

**FREE TRADE AGREEMENT BETWEEN THE EUROPEAN UNION AND NEW
ZEALAND**

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FREE TRADE AGREEMENT BETWEEN THE EUROPEAN UNION AND NEW ZEALAND

CHAPTER 12 DIGITAL TRADE

SECTION A GENERAL PROVISIONS

ARTICLE 12.1 Scope

1. This Chapter applies to measures of a Party affecting trade enabled by electronic means.
2. This Chapter does not apply to:
 - a) audio-visual services;
 - b) information held or processed by or on behalf of a Party, or measures relating to such information, including measures related to its collection; and
 - c) measures adopted or maintained by New Zealand that it deems necessary to protect or promote Māori rights, interests, duties and responsibilities¹ in respect of matters covered by this Chapter, including in fulfilment of New Zealand's obligations under te Tiriti o Waitangi / the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or a disguised restriction on trade enabled by electronic means. Chapter 26 (Dispute settlement) does not apply to the interpretation of te Tiriti o Waitangi / the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it.

ARTICLE 12.2 Definitions

1. The definitions set out in Article 10.3 (Definitions) of Chapter 10 (Trade in services and investment) apply to this Chapter.
2. The definition of the term “public telecommunications service” in point (i) of Article 10.47 (Definitions) applies to this Chapter.
3. For the purposes of this Chapter, the following definitions apply:

¹ For greater certainty, Māori rights, interests, duties and responsibilities include those relating to mātauranga Māori.

- a) “consumer” means any natural person using a public telecommunications service for other than professional purposes;
- b) “digital procurement” means procurement through electronic means;
- c) “direct marketing communication” means any form of commercial advertising by which a person communicates marketing messages directly to a user via a public telecommunications service, including electronic mail and text and multimedia messages (SMS and MMS);
- d) “electronic authentication” means an electronic process or act of verifying that enables the confirmation of:
 - i. the electronic identification of a person; or
 - ii. the origin and integrity of data in electronic form;
- e) “electronic invoicing” or “e-invoicing” means the automated creation, exchange and processing of invoices between suppliers and buyers using a structured digital format;
- f) “electronic seal” means data in electronic form, used by a juridical person, which is attached to, or logically associated with, other data in electronic form to ensure the origin and integrity of that other data;
- g) “electronic signature” means data in electronic form that is attached to, or logically associated with, other data in electronic form which:
 - i. may be used to identify the signatory in relation to the other data in electronic form; and
 - ii. is used by a signatory to agree on the other data in electronic form;²
- h) “internet access service” means a public telecommunications service that provides access to the internet, and thereby connectivity to virtually all endpoints of the internet, irrespective of the network technology and terminal equipment used;
- i) “personal data” means information relating to an identified or identifiable natural person;
- j) “trade administration document” means a form issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and
- k) “user” means a person using a public telecommunications service.

ARTICLE 12.3 Right to regulate

The Parties reaffirm each Party’s right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or

² For greater certainty, nothing in this definition prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the data has not been altered or verifying the identity of the signatory.

health, social services, public education, safety, the environment, including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, the promotion and protection of cultural diversity, and, in the case of New Zealand, the promotion or protection of the rights, interests, duties and responsibilities of Māori.

