

CHAPTER 1

INITIAL PROVISIONS, GENERAL DEFINITIONS AND INTERPRETATIONS

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.

Article 1.2: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under international agreements to which the Parties are party, including the WTO Agreement.
2. In the event of any inconsistency between this Agreement and any other international agreement to which the Parties are party, the Parties shall immediately consult with a view to finding a mutually satisfactory solution, taking into consideration customary rules of public international law.

Section B: General Definitions

Article 1.3: 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;

Agreement means the *Free Trade Agreement between Hong Kong, China and Australia*;

APEC means Asia-Pacific Economic Cooperation;

Area in respect of:

- (a) Australia means 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; and

(b) Hong Kong, China means the Hong Kong Special Administrative Region as delineated by the Order of the State Council of the People's Republic of China No. 221 dated July 1, 1997;

covered investment means, with respect to a Party, an investment in its Area 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 Home Affairs, or its successor; and
- (b) for Hong Kong, China, the Customs and Excise Department of Hong Kong, China, or its successor;

customs duty means any duty or charge of any kind imposed in connection with the importation of a good, but shall not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;
- (b) anti-dumping or countervailing duty applied consistently with Article VI of GATT 1994, the AD Agreement and the SCM Agreement; or
- (c) fee or other charge that is covered by Article VIII of GATT 1994;

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;

day means a calendar day;

enterprise means:

- (a) any entity constituted or organised under applicable laws, 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; or

- (b) a branch of an enterprise;

enterprise of a Party means:

- (a) an enterprise constituted or organised under the laws of a Party; or
- (b) a branch of an enterprise of a Party located in the Area of a Party,

which has substantial business activities in the Area of that 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;

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof:

- (a) for governmental purposes; and
- (b) not with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, rights in patents, rights in layout-designs (topographies) of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the TRIPS Agreement;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock and other forms of equity participation in an enterprise;

- (c) bonds, debentures, other debt instruments and loans;¹
- (d) futures, options and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
- (f) intellectual property rights;
- (g) licences, authorisations, permits and similar rights conferred pursuant to the Party's laws;² and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action;

Investment Agreement means the *Investment Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Australia*, done at Sydney, Australia on March 26, 2019;

Joint Commission means the Joint Commission established under Chapter 17 (Institutional Provisions);

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

measures adopted or maintained by a Party, for greater certainty, include measures adopted or maintained by:

- (a) central, regional, or local governments or authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central,

¹ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

² Whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) is an asset that has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's laws. Among such instruments that do not constitute assets that have the characteristics of an investment are those that do not create any rights protected under the Party's laws. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

regional, or local governments or authorities;

natural person of a Party means a natural person who under the law of the Party:

- (a) for Australia, is an Australian citizen or a permanent resident of Australia; and
- (b) for Hong Kong, China, is a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China;

originating means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

perishable good means a good that rapidly decays due to its natural characteristics, in particular in the absence of appropriate storage conditions;

person means a natural person or an enterprise;

SCM Agreement means the *Agreement on Subsidies and Countervailing Measures*, set out in Annex 1A to the WTO Agreement;

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, set out in Annex 1A to the WTO Agreement;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out 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 April 15, 1994.

Section C: Interpretations

Article 1.4: Interpretations

For the purposes of this Agreement, unless otherwise provided:

- (a) for Hong Kong, China, any reference to an international agreement to which a Party is a party shall include an international agreement made applicable to Hong Kong, China, and any reference to the rights, obligations or undertakings of a Party under an international agreement shall include the rights, obligations or undertakings made applicable to Hong Kong, China

under such an international agreement;

- (b) for Hong Kong, China, if an expression is qualified by the term “national”, such expression shall be interpreted as pertaining to Hong Kong, China; and
- (c) if anything under this Agreement is to be done within a number of days:
 - (i) of a specified date or event, the specified date or the date on which the specified event occurs shall be included in calculating that number of days; or
 - (ii) after, from or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.