CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1

Objective

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

ARTICLE 2.2

Scope

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

ARTICLE 2.3

Definitions

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

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

(b) "consular transaction" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third country, a

consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of the good;

(c) "export licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body or bodies as a prior condition for exportation from the territory of the exporting Party;

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

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

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

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

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

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

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

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

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

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

ARTICLE 2.4

National treatment on internal taxation and regulation

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

ARTICLE 2.5

Elimination of customs duties

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

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

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

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

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

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

ARTICLE 2.6

Standstill

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

ARTICLE 2.7

Export duties, taxes or other charges

1. A Party shall not adopt or maintain:

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

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

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

ARTICLE 2.8

Fees and formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994, including its interpretative Notes and Supplementary Provisions, that all fees and other charges of whatever character imposed by a Party on, or in connection with, importation or exportation of goods are limited in amount to the approximate cost of services rendered, and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. A Party shall not levy the fees and other charges of whatever character referred to in paragraph 1 on an *ad valorem* basis.

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

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

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

ARTICLE 2.9

Repaired or altered goods

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration.

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

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

ARTICLE 2.10

Remanufactured goods

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

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

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

ARTICLE 2.11

Import and export restrictions

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

2. A Party shall not adopt or maintain:

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

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

ARTICLE 2.12

Origin marking

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

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

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

ARTICLE 2.13

Import licensing procedures

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

2. A Party that adopts a new import licensing procedure or modifies an existing import licensing procedure, shall notify the other Party of such adoption or modification without delay and in any event no later than 60 days after the date of the publication of the relevant procedure. The notification shall include the information specified in Article 5(2) of the Import Licensing Agreement. A Party shall be deemed to be in compliance with this notification obligation if it notifies the adoption of a new import licensing procedure, or a modification of an existing import licensing procedure, to the WTO Committee on Import Licensing established by Article 4 of the Import Licensing Agreement, including the information specified in Article 5(2) of that Agreement.

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

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

ARTICLE 2.14

Export licensing procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2.15

Preference utilisation rates

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

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

ARTICLE 2.16

Temporary admission

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

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

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

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

(c) commercial samples and advertising films and recordings (recorded visual media or audio materials, consisting essentially of images or sound showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public); and

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

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

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

5. Each Party may require that the goods benefiting from temporary admission:

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

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

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

(d) be identified when imported and exported;

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

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

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

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

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

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

ARTICLE 2.17

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

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

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

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

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

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

ARTICLE 2.18

Specific measures concerning the management of preferential treatment

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

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

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

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

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

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

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

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

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

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

ARTICLE 2.19

Committee on Trade in Goods

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

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

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

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

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

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

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

ARTICLE 2.20

Contact points

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