

CHAPTER 1

INITIAL PROVISIONS 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 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. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and the other Party are party, the Parties shall, on request, consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Chapter 30 (Dispute Settlement).¹
3. For as long as the *Protocol on Ireland/Northern Ireland to the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, signed in London and Brussels on 24 January 2020 (the "Protocol") is in force,² nothing in this Agreement shall preclude the United Kingdom from adopting or maintaining measures, or refraining from doing so, further to the Protocol, and amendments thereto and subsequent agreements replacing parts thereof, provided that such measures, or the absence of such measures, are not used as a means of arbitrary or unjustified discrimination against the other Party or as a disguised restriction on trade.

¹ For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of paragraph 2.

² The Parties note in particular that arrangements for democratic consent specified at Article 18 of the Protocol may result in Articles 5 through 10, and other provisions of the Protocol dependent on the same Articles for their application, ceasing to apply to the United Kingdom in accordance with the arrangements specified at Article 18.

4. On request of either Party, the Parties shall hold consultations, in relation to the effects of a measure described in paragraph 3 the United Kingdom has adopted, or absence thereof,³ on this Agreement and seek a mutually acceptable solution.⁴

Article 1.3 Laws and regulations and their amendments

Where reference is made in this Agreement to laws or regulations of a Party, those laws or regulations shall be understood to include amendments thereto and successor laws or regulations, unless otherwise specified.

Article 1.4 General Definitions

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

“AD Agreement” means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, in Annex 1A to the WTO Agreement;

“Agreement” means the *Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*;

“Agreement on Safeguards” means the *Agreement on Safeguards*, in Annex 1A to the WTO Agreement;

“central level of government” means:

- (a) for Australia, the Commonwealth Government; and
- (b) for the United Kingdom, her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“Joint Committee” means the Australia-United Kingdom Joint Committee established under Article 29.1 (Establishment of the Joint Committee – Administrative and Institutional Provisions);

³ For greater certainty, this refers to a measure described in paragraph 3 which is adopted after entry into force of this Agreement or the absence of such measure.

⁴ This paragraph is without prejudice to Article 28.5 (Provision of Information - Transparency and Anti-Corruption).

“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 authority” means:

- (a) for Australia, the Department of Home Affairs, or its successor; and
- (b) for the United Kingdom, Her Majesty’s Revenue and Customs or its successor or where relevant, any other authority responsible for customs matters within its territory. For greater certainty, with respect to the provisions of this Agreement which apply to the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man, ‘customs authority’ shall also mean:
 - (i) with respect to the Bailiwick of Jersey, the Jersey Customs & Immigration Service or its successor;
 - (ii) with respect to the Bailiwick of Guernsey, Guernsey Customs & Excise or its successor; and
 - (iii) with respect to the Isle of Man, the Customs and Excise Division, Isle of Man Treasury or its successor;

“customs duty” includes any duty or charge of any kind imposed on or in connection with the importation of a good, 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 1994;
- (b) fee or other charge in connection with the importation commensurate with the cost of services rendered; or
- (c) antidumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Anti-dumping Agreement, and the SCM Agreement;

“Customs Valuation Agreement” means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* 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* in Annex 1B to the WTO Agreement;

“GATT 1994” means the *General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement. For greater certainty, references in this Agreement to articles in the GATT 1994 include the interpretative notes;

“good” 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;

“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) or a permanent resident; and

- (b) for the United Kingdom, a British citizen in accordance with its applicable laws and regulations, or a permanent resident;

“originating” means qualifying as originating under the rules of origin in Chapter 4 (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;

“regional level of government” means:

- (a) for Australia, a state of Australia, the Australian Capital Territory or the Northern Territory;
- (b) for the United Kingdom:
 - (i) England, Northern Ireland, Scotland or Wales;
or
 - (ii) Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland in respect of England, Northern Ireland, Scotland or Wales but not the United Kingdom as a whole;

“recovered material” means a material comprising one or more individual parts that results from:

- (a) the disassembly of a used good into individual parts;
and
- (b) the cleaning, testing or other processing of those individual 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 a good classified under HS headings 87.02, 87.03, 87.04, 87.05, 87.11 and 87.16, or subheading 8701.20⁵ that:

⁵ For greater certainty, the references to the tariff classification number of the Harmonized System in this definition are based on the Harmonized System, as amended on 1 January 2017.

- (a) is entirely or partially comprised of parts that are recovered materials;
- (b) has similar life expectancy, working conditions and performance to the equivalent good in new condition; and
- (c) is given a warranty in substance the same as the equivalent good in new condition;

“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*, 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*, 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;

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

“Trade Facilitation Agreement” means the *Agreement on Trade Facilitation*, in Annex 1A to the WTO Agreement;

“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 territorial sea, contiguous zone, exclusive economic zone and continental

shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law, particularly the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982;

- (b) for the United Kingdom:
 - (i) the territory of the United Kingdom of Great Britain and Northern Ireland including its territorial sea and airspace;
 - (ii) all the areas beyond the territorial sea of the United Kingdom, including the sea-bed and subsoil of those areas, over which the United Kingdom may exercise sovereign rights or jurisdiction in accordance with international law;
 - (iii) the Bailiwicks of Guernsey and Jersey and the Isle of Man (including their airspace and the territorial sea adjacent to them), territories for whose international relations the United Kingdom is responsible, as regards:
 - (A) Chapter 2 (Trade in Goods);
 - (B) Chapter 4 (Rules of Origin and Origin Procedures);
 - (C) Chapter 5 (Customs Procedures and Trade Facilitation);
 - (D) Chapter 6 (Sanitary and Phytosanitary Measures); and
 - (E) Chapter 25 (Animal Welfare and Antimicrobial Resistance);
 - (iv) any territory for whose international relations the United Kingdom is responsible and to which this Agreement is extended in accordance with Article 32.4 (Territorial Extension – Final Provisions);

“TRIPS Agreement” means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, in Annex 1C to the WTO Agreement, as revised or amended from time to time by a revision or amendment

that applies to the Parties and including any waiver of any provision thereof granted by Members of the WTO;

“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.