PART IV: GENERAL PROVISIONS

Article 16

Exceptions

1 Provided that such measures are not used as a means of arbitrary or unjustifiable discrimination between the Parties, or as a disguised restriction on trade between the Parties, nothing in this Agreement shall prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals;

(b) necessary to protect human, animal or plant life or health;

(c) relating to trade in gold or silver;

(d) necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement;

(e) necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement relating to the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

(f) necessary for the prevention of disorder or crime;

(g) relating to products of prison labour;

(h) imposed for the protection of national treasures of artistic, historical, anthropological, palaeontological, archaeological or other cultural or scientific value;

(i) necessary to reserve for approved purposes the use of Royal Arms or national, state, provincial and territorial arms, flags, crests and seals;

(j) necessary to protect its indigenous flora and fauna;

(k) undertaken in pursuance of its rights and obligations under a multilateral international commodity agreement or arrangement;

(l) necessary to prevent or relieve shortages of foodstuffs or other essential goods; or

(m) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2 Nothing in this Agreement shall prevent the adoption and enforcement by a Party of measures:

(a) necessary to protect its essential security interests or implement its international obligations or national policies:

(i) relating to the non-proliferation of biological and chemical weapons, nuclear weapons or other nuclear explosive devices;

(ii) relating to the traffic in arms, ammunition and implements of war, and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) in time of war or other serious international tension.

(b) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of peace and security.

Article 17

Transparency

1 Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all measures, including judicial decisions and administrative rulings, of general application which pertain to or affect the operation of this Agreement.

2 Each Party shall endeavour to provide as much opportunity as possible for interested parties and persons to comment on proposed measures that may affect trade or government procurement.

3 Nothing in Paragraphs 1 and 2 shall be interpreted as requiring a Party to disclose confidential information contrary to its national security or the public interest, or to prejudice legitimate commercial interests.

4 Each Party shall administer in a uniform, impartial and reasonable manner all measures of general application pertaining to trade and government procurement.

Article 18

Measures to Facilitate Trade

1 The Parties shall endeavour to implement measures which will facilitate trade within the Area and, where appropriate, shall encourage government bodies and other organisations and institutions to work towards the implementation of such measures.

2 The Parties shall examine the scope for taking action to facilitate trade within the Area by harmonising their laws, regulations and administrative practices.

3 Where possible, trade facilitation initiatives shall be co-ordinated with wider regional and international initiatives.

4 Where a Party believes harmonisation of measures, or their implementation, will facilitate trade or reduce or eliminate distortions of trade, it may notify any other Party of its wish to enter into consultations. The Party so requested shall enter into consultations in good faith, and as soon as possible, with a view to seeking a mutually satisfactory solution.

Article 19

Evolving Relationship

1 Where a Party considers it is desirable to extend the matters covered by this Agreement, or extend the territorial scope of this Agreement, or otherwise develop or deepen the relationship established by this Agreement, it may notify the other Parties of its wish to enter into consultations with a view to negotiating the terms and conditions of the extension.

2 The Parties undertake to periodically review the status of the relationship established by this Agreement, in accordance with Article 23.

Article 20

Notification

1 Each Party shall give the other Parties notice of any proposed or actual measure which might materially affect trade or government procurement in the Area.

2 The notice referred to in Paragraph 1 shall be given as soon as possible, but in any event not later than 15 days after implementing the measure or taking the action.

3 Each Party shall, on another Party's request, promptly provide information and respond to questions pertaining to any actual or proposed measure or action which might materially affect trade or government procurement in the Area.

4 The provisions of Paragraphs 1, 2 and 3 are to be interpreted as widely as possible consistent with not requiring a Party to disclose confidential information contrary to its national security or the public interest, or to prejudice legitimate commercial interests.

5 Any notice given in terms of this Agreement shall be in writing and shall be effective from the date on which it is received.

6 Where this Agreement requires a Party to notify the other Parties it shall be sufficient for that Party to notify the Forum Secretariat. The Forum Secretariat shall immediately disseminate the notice to all other Parties. Notifications which are made directly to other Parties shall also be made to the Forum Secretariat.

Article 21

Consultations

1 If a Party considers that:

(a) an obligation under this Agreement has not been, or is not being, fulfilled;

(b) any benefit conferred upon it by this Agreement is being, or may be, denied;

(c) the achievement of any objective of this Agreement is being, or may be, frustrated;

(d) a case of difficulty has arisen or may arise; or

(e) a change in circumstances necessitates, or might necessitate, an amendment of this Agreement;

it may notify any other Party of its wish to enter into consultations. The Party so requested shall enter into consultations in good faith and as soon as possible, with a view to seeking a mutually satisfactory solution.

