

**Understanding on Article 7 (Composition of Arbitral Tribunals) of Chapter
16 (Dispute Settlement) of the *Hong Kong, China – New Zealand Closer
Economic Partnership Agreement***

The Governments of the Hong Kong Special Administrative Region of the People's Republic of China and New Zealand ("the Parties to the CEP") refer to the *Hong Kong, China – New Zealand Closer Economic Partnership Agreement* ("the CEP"), and set out below their common understanding with regard to Article 7 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) of the CEP:

1. The Parties to the CEP affirm their understanding that the CEP will be amended to replace the current provisions of Article 7 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) of the CEP with the provisions set out in Annex 1 to this Understanding, at the same time as the CEP is first amended for any other reason.

2. The Parties to the CEP further affirm their understanding that, should the need to apply Article 7 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) of the CEP arise prior to the amendment referred to in Paragraph 1 of this Understanding coming into force, the Parties to the CEP will nevertheless apply the provisions set out in Annex 1 to this Understanding.

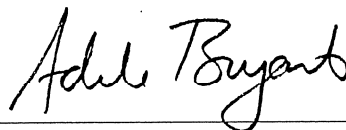
SIGNED in duplicate in the English language at Hong Kong, this 27th day of *May* 2011.

For the Government of the
Hong Kong Special Administrative
Region of the People's Republic of
China:



Leonia Tai
Deputy Director-General of Trade
and Industry

For the Government of New Zealand:



Adele Bryant
New Zealand Consul-General to
Hong Kong Special Administrative
Region of the People's Republic of
China

Annex 1

Article 7 Composition of Arbitral Tribunals

1. The arbitral tribunal shall consist of three members.
2. Each Party shall, within 30 days of the receipt of the request to establish an arbitral tribunal, appoint an arbitrator and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal.
3. The Parties shall appoint by common agreement the third arbitrator within 45 days of the receipt of the request to establish an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 2.
4. The chair shall be a national of a non-Party who shall not have his or her usual place of residence in the Area of either of the Parties.
5. If either Party has not appointed an arbitrator pursuant to paragraph 2 or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 3, the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to paragraph 2.
6. All arbitrators 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 judgment;
 - (c) be independent of, and not be affiliated with or take instructions from, either Party;
 - (d) not have dealt with the matter under dispute in any capacity; and
 - (e) comply with the code of conduct for panellists established under the *WTO Dispute Settlement Understanding*.
7. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.
8. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed, within 21 days from the date written notice is received by the Parties of the need for a successor, in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended pending the appointment of the successor arbitrator.

9. Where an arbitral tribunal is established under Articles 12, 13 or 15, it shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, any replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator. Where special circumstances warrant, the arbitral tribunal may comprise only the chair of the original arbitral tribunal if the Parties so agree.