SECTION B CROSS-BORDER DATA FLOWS AND PERSONAL DATA PROTECTION

ARTICLE 12.4 Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy and recognise that each Party may have its own regulatory requirements in this regard.
2. To that end, a Party shall not restrict cross-border data flows taking place between the Parties in the context of an activity that is within the scope of this Chapter, by:
 - a) requiring the use of computing facilities or network elements in its territory for data processing, including by requiring the use of computing facilities or network elements that are certified or approved in the territory of the Party;
 - b) requiring the localisation of data in its territory;
 - c) prohibiting storage or processing of data in the territory of the other Party; or
 - d) making the cross-border transfer of data contingent upon the use of computing facilities or network elements in its territory or upon localisation requirements in its territory.
3. For greater certainty, the Parties understand that nothing in this Article prevents the Parties from adopting or maintaining measures in accordance with Article 25.1 (General exceptions) to achieve the public policy objectives referred to therein, which, for the purposes of this Article, shall be interpreted, where relevant, in a manner that takes into account the evolutionary nature of the digital technologies. The preceding sentence does not affect the application of other exceptions in this Agreement to this Article.
4. The Parties shall keep the implementation of this Article under review and assess its functioning within three years after the date of entry into force of this Agreement unless the Parties agree otherwise. A Party may also at any time propose to the other Party to review this Article. Such proposal shall be accorded sympathetic consideration.
5. In the context of the review referred to in paragraph 4, and following the release of the Waitangi Tribunal's Report Wai 2522 dated 19 November 2021, New Zealand
 - a. reaffirms its continued ability to support and promote Māori interests under this Agreement; and

- b. affirms its intention to engage Māori to ensure the review referred to in paragraph 4 takes account of the continued need for New Zealand to support Māori to exercise their rights and interests, and meet its responsibilities under te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

ARTICLE 12.5 Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to enhancing consumer confidence and trust in digital trade.
2. Each Party may adopt or maintain measures it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in this Agreement shall affect the protection of personal data and privacy afforded by the Parties' respective measures.
3. Each Party shall inform the other Party about any measures referred to in paragraph 2 that it adopts or maintains.
4. Each Party shall publish information on the protection of personal data and privacy that it provides to users of digital trade, including:
 - a. how individuals can pursue a remedy for a breach of protection of personal data or privacy arising from digital trade; and
 - b. guidance and other information regarding compliance of businesses with applicable legal requirements protecting personal data and privacy.

SECTION C SPECIFIC PROVISIONS

ARTICLE 12.6 Customs duties on electronic transmissions

1. A Party shall not impose customs duties on electronic transmissions between a person of one Party and a person of the other Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided that such taxes, fees or other charges are imposed in a manner consistent with this Agreement.

ARTICLE 12.7 No prior authorisation

1. Each Party shall endeavour not to impose prior authorisation or any other requirement having an equivalent effect on the supply of services by electronic means.

2. Paragraph 1 shall be without prejudice to authorisation schemes that are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

ARTICLE 12.8 Conclusion of contracts by electronic means

Unless otherwise provided for under its laws and regulations, each Party shall ensure that:

- a) contracts may be concluded by electronic means;
- b) contracts are not deprived of legal effect, validity or enforceability solely on the ground that the contract was concluded by electronic means; and
- c) no other obstacles to the use of electronic contracts are created or maintained.

ARTICLE 12.9 Electronic authentication

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal effect or admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal, or the authenticating data resulting from electronic authentication, solely on the ground that it is in electronic form.
2. A Party shall not adopt or maintain measures that would:
 - a. prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their electronic transaction; or
 - b. prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic authentication in that electronic transaction complies with the applicable legal requirements.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of electronic transactions, the method of electronic authentication:
 - a. is certified by an authority accredited in accordance with the law of that Party; or
 - b. meets certain performance standards, which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of electronic transactions concerned.
4. To the extent provided for under its laws or regulations, a Party shall apply paragraphs 1 to 3 to other electronic processes or means of facilitating or enabling electronic transactions, such as electronic time stamps or electronic registered delivery services.

ARTICLE 12.10 Electronic invoicing

1. The Parties recognise the importance of e-invoicing standards as a key element of digital procurement systems to support interoperability and digital trade and that such systems can also be used for business-to-business and business-to-consumer electronic transactions.
2. Each Party shall ensure that the implementation of measures related to e-invoicing in its jurisdiction is designed to support cross-border interoperability. When developing measures related to e-invoicing, each Party shall take into account, as appropriate, international frameworks, guidelines or recommendations, where such international frameworks, guidelines or recommendations exist.
3. The Parties shall endeavour to share best practices pertaining to e-invoicing and digital procurement systems.

