

CHAPTER 1
GENERAL PROVISIONS

Article 1.1
Establishment of a Free Trade Area

The Parties hereby establish a free trade area consistent with Article XXIV of the GATT 1994 and Article V of the GATS.

Article 1.2
General Definitions

For the purposes of this Agreement, unless otherwise specified:

- (a) the term "Agreement on Anti-Dumping" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;
- (b) the term "Agreement on Customs Valuation" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;
- (c) the term "Agreement on Subsidies and Countervailing Measures" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;
- (d) the term "Area" means:
 - (i) for Australia, the Commonwealth of Australia:
 - (A) 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

- (B) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf, over which Australia exercises sovereign rights or jurisdiction in accordance with international law; and
- (ii) 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 and the laws and regulations of Japan;

Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

- (e) the term "customs administration" means the administration that, in accordance with the laws and regulations of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations;
- (f) the term "customs duty" means any customs or import duty and a charge of any kind, including any form of surtax or surcharge, imposed in connection with the importation of a good, but does not include any:
 - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;

- (ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Anti-Dumping, and the Agreement on Subsidies and Countervailing Measures; or
 - (iii) fees or other charges commensurate with the cost of services rendered;
- (g) the term "days" means calendar days, including weekends and holidays;
- (h) the term "enterprise" means any corporation, company, association, partnership, trust, joint venture, sole-proprietorship or other entity constituted or organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled;
- (i) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;
- (j) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;
- (k) the term "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;

- (l) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System defined in paragraph (a) of Article 1 of the International Convention on the Harmonized Commodity Description and Coding System, including the General Rules for the Interpretation of the Harmonized System, Section Notes and Chapter Notes, as adopted and implemented by the Parties in their respective laws;
- (m) the term "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, practice, decision, administrative action or any other form;
- (n) the term "natural person of a Party" means a natural person who is:
 - (i) for Australia, an Australian citizen or permanent resident, as defined in accordance with its laws and regulations; and
 - (ii) for Japan, a national of Japan, as defined in accordance with its laws and regulations;
- (o) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3 (Rules of Origin);
- (p) the term "person" means either a natural person or an enterprise;
- (q) the term "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;
- (r) the term "SPS measure" means any sanitary or phytosanitary measure referred to in paragraph 1 of Annex A to the SPS Agreement;
- (s) the term "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; and

- (t) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

Article 1.3 Transparency

1. Each Party shall ensure that its laws, regulations, administrative procedures, and administrative rulings of general application as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement, are promptly published or otherwise made publicly available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. Each Party shall make easily available to the public the names and addresses of the competent authorities responsible for the laws, regulations, administrative procedures and administrative rulings referred to in paragraph 1.
3. Each Party shall, on request of the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1.
4. When introducing or changing its laws, regulations or administrative procedures that significantly affect the implementation of this Agreement, each Party shall endeavour to take appropriate measures to enable interested persons and the other Party to become acquainted with such introduction or change.

Article 1.4 Public Comment Procedures

To the extent practicable and subject to its laws and regulations, each Party shall provide a reasonable opportunity for comments on any measure of general application it proposes to adopt with respect to any matter covered by this Agreement.

Article 1.5
Administrative Proceedings

1. Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of the Government of a Party, the competent authorities shall, subject to the laws and regulations of the Party:

- (a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party; and
- (b) provide, within a reasonable period of time, information concerning the status of the application, on request of the applicant.

2. Recognising the importance of administering its laws, regulations, administrative procedures, and administrative rulings of general application in a consistent, impartial and reasonable manner, each Party shall ensure, subject to its laws and regulations, that its competent authorities, prior to any final administrative decision which imposes obligations on or restricts rights of a person, provide that person with:

- (a) when the process is initiated, reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and
- (b) a reasonable opportunity to present facts and arguments in support of the positions of such person,

provided that time, the nature of the measure and the public interest permit.

Article 1.6
Review and Appeal

1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of administrative actions relating to matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement of such actions.

2. Each Party shall ensure that the parties in any such tribunals or procedures are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws and regulations, that such decision is implemented by the relevant competent authorities with respect to the administrative action at issue.

