

CHAPTER 1

INITIAL PROVISIONS AND DEFINITIONS

Section A: Initial Provisions

ARTICLE 1.1: ESTABLISHMENT OF A FREE TRADE AREA

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

ARTICLE 1.2: RELATION TO OTHER AGREEMENTS

1. Each Party affirms its existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.
2. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that provides for more favourable treatment of goods, services, investments, or persons than that provided for under this Agreement.
3. Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and 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, taking into consideration general principles of international law.

ARTICLE 1.3: EXTENT OF OBLIGATIONS

1. In accordance with customary international law and unless otherwise provided in this Agreement, for the purposes of determining a Party's compliance with this Agreement, the exercise of, or failure to exercise, governmental authority of that Party:

- (a) by a central, regional or local level of government; or
- (b) delegated by a central, regional or local level of government,

shall be considered an exercise of, or failure to exercise, governmental authority by a Party.

2. For greater certainty, and unless otherwise provided in this Agreement, the national treatment obligations included in this Agreement shall apply to a central, regional and local level of government, and the treatment to be accorded by a Party at a regional or local level of government means treatment no less favourable than the most favourable treatment that the regional or local level of government accords to any goods, services, persons or investments of investors, as described in those national treatment obligations, of the Party of which it forms a part.

Section B: General Definitions

ARTICLE 1.4: DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

central level of government means:

- (a) for Korea, the central level of government; and
- (b) for Australia, the Commonwealth Government;

covered investment means, with respect to a Party, an investment, as defined in relevant Chapters, in its territory of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs administration means:

- (a) for Korea, the Korea Customs Service, or its successor; and
- (b) for Australia, the Australian Customs and Border Protection Service, or its successor;

Customs duty includes any duty or charge of any kind imposed on, or in connection with, the importation of a good of the other Party, including any form of surtax or surcharge imposed on or 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, or any equivalent provision of a successor agreement to which both Parties are party;
- (b) additional customs duty collected as a result of a measure consistent with Chapter 6 (Trade Remedies);
- (c) fee or other charge in connection with importation commensurate with the cost of service rendered; or
- (d) premiums offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions or tariff rate quotas established in Appendix 2-A-1;

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

enterprise of a Party means an enterprise constituted or organised under the law of a Party;

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

freely usable currency means “freely usable currency” as determined by the International Monetary Fund under its *Articles of Agreement*;

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

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

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 that 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 governed by the *International Convention on the Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

Import Licencing Agreement means the *Agreement on Import Licencing Procedures*, in Annex 1A of the WTO Agreement;

Joint Committee means the Joint Committee established in Article 21.3 (Joint Committee);

local level of government means:

- (a) for Korea, a local government as defined in the *Local Autonomy Act*; and
- (b) for Australia, any government below a regional level of government;

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

national means:

- (a) for Korea, a Korean national within the meaning of the *Nationality Act*; and
- (b) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* or a permanent resident as defined in accordance with the *Migration Regulations 1994*;

originating means qualifying under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

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 duty rate applicable under this Agreement to an originating good;

regional level of government means:

- (a) for Korea, “regional level of government” is not applicable; and
- (b) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory;

Safeguards Agreement means the *Agreement on Safeguards*, in Annex 1A of the WTO Agreement;

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

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

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party¹;

TBT Agreement means the *Agreement on Technical Barriers to Trade*, in Annex 1A of the WTO Agreement;

territory means:

- (a) for Korea, the land, maritime, and air space under its sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its law; and
- (b) 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 territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, in Annex 1C of the WTO Agreement;

WTO means the World Trade Organization; and

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

¹ For greater certainty, ownership, or control through ownership interests, may be direct or indirect.