

## CHAPTER 1

### INITIAL PROVISIONS AND GENERAL DEFINITIONS

#### Article 1: Establishment of the PACER Plus 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 2: General Definitions

For the purposes of this Agreement, unless the context otherwise requires:

**administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit, and that establishes a norm of conduct, but shall not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice;

**Agreement** means the *Pacific Agreement on Closer Economic Relations Plus* (PACER Plus);

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

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

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

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

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

**Anti-Dumping 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;

**commercial samples of negligible value** means commercial samples having a value, individually or in the aggregate as shipped, of not more than the amount specified in a Party's laws, regulations or procedures governing temporary admission, or so marked, torn,

perforated or otherwise treated that they are unsuitable for sale or use except as commercial samples;

**Customs Administration** means the official agencies responsible for implementing the provisions of the Chapter on Rules of Origin and Verification Procedures and the Chapter on Customs Procedures;

**customs duty** means any duty or a charge of any kind, including any tax or surcharge, imposed in connection with the importation of a good, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of a like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
- (b) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, and the Agreement on Subsidies and Countervailing Measures; or
- (c) fee or any charge commensurate with the cost of services rendered;

**days** means calendar days, including weekends and holidays;

**developed country Party** means any Party that is not a Developing Country Party or a Least Developed Country Party;

**developing country Party** means a Party that designates itself as a developing country, and includes Least Developed Country Parties unless otherwise specified;

**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, and a branch of an enterprise;

**enterprise of a Party means** an enterprise which is either:

- (a) organised or constituted under the law of that Party, or a branch located in the territory of another Party, which is engaged in substantive business operations in the territory of that Party or any other Party; or
- (b) in the case of the supply of a service through commercial presence, owned or controlled by:
  - (i) natural persons of that Party; or
  - (ii) an enterprise of that Party identified under subparagraph (a);

**Forum Island Countries** means the Pacific Island Countries which are Parties to this Agreement and are Members of the Pacific Islands Forum, referred to in this Agreement collectively as the Forum Island Countries and individually as a Forum Island Country;

**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;

**Harmonized System** or **HS** means the Harmonized Commodity Description and Coding System established by the *International Convention on the Harmonized Description and Coding System* signed at Brussels on 14 June 1983, as amended;

**IMF Articles of Agreement** means the *Articles of Agreement of the International Monetary Fund*;

**import licensing** means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

**Joint Committee** means the PACER Plus Joint Committee established pursuant to Article 1 of Chapter 12 (Institutional Provisions);

**Least Developed Country Party** means any Party that is on the United Nations List of Least Developed Countries;

**measure** means any measure of a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

**natural person of a Party** means a natural person that possesses the nationality or citizenship of, or right of permanent residence, in that Party in accordance with its laws and regulations;<sup>1</sup>

**Negotiating Parties** means Australia, the Cook Islands, the Federated States of Micronesia, the Independent and Sovereign Republic of Kiribati, the Republic of Nauru, New Zealand, Niue, the Republic of Palau, the Republic of the Marshall Islands, the Independent State of Samoa, Solomon Islands, the Kingdom of Tonga, Tuvalu, the Republic of Vanuatu, referred to in this Agreement collectively as the Negotiating Parties or individually as a Negotiating Party;

**Pacific Islands Forum** means the Pacific Islands Forum, as referred to in the *Agreement Establishing the Pacific Islands Forum Secretariat*;

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<sup>1</sup> For the purposes of this Agreement, for the Cook Islands, nationality means a person belonging to the part of the Polynesian race indigenous to the Cook Islands and includes any person descended from a Cook Islander as recognised by Cook Islands law, or a permanent resident of the Cook Islands pursuant to Cook Islands law; and for Niue, a natural person is a Niuean national or permanent resident as recognised by Niuean law.

**Party** means any State, separate customs territory or self-governing entity for which this Agreement is in force;

**printed advertising materials** means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise, or advertise a good or a service, or are essentially intended to advertise a good or a service, and are supplied free of charge;

**regional trade agreement** means an agreement for closer integration between the economies of the constituent parties composed alternatively or jointly of:

- (a) a customs union or free-trade area or agreement for the formation of such a union or area consistent with Article XXIV of GATT 1994, the Understanding on the Interpretation of Article XXIV of GATT 1994 and, in the case of a customs union or free-trade area or agreement for the formation of such a union or area exclusively involving developing countries, the GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Decision of 28 November 1979, L/4903);
- (b) an economic integration agreement liberalising trade in services consistent with Article V of GATS;

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

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

**WTO** means the World Trade Organization;

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

**WTO Member** means a state, separate customs territory or self-governing entity that is Party to the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.