ARTICLE 12.11 Transfer of or access to source code

1. The Parties recognise the increasing social and economic importance of the use of digital technologies, and the importance of the safe and responsible development and use of digital technologies, including in respect of source code of software to foster public trust.
2. A Party shall not require the transfer of, or access to, the source code of software owned by a person of the other Party as a condition for the import, export, distribution, sale or use of such software, or of products containing such software, in or from its territory.³
3. For greater certainty, paragraph 2:
 - a. does not apply to the voluntary transfer of, or granting of access to, source code of software on a commercial basis by a person of the other Party, for example in the context of a public procurement transaction or a freely negotiated contract; and
 - b. does not affect the right of regulatory, administrative, law enforcement or judicial bodies of a Party to require the modification of source code of software to comply with its laws and regulations that are not inconsistent with this Agreement.
4. Nothing in this Article shall:
 - a. affect the right of regulatory authorities, law enforcement, judicial or conformity assessment bodies of a Party to access source code of software, either prior to or following import, export, distribution, sale or use, for investigation, inspection or examination, enforcement action or judicial proceeding purposes, to determine compliance with its laws and regulations, including those relating to non-discrimination and the

³ This Article does not preclude a Party from requiring that access be provided to software used for critical infrastructure, to the extent required to ensure the effective functioning of critical infrastructure, subject to safeguards against unauthorised disclosure.

prevention of bias, subject to safeguards against unauthorised disclosure;

- b. affect requirements by a competition authority or other relevant body of a Party to remedy a violation of competition law;
- c. affect the protection and enforcement of intellectual property rights; or
- d. affect the right of a Party to take measures in accordance with point (a) of Article 14.1(2) (Incorporation of certain provisions of the GPA) under which Article III of the GPA is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 12.12 Consumer trust online

1. Recognising the importance of enhancing consumer trust in digital trade, each Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including measures that:
 - a. proscribe fraudulent and deceptive commercial practices, including misleading commercial practices;
 - b. require suppliers of goods and services to act in good faith and abide by fair commercial practices, including by respecting the rights of consumers regarding unsolicited goods and services; and
 - c. grant consumers access to redress for breaches of their rights, including a right to remedies in cases where goods or services are paid for and not delivered or provided as agreed.
2. Each Party shall provide a level of protection for consumers engaging in electronic commerce transactions that is at least equivalent to that provided for consumers of commerce conducted by non-electronic means under its laws, regulations and policies.
3. The Parties recognise the importance of entrusting their consumer protection agencies or other relevant bodies with adequate enforcement powers and the importance of cooperation between their consumer protection agencies or other relevant bodies in order to protect consumers and enhance consumer trust online.
4. The Parties recognise the benefits of mechanisms to facilitate the resolution of claims relating to cross-border electronic commerce transactions. To that end, the Parties shall explore options to make such mechanisms available for cross-border electronic commerce transactions between themselves.

ARTICLE 12.13 Unsolicited direct marketing communications

1. Each Party shall adopt or maintain measures to ensure the effective protection of users against unsolicited direct marketing communications.

2. Each Party shall ensure that direct marketing communications are not sent to users who are natural persons unless they have given their consent to receiving such marketing communications. Consent shall be defined in accordance with the law of the Party concerned.
3. Notwithstanding paragraph 2, each Party shall allow persons that have collected, in accordance with its law, the contact details of a user in the context of the supply of goods or services, to send direct marketing communications to that user for their own similar goods or services.
4. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable users to request cessation free of charge at any moment.
5. Each Party shall provide users with access to redress against suppliers of unsolicited direct marketing communications that do not comply with the measures adopted or maintained pursuant to paragraphs 1 to 4.