2 For the purposes of this Agreement, consultations between the Parties shall be considered to have commenced on the day on which notice requesting the consultations is received.

Article 22

Dispute Resolution

1 The Parties shall endeavour, as far as is possible, to settle any differences concerning the interpretation, implementation or operation of this Agreement through amicable consultations in accordance with Article 21. Such consultations shall be undertaken with appropriate regard to relevant cultural values and customary procedures for resolving differences in the Pacific region.

2 Where the consultations referred to in Paragraph 1 have failed within 60 days to resolve the dispute between the Parties, any Party to the dispute may notify the Secretary General and the other Parties to the dispute of its wish to resolve the dispute by mediation. The Parties may agree on a mediator or request the Secretary General to appoint a mediator. Any costs relating to such mediation shall be borne by the Parties to the dispute in equal shares.

3 Where the mediation process referred to in Paragraph 2 has failed within 60 days, or such time period as agreed to by the Parties to the dispute, to resolve the dispute between the Parties, any Party to the dispute may notify the Secretary General and the other Parties to the dispute of its decision to submit the dispute to arbitration, pursuant to the provisions of Annex V.

4 The Secretary General in consultation with the Parties, shall develop, maintain and, from time to time, amend a list of individuals who may be designated as Arbitrators for the purpose of this Article and Annex V. The Parties, in consultation with Secretary General, shall establish the criteria for individuals to be included in the list of potential arbitrators.

5 The list described in the preceding Paragraph shall identify each individual, including that individual's nationality, and briefly describe the individual's experience with respect to both international trade and international arbitration, the individual's training or qualifications for services as an arbitrator, and any areas of special expertise which the individual possesses.

6 Where a Party fails to comply with the arbitrator's award, any Party affected by this failure may enter into consultations with the other Parties with a view to persuading the defaulting Party to comply. Where such consultations are unsuccessful within 60 days, any affected Party may suspend the application to the defaulting Party of concessions or the performance of any other obligations under this Agreement, until such time as the defaulting Party complies with the arbitrator's award. The level of the suspension of concessions or performance of other obligations by the affected Party shall be equivalent to the level of nullification or impairment of benefits under this Agreement to that Party caused by the defaulting Party.

7 Once the defaulting Party complies with the decision of the Arbitrator, all action taken under the preceding Paragraph shall be terminated.

Article 23

Review

1 The Parties shall meet at the time of the Forum Trade Ministers' Meeting or otherwise as appropriate to review relevant aspects of the implementation and operation of this Agreement.

2 The Parties undertake to conduct a general review of the operation of this Agreement no later than five years after it enters into force, and thereafter at no later than five-yearly intervals. Under the general review, the Parties shall:

(a) monitor progress made in implementing this Agreement, and in particular, progress made in:

(i) ensuring the effectiveness and appropriateness of the Rules (Article 5);

(ii) implementing timetables for reduction and elimination of tariffs (Article 7);

(iii) removing goods from the lists of excepted imports (Article 8);

(iv) eliminating measures distorting trade in goods (Article 9);

(v) liberalising developing industries (Article 14);

(vi) liberalising government procurement (Article 15);

(vii) implementing measures to facilitate trade and harmonise business laws and other measures (Article 18); and

(viii) broadening and deepening the relationship established by this Agreement (Article 19);

(b) assess whether the Agreement is operating effectively;

(c) evaluate the need for additional measures or modifications to increase its effectiveness;

(d) endeavour, in the spirit of this Agreement, to identify ways to accelerate the time frames for liberalisation, including the removal of items from their lists of exempted imports; and

(e) consider any other matter relating to the implementation of this Agreement or trade within the Area or in the Pacific region.

PART V: FINAL PROVISIONS

Article 24

Effect on other Agreements

1 This Agreement shall not exempt any Party from its obligations, or abrogate the rights of any Party, under any existing international agreements to which it is Party.

2 Nothing in this Agreement shall prevent Parties from entering into any other agreements relating to the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade to the extent that those agreements are consistent with the terms and objectives of this Agreement.

Article 25

Amendments

1 With the exception of the lists of excepted imports in Annex III which may be amended only in accordance with Articles 8 and 11 and the rules governing trade in alcohol and tobacco products which may be agreed in accordance with Paragraph 13 of Article 8, this Agreement may be amended at any time by the unanimous agreement of the Parties.