

## **CHAPTER ONE INITIAL PROVISIONS AND DEFINITIONS**

### **Section A: Initial Provisions**

#### **ARTICLE 1.1: ESTABLISHMENT OF A FREE TRADE AREA**

Consistent with Article XXIV of GATT 1994 and Article V of GATS, the Parties 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 bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.
2. For greater certainty, this Agreement shall not be construed to derogate from any international legal obligation between the Parties that provides for more favorable treatment of goods, services, investments, or persons than that provided for under this Agreement.

#### **ARTICLE 1.3: EXTENT OF OBLIGATIONS**

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by regional levels of government.

### **Section B: General Definitions**

#### **ARTICLE 1.4: DEFINITIONS**

For purposes of this Agreement, unless otherwise specified:

**central level of government** means:

- (a) for Korea, the central level of government; and
- (b) for the United States, the federal level of government;

**covered investment** means, with respect to a Party, an investment, as defined in Article 11.28 (Definitions), in its territory of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

**customs duties** 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,<sup>1</sup> but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, 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; or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered;

**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;

**days** means calendar days;

**enterprise** means any entity constituted or organized 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 organization;

**enterprise of a Party** means an enterprise constituted or organized under a Party's law;

**existing** means in effect on the date this Agreement enters into force;

**freely usable currency** means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement*;

**GATS** means the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;

**GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

**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 that 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, and Chapter Notes,

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<sup>1</sup> For greater certainty, "customs duty" includes an adjustment tariff imposed pursuant to Article 69 of Korea's *Customs Act*.

as adopted and implemented by the Parties in their respective tariff laws;

**Import Licensing Agreement** means the *Agreement on Import Licensing Procedures*, contained in Annex 1A to the WTO Agreement;

**Joint Committee** means the Joint Committee established under Article 22.2 (Joint Committee);

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

**national** means:

- (a) with respect to Korea, a Korean national within the meaning of the *Nationality Act*,<sup>2</sup> and
- (b) with respect to the United States, “national of the United States” as defined in the *Immigration and Nationality Act*;

**originating** means qualifying under the rules of origin set out in Chapter Four (Textiles and Apparel) or Six (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 duty rate applicable under this Agreement to an originating good;

**regional level of government** means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico; for Korea, “regional level of government” is not applicable;

**remanufactured goods** means goods classified in HS Chapter 84, 85, 87, or 90, or under heading 94.02 that:

- (a) are entirely or partially comprised of recovered goods as defined in Article 6.22 (Definitions); and
- (b) have a similar life expectancy and enjoy a factory warranty similar to such new goods;

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

**sanitary or phytosanitary measure** means any measure referred to in paragraph 1 of Annex A of the SPS Agreement;

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<sup>2</sup> A natural person who is domiciled in the area north of the Military Demarcation Line on the Korean Peninsula shall not be entitled to benefits under this Agreement.

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

**state enterprise** means an enterprise that is owned, or controlled through ownership interests, by a Party;<sup>3</sup>

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

**territory** means:

- (a) with respect to Korea, the land, maritime, and air space over which Korea exercises sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law; and
- (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 sovereign rights with respect to the seabed and subsoil and their natural resources;

**TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement;<sup>4</sup>

**WTO** means the World Trade Organization; and

**WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on April 15, 1994.

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<sup>3</sup> For greater certainty, ownership, or control through ownership interests, may be direct or indirect.

<sup>4</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.