ARTICLE 12.14 Cooperation on regulatory matters with regard to digital trade

1. The Parties shall exchange information on the following regulatory matters in the context of digital trade:
 - a. the recognition and facilitation of interoperable electronic trust and authentication services;
 - b. the treatment of direct marketing communications;
 - c. the protection of consumers online, including means for consumer redress and building consumer confidence;
 - d. the challenges for SMEs in the use of electronic commerce;
 - e. e-government; and
 - f. other matters relevant for the development of digital trade.
2. For greater certainty, this Article shall not apply to a Party's rules and safeguards for the protection of personal data and privacy, including on cross-border transfers of personal data.
3. The Parties shall, where appropriate, cooperate and participate actively in international fora to promote the development of digital trade.
4. The Parties recognise the importance of cooperating on cybersecurity matters relevant to digital trade.

ARTICLE 12.15 Paperless trade in goods

1. With a view to creating a paperless border environment for trade in goods, the Parties recognise the importance of eliminating paper forms and documents required for the import, export or transit of goods. To that end, the Parties are encouraged to eliminate paper forms and documents, as appropriate, and transition toward using forms and documents in data-based formats.

2. Each Party shall endeavour to make trade administration documents that it issues or controls, or that are required in the normal course of trade, available to the public in electronic format. For the purposes of this paragraph, the term “electronic format” includes formats suitable for automated interpretation and electronic processing without human intervention, as well as digitised images and forms.
3. Each Party shall endeavour to accept the electronic versions of trade administration documents as the legal equivalent of paper versions of trade administration documents.
4. The Parties shall endeavour to cooperate bilaterally and in international fora to enhance acceptance of electronic versions of trade administration documents.
5. In developing initiatives that provide for the use of paperless trade in goods, each Party shall endeavour to take into account the methods agreed by international organisations.

ARTICLE 12.16 Open internet access

The Parties recognise the benefits of users in their respective territories, subject to each Party’s applicable policies, laws and regulations, being able to:

- a) access, distribute and use services and applications of their choice available on the internet, subject to reasonable network management that does not block or slow down traffic based on commercial reasons;
- b) connect devices of their choice to the internet, provided that such devices do not harm the network; and
- c) have access to information on the network management practices of their supplier of internet access services.

CHAPTER 25 EXCEPTIONS AND GENERAL PROVISIONS

ARTICLE 25.1 General exceptions

1. For the purposes of Chapter 2 (National treatment and market access for goods), Chapter 4 (Customs and trade facilitation), Section B (Investment liberalisation) of Chapter 10 (Trade in services and investment), Chapter 12 (Digital trade), Chapter 13 (Energy and raw materials) and Chapter 17 (State-owned enterprises), Article XX of GATT 1994 and its interpretative Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment or trade in services, nothing in Chapter 10 (Trade in services and investment), Chapter 11 (Capital movements, payments and transfers), Chapter 12 (Digital trade), Chapter 13 (Energy and raw materials) and Chapter 17 (State-owned enterprises) shall be construed to prevent the adoption or enforcement by either Party of measures:
 - a. necessary to protect public security or public morals or to maintain public order;⁴
 - b. necessary to protect human, animal or plant life or health;
 - c. necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - i. the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - ii. the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - iii. safety.
3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with a Chapter or a Section referred to in paragraphs 1 and 2 of this Article:
 - a. the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures which are necessary to protect human, animal or plant life or health;
 - b. point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and

⁴ The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- c. measures taken to implement MEAs may fall under point (b) or (g) of Article XX of GATT 1994 or under point (b) of paragraph 2 of this Article.
4. Before a Party takes any measures provided for in points (i) and (j) of Article XX of GATT 1994, that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If no agreement is reached within 30 days of providing the information, the Party may apply the relevant measures. Where exceptional and critical circumstances requiring immediate action prevent prior information or examination, the Party intending to take the measures may apply forthwith precautionary measures necessary to deal with the situation. That Party shall inform the other Party immediately thereof.