Article 1.7
Confidential Information

1. Each Party shall, subject to its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

2. Unless otherwise provided for in this Agreement, nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 1.8
Taxation

1. Unless otherwise provided for in this Article, nothing in this Agreement shall apply to taxation measures.

Note: the term "taxation measures" shall not include:

- (a) a customs duty as defined in subparagraph (f) of Article 1.2;
- (b) an anti-dumping or countervailing duty referred to in subparagraph (f)(ii) of Article 1.2; and
- (c) fees or charges referred to in subparagraph (f)(iii) of Article 1.2.

2. The following provisions shall apply to taxation measures:

- (a) Articles 1.3, 1.6 and 1.7, to the extent that the provisions of this Agreement are applicable to such taxation measures;
- (b) Article 2.3 (Trade in Goods - National Treatment) to the same extent as Article III of the GATT 1994 and Article 2.6 (Trade in Goods - Export Duties);
- (c) Article 9.4 (Trade in Services - National Treatment);
- (d) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;
- (e) Articles 14.3 (Investment - National Treatment) and 14.4 (Investment - Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;
- (f) Article 14.11 (Investment - Expropriation and Compensation), to the extent that such taxation measures constitute expropriation under Chapter 14 (Investment); and

- (g) Article 14.6 (Investment - Access to the Courts of Justice), where Article 14.11 (Investment - Expropriation and Compensation) applies to taxation measures in accordance with subparagraph (f).

3. Notwithstanding paragraph 2, nothing in the Articles referred to in that paragraph shall apply to:

- (a) a non-conforming provision of any taxation measure that is maintained by a Party on the date of entry into force of this Agreement;
- (b) the continuation or prompt renewal of a non-conforming provision of any taxation measure referred to in subparagraph (a);
- (c) an amendment or modification to a non-conforming provision of any taxation measure referred to in subparagraph (a), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with any of those Articles;
- (d) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or
- (e) a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax agreement. In the event of any inconsistency relating to a taxation measure between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency. In the case of a tax agreement between the Parties any consultations about whether any inconsistency exists shall include the competent authorities of each Party under that tax agreement.

5. Nothing in this Agreement shall oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax agreement.

Article 1.9 General Exceptions

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures), 5 (Sanitary and Phytosanitary Cooperation), 6 (Technical Regulations, Standards and Conformity Assessment Procedures), 7 (Food Supply), 8 (Energy and Mineral Resources) and 13 (Electronic Commerce), Article XX of the GATT 1994 is incorporated into and forms part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 9 (Trade in Services), 10 (Telecommunications Services), 11 (Financial Services), 12 (Movement of Natural Persons) and 13 (Electronic Commerce), Article XIV of the GATS is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Article 1.10 Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

- (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or such supply of services, as is carried on directly or indirectly for the purpose of supplying or provisioning a military establishment; or
 - (iii) 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 United Nations Charter for the maintenance of international peace and security.

Article 1.11
Relation to Other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement and any other agreements to which both Parties are party.

2. In the event of any inconsistency between this Agreement and the WTO Agreement or any other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

3. Unless otherwise provided for in this Agreement, if any international agreement, or provision therein, incorporated into or referred to in this Agreement is amended, the Parties shall consult on whether it is necessary to amend this Agreement.

4. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles goods, services, or persons to treatment more favourable than that accorded by this Agreement.

5. In the event of any inconsistency between this Agreement and the Agreement on Commerce between Japan and the Commonwealth of Australia or the Basic Treaty of Friendship and Co-operation between Japan and Australia, this Agreement shall prevail to the extent of inconsistency.

Article 1.12
Implementing Agreement

The Governments of the Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to as "the Implementing Agreement").

Article 1.13
Joint Committee

1. The Parties hereby establish a Joint Committee under this Agreement.

2. The functions of the Joint Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Agreement;
- (b) considering and recommending to the Parties any amendments to this Agreement;
- (c) supervising and coordinating the work of all Sub-Committees established under this Agreement;
- (d) adopting any necessary decisions, including those referred to the Joint Committee under the relevant provisions of this Agreement; and
- (e) carrying out other functions as the Parties may agree.

3. The Joint Committee:

- (a) shall be composed of representatives of the Governments of the Parties; and
- (b) may establish and delegate its responsibilities to Sub-Committees.

4. The Joint Committee shall meet once a year alternately in Japan and Australia, unless the Parties otherwise agree.

Article 1.14
Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.