

CHAPTER 1

OBJECTIVES AND DEFINITIONS

ARTICLE 101

Establishment of the Free Trade Area

The Parties hereby establish a free trade area consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article V of the *General Agreement on Trade in Services* (GATS).

ARTICLE 102

Objectives

The objectives of the Parties in concluding this Agreement are:

- (a) to liberalise trade in goods and services and to create favourable conditions for the stimulation of trade and investment flows;
- (b) to build upon their commitments under the World Trade Organization and to support its efforts to create a predictable and more free and open global trading system;
- (c) to establish a program of cooperative activities in support of the aims of the Agreement;
- (d) to improve the efficiency and competitiveness of their economies; and
- (e) to support the wider liberalisation and facilitation process in APEC and in particular the efforts of all APEC economies to meet the Bogor goals of free and open trade and investment by 2010 at the latest for industrialised economies and 2020 at the latest for developing economies.

ARTICLE 103

General Definitions

Unless otherwise defined, for the purposes of this Agreement:

- (a) “Agreement” means the Thailand-Australia Free Trade Agreement;
- (b) “APEC” means Asia-Pacific Economic Cooperation;
- (c) “commercial presence” means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;
- (d) “customs administration” means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and policies;
- (e) “customs duties” includes any customs or import duty and a charge of any kind imposed in connection with the import of a good, including any form of surtax or surcharge in connection with such import, but does not include any:
 - (i) charge equivalent to an internal tax imposed consistently with Article III (2) of GATT 1994;
 - (ii) any anti-dumping or countervailing duty applied consistently with the provisions of GATT 1994, the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, and the *WTO Agreement on Subsidies and Countervailing Measures*; and
 - (iii) fee or other charge in connection with importing commensurate with the cost of services rendered;
- (f) “days” means calendar days;
- (g) “FTA Joint Commission” means the Free Trade Agreement Joint Commission established under Article 1701 of this Agreement;
- (h) “GATS” means the *General Agreement on Trade in Services*, which is part of the WTO Agreement;
- (i) “GATT 1994” means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;
- (j) “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;

- (k) “Harmonised System” means the *Harmonised Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes and Chapter Notes, as adopted by the Parties in their respective tariff laws;
- (l) “investment” means every kind of asset, owned or controlled, directly or indirectly, by an investor, including but not limited to the following:
 - (i) movable and immovable property, including rights such as mortgages, liens and other pledges;
 - (ii) shares, stocks, bonds and debentures and any other form of participation in a juridical person;
 - (iii) a claim to money or a claim to performance having economic value;
 - (iv) intellectual property rights, including rights with respect to copyright, patents, trademarks, trade names, industrial designs, trade secrets, know-how and goodwill;
 - (v) business concessions and any other rights required to conduct economic activity and having economic value conferred by law or under a contract, including concession to search for, cultivate, extract or exploit natural resources; and
 - (vi) returns that are invested.

For the purposes of this Agreement, any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such altered investment is approved by the relevant Party if so required by its laws, regulations or policies;

- (m) “investor of a Party” means:
 - (i) a juridical person of a Party; or
 - (ii) a natural person who is a national or a permanent resident of a Party, that has made, is in the process of making, or is seeking to make an investment in the territory of the other Party;
- (n) “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or governmentally owned, including any corporation, association, trust, partnership, joint venture or sole proprietorship;
- (o) a juridical person is:
 - (i) “owned” by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) “controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (p) “juridical person of a Party” means a juridical person duly constituted or otherwise organised under the applicable law of the Party;

- (q) “measure” includes any law, regulation, governmental procedure or requirement;
- (r) “non-originating material” means a material that does not qualify as originating in accordance with the relevant provisions of Chapter 4;
- (s) “originating goods” means goods that qualify as originating in accordance with the relevant provisions of Chapter 4;
- (t) “Parties” means the Kingdom of Thailand and Australia;
- (u) “person” means a natural person or a juridical person;
- (v) “preferential tariff treatment” means the customs duty rate that is applicable to an originating good pursuant to Article 203 (3) of Chapter 2;
- (w) “service supplier” means any person that supplies a service;¹
- (x) “services” includes any services in any sector or sub-sector except services supplied in the exercise of government authority;
- (y) “SPS Agreement” means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement;
- (z) “TBT Agreement” means the *Agreement on Technical Barriers to Trade*, which is part of the WTO Agreement;
- (aa) “territory” means the territory of a Party as well as the exclusive economic zone, seabed and subsoil over which the Party exercises sovereign rights or jurisdiction in accordance with international law;
- (bb) “WTO” means the World Trade Organization;
- (cc) “WTO Agreement” means the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994;
- (dd) “WTO Agreement on Textiles and Clothing” means the *Agreement on Textiles and Clothing*, which is part of the WTO Agreement;
- (ee) “WTO Customs Valuation Agreement” means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement; and
- (ff) “WTO Safeguards Agreement” means the *Agreement on Safeguards*, which is part of the WTO Agreement.

1 Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

ARTICLE 104

Territorial Application

The free trade area to which this Agreement applies consists of the Kingdom of Thailand and Australia.