ARTICLE 25.2 Security exceptions

Nothing in this Agreement shall be construed:

- a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or
- b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - a. connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology and economic activities as carried out directly or indirectly for the purpose of supplying a military establishment;
 - b. relating to fissionable and fusionable materials or the materials from which they are derived; or
 - c. taken in time of war or other emergency in international relations; or
- c) to prevent a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

ARTICLE 25.3 Taxation

1. For the purposes of this Article, the following definitions apply:
- a. “direct taxes” means all taxes on income or capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, taxes on wages or salaries paid by enterprises and taxes on capital appreciation;
 - b. “residence” means residence for tax purposes; and
 - c. “tax convention” means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either any Member State, the Union or New Zealand are party to.

2. Nothing in this Agreement shall affect the rights and obligations of either the Union or the Member States or New Zealand, under any tax convention. In the event of any inconsistency between this Agreement and any tax convention, the tax convention shall prevail to the extent of such inconsistency. As regards a tax convention between the Union or the Member States and New Zealand, the relevant competent authorities under this Agreement and the tax convention shall jointly determine whether an inconsistency exists between this Agreement and the tax convention.⁵
3. Articles 10.7 (Most-favoured-nation treatment) and 10.17 (Most-favoured-nation treatment) shall not apply to an advantage accorded by a Party pursuant to a tax convention.
4. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure that:
 - a. is aimed at ensuring the equitable or effective⁶ imposition or collection of direct taxes; or
 - b. distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

⁵ For greater certainty, this is without prejudice to Chapter 26 (Dispute settlement).

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

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

ARTICLE 25.4 Restrictions in the event of balance-of-payments and external financial difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or the threat thereof, that Party may adopt or maintain temporary safeguard measures with regard to capital movements, payments or transfers⁷.
2. Any temporary safeguard measure adopted or maintained under paragraph 1 shall:
 - a. be consistent with the Articles of Agreement of the International Monetary Fund;
 - b. not exceed what is necessary to deal with the circumstances described in paragraph 1;
 - c. be temporary and phased out progressively as the circumstances described in paragraph 1 improve;
 - d. avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and
 - e. be non-discriminatory so that the other Party is treated no less favourably than any non-Party in like situations.
3. With respect to trade in goods, a Party may adopt temporary safeguard measures in order to safeguard its external financial position or balance of payments. Any temporary safeguard measure adopted or maintained under this paragraph shall be consistent with GATT 1994 and its Understanding on the Balance-of-Payments Provisions.
4. With respect to trade in services, a Party may adopt temporary safeguard measures in order to safeguard its external financial position or balance of payments. Any temporary safeguard measure adopted or maintained under this paragraph shall be consistent with Article XII of GATS.

ARTICLE 25.5 Temporary safeguard measures

1. In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union, or the threat thereof, the Union may adopt or maintain temporary safeguard measures with regard to capital movements, payments or transfers for a period that does not exceed six months.
2. Any temporary safeguard measure adopted or maintained under paragraph 1 shall be limited to the extent that is strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between New Zealand and a third country in like situations.

⁷ For greater certainty, serious balance-of-payments and external financial difficulties, or the threat thereof, may be caused, among other factors, by serious difficulties relating to monetary or exchange rate policies, or the threat thereof.

ARTICLE 25.6 Tiriti o Waitangi / Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods, trade in services and investment, 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 te Tiriti o Waitangi / the Treaty of Waitangi.
2. The Parties agree that the interpretation of te Tiriti o Waitangi / 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 26 (Dispute settlement) shall otherwise apply to this Article. A panel established under Article 26.5 (Establishment of a panel) may be requested by the Union to determine only whether any measure referred to in paragraph 1 is inconsistent with its rights under this Agreement.

ARTICLE 25.7 Disclosure of information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where a panel requires such confidential information in dispute settlement proceedings under Chapter 26 (Dispute settlement). In such cases, the panel shall ensure that confidentiality is fully protected.
2. Each Party shall treat as confidential any information submitted by the other Party to the Trade Committee or to specialised committees that the other Party has designated as confidential.

ARTICLE 25.8 WTO waivers

If a right or obligation in this Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a decision to grant a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the duplicated provision in this Agreement.