

CHAPTER 1 ESTABLISHMENT OF A FREE TRADE AREA AND GENERAL DEFINITIONS

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 General Definitions

For the purposes of this Agreement, unless otherwise specified:

- (a) **AANZFTA Agreement** means the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* done at Cha-am, Petchaburi, Thailand, on 27 February 2009;
- (b) **Anti-Dumping Agreement** means the *Agreement on Implementation of Article VI of GATT 1994*, in Annex 1A to the WTO Agreement;
- (c) **Agreement on Subsidies and Countervailing Measures** means the *Agreement on Subsidies and Countervailing Measures*, in Annex 1A to the WTO Agreement;
- (d) **central level of government** means:
 - (i) for Australia, the Commonwealth Government; and
 - (ii) for Malaysia, the federal level of government;
- (e) **Customs Administration** means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;
- (f) **customs duties** means any customs or import duty or a charge of any kind, including any tax 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 GATT 1994, in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
 - (ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Anti-Dumping

Agreement, as may be amended and the Agreement on Subsidies and Countervailing Measures, as may be amended; or

- (iii) fee or any charge commensurate with the cost of services rendered;
- (g) **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of GATT 1994*, in Annex 1A of the WTO Agreement;
- (h) **days** means calendar days, including weekends and holidays;
- (i) **existing** means in effect on the date of entry into force of this Agreement;
- (j) **GATS** means the *General Agreement on Trade in Services*, in Annex 1B to the WTO Agreement;
- (k) **GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, in Annex 1A to the WTO Agreement;
- (l) **good** means any merchandise, product, article or material;
- (m) **HS** means the Harmonized Commodity Description and Coding System established by the *International Convention on the Harmonized Commodity Description and Coding System* done at Brussels on 14 June 1983, as amended;
- (n) **IMF Articles of Agreement** means the *Articles of Agreement of the International Monetary Fund*, adopted at the United Nations Monetary and Financial Conference, on July 22 1944, as amended;
- (o) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association¹;
- (p) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (q) **natural person of a Party** means a person who:
 - (i) for Australia, is an Australian citizen or permanent resident as defined in accordance with its laws and regulations; and

¹ For the purposes of Chapter 9 (Telecommunications Services) and Chapter 12 (Investment), this is taken to include branch or representative offices.

- (ii) for Malaysia, is a citizen of Malaysia, or has been granted the right of permanent residence in the territory of Malaysia in accordance with its laws and regulations.
- (r) **originating good** means a good that qualifies as originating under Chapter 3 (Rules of Origin);
- (s) **person** means a natural person or a juridical person;
- (t) **personal data** means information about an individual whose identity is apparent or can reasonably be ascertained from, the information;
- (u) **professional services** means services, the supply of which requires specialised post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Competent Authority, but does not include services supplied by trades-persons or vessel and aircraft crew members;
- (v) **regional level of government** means:
 - (i) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory; and
 - (ii) for Malaysia, means a State of the Federation of Malaysia in accordance with the Federal Constitution of Malaysia;
- (w) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, in Annex 1A to the WTO Agreement;
- (x) **territory** means:
 - (i) with respect to Australia, the territory of the Commonwealth of Australia:
 - (AA) 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
 - (BB) including Australia's territorial sea, contiguous zone, exclusive economic zone, and continental shelf; and
 - (ii) with respect to Malaysia, its land territory, internal waters and territorial sea and any maritime area situated beyond the territorial sea which has been or might in future be designated under its domestic law, in accordance with international law, as an area within which Malaysia may exercise sovereign rights or

jurisdiction with regard to the sea, seabed, the subsoil and the natural resources²;

- (y) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, in Annex 1C to the WTO Agreement;
- (z) **WTO** means the World Trade Organization; and
- (aa) **WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

² 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, 10 December 1982.