

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

CHAPTER ONE
ESTABLISHMENT OF A FREE TRADE AREA AND DEFINITIONS

ARTICLE 1.1 : GENERAL

1. The Parties to this Agreement, 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.
2. The Parties affirm their 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.
3. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles goods or services, or suppliers of goods or services, to treatment more favourable than that accorded by this Agreement.

ARTICLE 1.2 : GENERAL DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

1. **Agreement on Textiles and Clothing** means the *Agreement on Textiles and Clothing*, contained in Annex 1A to the WTO Agreement;
2. **central government** or **central level of government** means:
 - (a) for the United States, the federal government; and
 - (b) for Australia, the Commonwealth government;
3. **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;
4. **customs duty** includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge 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 in respect of the like domestic good or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
 - (b) antidumping or countervailing duty that is applied pursuant to a Party's law;

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

- (c) fee or other charge in connection with importation commensurate with the cost of services rendered; or
 - (d) duty imposed pursuant to Article 5 of the *WTO Agreement on Agriculture*;
5. **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;
6. **days** means calendar days;
7. **enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;
8. **enterprise of a Party** means an enterprise constituted or organized under the law of a Party;
9. **existing** means in effect on the date of entry into force of this Agreement;
10. **GATS** means the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;
11. **GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;
12. **goods of a Party** means domestic products as these are understood in GATT 1994 or such goods as the Parties determine under the rules of origin applied in the normal course of trade, and includes originating goods of a Party;
13. **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;
14. **Harmonized System (HS)** means 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;
15. **measure** includes any law, regulation, procedure, requirement or practice;
16. **national** means a natural person referred to in Annex 1-A to this Agreement or a permanent resident of a Party;

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

17. **originating** means qualifying under the rules of origin set out in Chapter Five (Rules of Origin);
18. **person** means a natural person or an enterprise;
19. **person of a Party** means a national or an enterprise of a Party;
20. **regional government** or **regional level of government** means,
 - (a) for the United States, a state of the United States, the District of Columbia, or Puerto Rico; and
 - (b) for Australia, a state of Australia, the Australian Capital Territory or the Northern Territory;
21. **Safeguards Agreement** means the *Agreement on Safeguards*, contained in Annex 1A to the WTO Agreement;
22. **SPS Agreement** means *the Agreement on Application of Sanitary and Phytosanitary Measures*, contained in Annex 1A to the WTO Agreement;
23. **state enterprise** means an enterprise that is owned, or controlled through ownership interests, by the central or a regional government of a Party;
24. **TBT Agreement** means the *Agreement on Technical Barriers to Trade*, contained in Annex 1A to the WTO Agreement;
25. **territory** means, with respect to a Party, the territory of that Party as set out in Annex 1-A to this Agreement;
26. **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement;
27. **WTO** means the World Trade Organization; and
28. **WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on April 15, 1994.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

ANNEX 1-A
CERTAIN DEFINITIONS

For purposes of this Agreement:

1. **national** means:
 - (a) with respect to Australia, an Australian citizen as defined in the *Australian Citizenship Act 1948*; and
 - (b) with respect to the United States, a national of the United States as defined in Title III of the *Immigration and Nationality Act*.

2. **territory** means:
 - (a) with respect to Australia, the territory of the Commonwealth 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.
 - (b) with respect to 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) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.