

## CHAPTER 1

### INITIAL PROVISIONS AND GENERAL DEFINITIONS

#### Section A: Initial Provisions

##### Article 1.1: Establishment of a Free Trade Area

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

##### Article 1.2: Relation to Other Agreements

1. Recognising the Parties' intention for this Agreement to coexist with their existing international agreements, each Party affirms:

- (a) in relation to existing international agreements to which all Parties are party, including the WTO Agreement, its existing rights and obligations with respect to the other Parties; and
- (b) in relation to existing international agreements to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be.

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and at least one other Party are party, on request, the relevant Parties to the other agreement shall consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Chapter 28 (Dispute Settlement).<sup>1</sup>

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<sup>1</sup> For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of paragraph 2.

## Section B: General Definitions

### Article 1.3: General Definitions

For the purposes of this Agreement, unless otherwise provided in this Agreement:

**AD Agreement** means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

**Agreement** means the Trans-Pacific Partnership Agreement;

**APEC** means Asia-Pacific Economic Cooperation;

**central level of government** has for each Party the meaning set out in Annex 1-A (Party-Specific Definitions);

**Commission** means the Trans-Pacific Partnership Commission established under Article 27.1 (Establishment of the Trans-Pacific Partnership Commission);

**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 for those Parties or established, acquired, or expanded thereafter;

**customs administration** means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and, where applicable, policies, and has for each Party the meaning set out in Annex 1-A (Party-Specific Definitions);

**customs duty** includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;
- (b) fee or other charge in connection with the importation commensurate with the cost of services rendered; or
- (c) antidumping or countervailing duty;

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

**days** means calendar days;

**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;

**existing** means in effect on the date of entry into force of this Agreement;

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

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

**goods** means any merchandise, product, article or material;

**goods of a Party** means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of a Party;

**government procurement** means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

**Harmonized System (HS)** means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes as adopted and implemented by the Parties in their respective laws;

**heading** means the first four digits in the tariff classification number under the Harmonized System;

**measure** includes any law, regulation, procedure, requirement or practice;

**national** means a “natural person who has the nationality of a Party” according to Annex 1-A (Party-Specific Definitions) or a permanent resident of a Party;

**originating** means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures) or Chapter 4 (Textile and Apparel Goods);

**Party** means any State or separate customs territory for which this Agreement is in force;

**person** means a natural person or an enterprise;

**person of a Party** means a national or an enterprise of a Party;

**preferential tariff treatment** means the customs duty rate applicable to an originating good, pursuant to each Party's Tariff Schedule set out in Annex 2-D (Tariff Commitments);

**recovered material** means a material in the form of one or more individual parts that results from:

- (a) the disassembly of a used good into individual parts; and
- (b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

**remanufactured good** means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

- (a) has a similar life expectancy and performs the same as or similar to such a good when new; and
- (b) has a factory warranty similar to that applicable to such a good when new;

**regional level of government** has for each Party the meaning set out in Annex 1-A (Party-Specific Definitions);

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

**sanitary or phytosanitary measure** means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

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

**SME** means a small and medium-sized enterprise, including a micro-sized enterprise;

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

**state enterprise** means an enterprise that is owned, or controlled through ownership interests, by a Party;

**subheading** means the first six digits in the tariff classification number under the Harmonized System;

**territory** has for each Party the meaning set out at Annex 1-A (Party-Specific Definitions);

**textile or apparel good** means a good listed in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin);

**TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement;<sup>2</sup>

**WTO** means the World Trade Organization; and

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

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<sup>2</sup> For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

## ANNEX 1-A

### PARTY-SPECIFIC DEFINITIONS

Further to Article 1.3 (General Definitions), for the purposes of this Agreement, unless provided elsewhere in this Agreement:

**central level of government** means:

- (a) for Australia, the Commonwealth Government;
- (b) for Brunei Darussalam, the national level of government;
- (c) for Canada, the Government of Canada;
- (d) for Chile, the national level of government;
- (e) for Japan, the Government of Japan;
- (f) for Malaysia, the federal level of government;
- (g) for Mexico, the federal level of government;
- (h) for New Zealand, the national level of government;
- (i) for Peru, the national level of government;
- (j) for Singapore, the national level of government;
- (k) for the United States, the federal level of government; and
- (l) for Viet Nam, the national level of government;

**customs administration** means:

- (a) for Australia, the Department of Immigration and Border Protection;
- (b) for Brunei Darussalam, the Royal Customs and Excise Department;
- (c) for Canada, the Canada Border Services Agency;
- (d) for Chile, the National Customs Service of Chile (*Servicio Nacional de Aduanas*);

- (e) for Japan, the Ministry of Finance;
- (f) for Malaysia, the Royal Malaysian Customs Department;
- (g) for Mexico, the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*);
- (h) for New Zealand, the New Zealand Customs Service;
- (i) for Peru, the National Superintendence of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria*);
- (j) for Singapore, the Singapore Customs;
- (k) for the United States, U.S. Customs and Border Protection; and, with respect to provisions that concern enforcement, information sharing and investigations, this also means U.S. Immigration and Customs Enforcement, as applicable; and
- (l) for Viet Nam, the General Department of Viet Nam Customs,

or any successor of such customs administration;

