

## 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. The Parties affirm their existing rights and obligations with respect to each other under existing international agreements, to which both Parties are party, including the WTO Agreement.
2. Unless otherwise provided for in this Agreement:
  - (a) 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; and
  - (b) 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.

#### Section B: General Definitions

##### Article 1.3: General Definitions

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

**Agreement** means the Peru-Australia Free Trade Agreement;

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

**Agreement on Trade-Related Investment Measures** means the *Agreement on Trade-Related Investment Measures*, set out in Annex 1A to the WTO Agreement;

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

**central level of government** means:

- (a) for Australia, the Commonwealth government; and
- (b) for Peru, the national level of government;

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

**customs administration** means:

- (a) for Australia, the Department of Immigration and Border Protection; and
- (b) for Peru, the National Superintendence of Customs and Tax Administration (Superintendencia Nacional de Aduanas y de Administración Tributaria),

or any successor of such customs administration;

**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;

**Joint Commission** means the Joint Commission established under Article 26.1 (Establishment of the Joint Commission);

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

**national** means:

- (a) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* (Cth), as amended from time to time, or any successor legislation, or a permanent resident; and
- (b) 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, or a permanent resident;

**originating** means qualifying as originating 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 customs duty rate applicable to an originating good, pursuant to each Party's Tariff Schedule set out in Annex 2-B (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;

**regional level of government** means:

- (a) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory; and
- (b) for Peru, regional government in accordance with the Political Constitution of Peru (Constitución Política del Perú) and other applicable legislation;

**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;

**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** 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 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;

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