

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 the GATT 1994 and Article V of the GATS, hereby establish a free trade area.

Article 1.2: Relation to Other Agreements

Each Party affirms its existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which it and another Party are party.

Article 1.3: Relation to Environmental and Conservation Agreements

1. In the event of any inconsistency between a Party's obligations under this Agreement and its respective obligations under the following multilateral environmental agreements ("covered agreements"):¹

- (a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended;
- (b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;
- (c) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;
- (d) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;
- (e) the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;

¹ For the purposes of this paragraph, (1) "covered agreements" shall encompass the multilateral environmental agreements provided herein and those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which the Party is party; and (2) a Party's "obligations" shall be interpreted to reflect, *inter alia*, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

- (f) the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and
- (g) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949,

a Party's obligations under this Agreement shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade.

2. Pursuant to Article 34.3 (Amendments), the Parties may agree in writing to modify paragraph 1 to include any amendment to an agreement referred to therein, and any other environmental or conservation agreement.

Article 1.4: Persons Exercising Delegated Governmental Authority

Each Party shall ensure that a person that has been delegated regulatory, administrative, or other governmental authority by a Party acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

Section B: General Definitions

Article 1.5: General Definitions

For the purposes of this Agreement, unless otherwise provided:

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;

central level of government means:

- (a) for Canada, the Government of Canada;
- (b) for Mexico, the federal level of government; and
- (c) for the United States, the federal level of government;

Commission means the Free Trade Commission established under Article 30.1 (Establishment of the Free Trade 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 or established, acquired, or expanded thereafter;

customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations or any successor of such customs administration;

customs duty includes a 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 the GATT 1994;
- (b) fee or other charge in connection with the importation commensurate with the cost of services rendered;
- (c) antidumping or countervailing duty; and
- (d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas, or tariff preference levels;

customs offense means any act committed for the purpose of, or having the effect of, avoiding a Party's laws or regulations pertaining to the provisions of this Agreement governing importations or exportations of goods between, or transit of goods through, the territories of the Parties, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, transshipment, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods;

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

days means calendar days, including weekends and holidays;

Dispute Settlement Understanding (DSU) means the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, set out in Annex 2 to the WTO Agreement;

duty deferral program includes measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, "maquiladoras", and inward processing programs;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

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

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 a merchandise, product, article, or material;

goods of a Party means domestic products as these are understood in the 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 Systems*, 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;

IMF Articles of Agreement means the *Articles of Agreement of the International Monetary Fund*, done at Bretton Woods, United States on July 22, 1944;

individual means a natural person;

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

NAFTA 1994 means the *North American Free Trade Agreement* that entered into force on January 1, 1994;

national means a “natural person who has the nationality of a Party” as set out below for each Party or a permanent resident of a Party:

- (a) for Canada, a citizen of Canada;
- (b) for Mexico, a person who has the nationality of Mexico in accordance with its applicable laws; and
- (c) for the United States, a “national of the United States” as defined in the *Immigration and Nationality Act*;

originating means qualifying as originating under the rules of origin set out in Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods);

person means a natural person or an enterprise;

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

preferential tariff treatment means the duty rate applicable to an originating good;

publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

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 means:

- (a) for Canada, a province or territory of Canada;
- (b) for Mexico, a state of the United Mexican States; and
- (b) for the United States, a state of the United States, the District of Columbia, or Puerto Rico;

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

sanitary or phytosanitary measure means a 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;

Secretariat means the Secretariat established under Article 30.6 (The Secretariat);

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 in Section C (Country-Specific Definitions);

textile or apparel good means a textile or apparel good classified in HS subheading 4202.12, 4202.22, 4202.32, or 4202.92 (luggage, handbags and similar articles with an outer surface of textile materials), heading 50.04 through 50.07, 51.04 through 51.13, 52.04 through 52.12, 53.03 through 53.11, Chapter 54 through 63, heading 66.01 (umbrellas) or heading 70.19 (yarns and fabrics of glass fiber), subheading 9404.90 (articles of bedding and similar furnishing), or heading 96.19 (babies diapers and other sanitary textile articles);

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

Uniform Regulations means the regulations described in Article 5.16 (Uniform Regulations);

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.

² 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.

Section C: Country-Specific Definitions

For the purposes of this Agreement, unless otherwise provided:

territory means:

- (a) for Canada,
 - (i) the land territory, air space, internal waters, and territorial sea of Canada,
 - (ii) the exclusive economic zone of Canada, and
 - (iii) the continental shelf of Canada,as determined by its domestic law and consistent with international law.
- (b) for Mexico,
 - (i) the land territory, including the states of the Federation and Mexico City,
 - (ii) the air space, and
 - (iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the *United Nations Convention on the Law of the Sea*, done at Montego Bay on December 10, 1982; and
- (c) 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 and air space 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.