**natural person who has the nationality of a Party means:**

- (a) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007*, as amended from time to time, or any successor legislation;
- (b) for Brunei Darussalam, a subject of His Majesty the Sultan and Yang Di-Pertuan in accordance with the laws of Brunei Darussalam;
- (c) for Canada, a natural person who is a citizen of Canada under Canadian legislation;
- (d) for Chile, a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile (*Constitución Política de la República de Chile*);
- (e) for Japan, a natural person who has the nationality of Japan under its laws;
- (f) for Malaysia, a natural person who is a citizen of Malaysia in accordance with its laws and regulations;

- (g) for Mexico, a person who has the nationality of Mexico in accordance with its applicable laws;
- (h) for New Zealand, a natural person who is a citizen as defined in the *Citizenship Act 1977*, as amended from time to time, or any successor legislation;
- (i) for Peru, a natural person who has the nationality of Peru by birth, naturalisation or option in accordance with the Political Constitution of Peru (*Constitución Política del Perú*) and other relevant domestic legislation;
- (j) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws;
- (k) for the United States, a “national of the United States” as defined in the *Immigration and Nationality Act*; and
- (l) for Viet Nam, a natural person who is a citizen of Viet Nam within the meaning of its Constitution and its domestic laws;

**regional level of government** means:

- (a) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory;
- (b) for Brunei Darussalam, the term regional level of government is not applicable;
- (c) for Canada, a provincial or territorial government;
- (d) for Chile, as a unitary Republic, the term regional level of government is not applicable;
- (e) for Japan, the term regional level of government is not applicable;
- (f) for Malaysia, a State of the Federation of Malaysia in accordance with the Federal Constitution of Malaysia;
- (g) for Mexico, a state of the United Mexican States;
- (h) for New Zealand, the term regional level of government is not applicable;
- (i) for Peru, regional government in accordance with the Political Constitution of Peru (*Constitución Política del Perú*) and other applicable legislation;

- (j) for Singapore, the term regional level of government is not applicable;
- (k) for the United States, a state of the United States, the District of Columbia, or Puerto Rico; and
- (l) for Viet Nam, the term regional level of government is not applicable; and

**territory** means:

- (a) for Australia, the territory of Australia:
  - (i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and
  - (ii) including Australia's air space, territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law;
- (b) for Brunei Darussalam, the land territory, internal waters and territorial sea of Brunei Darussalam, extending to the air space above its territorial sea, as well as to its sea-bed and subsoil over which it exercises sovereignty, and the maritime area beyond its territorial sea, which has been or may hereafter be designated under the laws of Brunei Darussalam in accordance with international law as an area over which Brunei Darussalam exercises sovereign rights and jurisdiction with respect to the seabed, the subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;
- (c) for Canada:
  - (i) the land territory, air space, internal waters and territorial seas of Canada;
  - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* done at Montego Bay on December 10, 1982 (UNCLOS); and
  - (iii) the continental shelf of Canada, as determined by its

domestic law, consistent with Part VI of UNCLOS;

- (d) for Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;
- (e) for Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law including the UNCLOS and the laws and regulations of Japan;
- (f) for Malaysia, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea as designated or that might in the future be designated under its national law, in accordance with international law, as an area within which Malaysia exercises sovereign rights and jurisdiction with regards to the seabed, subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;
- (g) for Mexico:
  - (i) the states of the Federation and the Federal District;
  - (ii) the islands, including the reefs and keys, in the adjacent seas;
  - (iii) the islands of Guadalupe and Revillagigedo, situated in the Pacific Ocean;
  - (iv) the continental shelf and the submarine shelf of such islands, keys and reefs;
  - (v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;
  - (vi) the space located above the national territory, in accordance with international law; and
  - (vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the *United Nations Convention on the Law of the Sea* done at Montego Bay on December 10, 1982, and its domestic law, Mexico may exercise sovereign rights or jurisdiction;
- (h) for New Zealand, the territory of New Zealand and the exclusive

economic zone, seabed and subsoil over which it exercises sovereign rights with respect to natural resources in accordance with international law, but does not include Tokelau;

- (i) for Peru, the mainland territory, the islands, the maritime areas and the air space above them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with the provisions of the Political Constitution of Peru (*Constitución Política del Perú*) and other relevant domestic law and international law;
- (j) for Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;
- (k) for the United States:
  - (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;
  - (ii) the foreign trade zones located in the United States and Puerto Rico; and
  - (iii) the territorial sea of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea*, the United States may exercise sovereign rights or jurisdiction; and
- (l) for Viet Nam, the land territory, islands, internal waters, territorial sea, and air space above them, the maritime areas beyond territorial sea including seabed, subsoil and natural resources thereof over which Viet Nam exercises its sovereignty, sovereign rights or jurisdiction in accordance with its domestic laws and international law.