or other obligations shall be equivalent to the level of nullification and impairment that is attributable to the failure of the Party complained against to implement the obligation in Article 15.1.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in Article 15.1 has been complied with or a mutually satisfactory solution is reached between the Parties to the dispute.

9. If the right to suspend concessions or other obligations has been exercised under this Article, and the Party complained against considers that:

(a) the level of concessions or other obligations suspended by the complaining Party is not equivalent to the level of the nullification and impairment; or

(b) any measure it has taken subsequent to the notification of the suspension of benefits in paragraph 3 complies with the obligation in Article 15.1,

it may request the Panel to reconvene to examine the matter. The Panel shall reconvene within 15 days of the date of the request, unless the original panellists are unavailable, in which case the Panel shall reconvene in accordance with the procedure in Article 11.9.

10. If the Panel determines that the level of benefits suspended is excessive, it shall determine the level of benefits it considers to be of equivalent effect to the level of nullification or impairment found by the Panel, adjusted to reflect any loss sustained by a Party as a result of excessive suspension. A report under Article 17.10 shall be final and binding on the Parties.

Article 18: Expenses

1. Unless the Parties to the dispute agree otherwise, each Party to the dispute shall bear the costs of its own expenses and legal costs.

2. Unless the Parties to the dispute agree otherwise, the expenses of a Panel, including the remuneration of the panellists, the costs of the chair, and other expenses associated with the conduct of the proceedings shall be borne by the Parties to the dispute in equal shares.

CHAPTER 15

FINAL PROVISIONS

Article 1: Annexes, Appendices and Footnotes

The annexes, appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 2: 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 its regional and local governments and authorities and non-governmental bodies (in the exercise of governmental powers delegated to them) within its territory.

Article 3: Relation to Other Agreements

1. In respect of matters within the scope of this Agreement, each Party reaffirms its rights and obligations under other agreements to which one or more other Parties are party, including under the WTO Agreement in the case of a WTO Member.

2. Nothing in this Agreement shall be construed to derogate from any right or obligation a Party has under existing agreements to which one or more other Parties are party, including under the WTO Agreement in the case of a WTO Member.

3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall consult with a view to finding a mutually satisfactory solution, taking into account applicable principles of international law. Notwithstanding the preceding sentence, the provisions of this Agreement, upon entry into force, shall, as between the Parties hereto, prevail to the extent of any inconsistency over the provisions of the *South Pacific Regional Trade and Economic Cooperation Agreement* (SPARTECA).[1]

4. Nothing in this Agreement shall prevent any Party from entering into any agreement with one or more other Parties relating to trade in goods, trade in services, investment or other areas of economic cooperation.

Article 4: Amended or Successor International Agreements

If any international agreement, or a provision therein, referred to in this Agreement (or

[1] For greater certainty, the purpose of this article is to ensure consistency with Article 30 of the *Vienna Convention on the Law of Treaties* (Application of Successive Treaties Relating to the Same Subject Matter).

incorporated into this Agreement) is amended, the Parties shall consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

Article 5: Disclosure of Information

Unless otherwise provided in this Agreement, nothing in this Agreement shall be construed to require any Party to provide or allow access to information, the disclosure of which it considers would be contrary to the public interest as determined by its domestic law, be contrary to any of its legislation, impede law enforcement, or prejudice legitimate commercial interests of particular enterprises, public or private.

Article 6: Confidentiality

Unless otherwise provided in this Agreement, where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that the Party receiving the information is required to provide the information under its domestic law.

Article 7: Amendments

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

Article 8: Entry into Force

1. This Agreement shall enter into force 60 days after the date on which no fewer than eight negotiating Parties have notified the Depositary in writing of the completion of their internal requirements.[2]

2. After the date of entry into force of this Agreement in accordance with paragraph 1, this Agreement shall enter into force for any other signatory 60 days after the date on which such signatory has notified the Depositary in writing of the completion of its internal requirements.

[2]For greater certainty, the term "internal requirements" may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

Article 9: Accession

1. This Agreement shall be open to accession or association by a State, separate customs territory or self-governing entity as the Parties may agree.

2. An applicant for accession shall accept all of the provisions of this Agreement and its Annexes.

3. The applicant for accession shall enter into negotiations with the Parties on Schedules of Commitments on Tariffs (Chapter 2), Trade in Services (Chapter 7), Movement of Natural Persons (Chapter 8) and Investment (Chapter 9) on terms to be agreed between the Parties.

4. The Agreement shall enter into force for an accession applicant 60 days after it has deposited an instrument of accession with the Depositary indicating that it accepts the terms and conditions for the accession, and the Parties have notified the Depositary in writing of the completion of their internal requirements with respect to the accession.

5. Notwithstanding paragraphs 2 and 3, Forum Island Countries which had participated in the PACER Plus negotiations but were unable to sign by the time that the Agreement entered into force, can accede to it on an expedited basis following agreement with the Parties on its Schedules of Commitments on Tariffs (Chapter 2), Trade in Services (Chapter 7), Movement of Natural Persons (Chapter 8) and Investment (Chapter 9).

Article 10: Depositary

1. Tonga shall be the Depositary for this Agreement.

2. The Depositary shall:

   (a) register this Agreement pursuant to Article 102 of the Charter of the United Nations Charter;

   (b) transmit certified copies of this Agreement to all of the Parties; and

   (c) notify all of the Parties of signatures, acceptances, ratifications, accessions to, and withdrawals from, this Agreement.

Article 11: Withdrawal and Termination

1. Any Party may withdraw from this Agreement by giving six months advance notice in writing to the other Parties.

2. This Agreement shall terminate if, pursuant to paragraph 1, more than half of the Parties have notified their withdrawal from it.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Nuku'alofa the fourteenth day of June, two thousand and seventeen, in one copy in the English language.

Australia _____

The Cook Islands _____

The Federated States of Micronesia _____

The Independent and Sovereign Republic of Kiribati _____

The Republic of Nauru _____

New Zealand _____

Niue _____

The Republic of Palau _____

The Republic of the Marshall Islands _____

The Independent State of Samoa _____

Solomon Islands _____

The Kingdom of Tonga _____

Tuvalu _____

The Republic of Vanuatu _____