

CHAPTER TWO
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1: SCOPE OF APPLICATION

Except as otherwise provided in this Agreement, this Chapter shall apply to trade in goods of a Party.

SECTION A: NATIONAL TREATMENT

ARTICLE 2.2: NATIONAL TREATMENT

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to this end Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Paragraph 1 shall not apply to the measures set out in Annex 2A.

SECTION B: ELIMINATION OF CUSTOMS DUTIES

ARTICLE 2.3: ELIMINATION OF CUSTOMS DUTIES

1. Except as otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods in accordance with its Schedule set out in Annex 2B.
3. The Parties may deny preferential tariff treatment under this Agreement for used goods. For purposes of this paragraph, **used goods** includes those identified as such in headings or sub-headings of the HS and those reconstructed, repaired, recovered, remanufactured, or any other similar goods that, after having been used, have been subject to a process to restore their original characteristics or specifications, or to restore the functionality they had when they were new.¹
4. Upon request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules set out in Annex 2B.
5. An agreement between the Parties to accelerate the elimination of a customs duty on a good, shall supersede any duty rate or staging category determined pursuant to their

¹ This paragraph shall not apply to used vehicles that are classified in heading 8703 of the HS, provided that they do not fall within the scope of the measures referred to in Annex 2A. Accordingly, each Party shall provide preferential tariff treatment under this Agreement for such used vehicles.

Schedules set out in Annex 2B for such good, when approved by the Parties in accordance with Article 22.1 (Joint Commission) and their applicable legal procedures.

6. For greater certainty, a Party may:
 - (a) raise a customs duty to the level established in its Schedule set out in Annex 2B following a unilateral reduction for the respective year; or
 - (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO or in accordance with Chapter Twenty-Three (Dispute Settlement).

SECTION C: SPECIAL REGIMES

ARTICLE 2.4: WAIVER OF CUSTOMS DUTIES

1. Neither Party shall adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.
2. Neither Party shall, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

ARTICLE 2.5: TEMPORARY ADMISSION OF GOODS

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:
 - (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry in accordance with the laws of the importing Party;
 - (b) goods intended for display or demonstration;
 - (c) commercial samples and advertising films and recordings; and
 - (d) goods admitted for sports purposes.
2. Each Party, upon request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party shall condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

- (a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of business activity, trade, profession or sport activity of that person;
- (b) not be sold or leased while in its territory;
- (c) be accompanied by a security in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
- (d) be capable of identification when exported;
- (e) be exported on the departure of the person referred to in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within one year, unless extended;
- (f) be admitted in no greater quantity than is reasonable for its intended use; and
- (g) be otherwise admissible into the Party's territory under its law.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.

5. Each Party shall adopt or maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

7. Each Party shall provide that its customs authority or other competent authority relieves the importer or another person responsible for a good admitted under this Article of any liability for failure to export the good on presentation of satisfactory proof to the customs authority of the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Neither Party shall:

- (a) prevent a vehicle or container used in international traffic that enters its territory from the territory of the other Party from exiting its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

- (b) require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;
- (c) condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and
- (d) require that the vehicle or carrier bringing a container from the territory of the other Party into its territory be the same vehicle or carrier that takes the container to the territory of the other Party.

9. For purposes of paragraph 8, **vehicle** means a truck, a truck tractor, a tractor, a trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

ARTICLE 2.6: GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.

2. Neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

3. For purposes of this Article, **repair or alteration** does not include an operation or process that:

- (a) destroys a good's essential characteristics or creates a new or commercially different good; or
- (b) transforms an unfinished good into a finished good.

ARTICLE 2.7: DUTY-FREE ENTRY OF COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party; or
- (b) such materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

SECTION D: NON-TARIFF MEASURES

ARTICLE 2.8: IMPORT AND EXPORT RESTRICTIONS

1. Except as otherwise provided in this Agreement, neither Party shall adopt or maintain any non-tariff measures that prohibit or restrict the importation of any good of the other Party or the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

- (a) export and import price requirements, except as permitted in enforcement of countervailing and anti-dumping duty orders and undertakings;
- (b) import licensing conditioned on the fulfillment of a performance requirement; or
- (c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2A.

4. Neither Party shall, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

5. Nothing in paragraph 4 prevents a Party from requiring the designation of an agent for purposes of facilitating communications between regulatory authorities of the Party and a person of the other Party.

6. For purposes of paragraph 4:

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

ARTICLE 2.9: IMPORT LICENSING

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement and to this end the Import Licensing Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. (a) Promptly after the entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall:
 - (i) include the information specified in Article 5 of the Import Licensing Agreement; and
 - (ii) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.
- (b) Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government website or in a single official journal. The Party shall do so at least 20 days before the new procedure or modification takes effect.²
3. Neither Party shall apply an import licensing procedure to a good of the other Party unless the Party has met the requirements of paragraph 2 with respect to that procedure.

ARTICLE 2.10: ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure that all fees and charges of whatever character imposed on or in connection with the importation or exportation of goods are consistent with Article VIII:1 of GATT 1994 and its interpretive notes. To this end, Article VIII:1 of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.
3. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

ARTICLE 2.11: EXPORT TAXES

Neither Party shall adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

ARTICLE 2.12: STATE TRADING ENTERPRISES

The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVII of GATT 1994, its interpretative notes, and the *Understanding on the Interpretation of Article XVII of GATT 1994*, which are incorporated into and made part of this Agreement, *mutatis mutandis*.

² This subparagraph shall not apply to a law or regulation that takes effect less than 20 days after it is published.

ARTICLE 2.13: CUSTOMS VALUATION

1. The Customs Valuation Agreement and any successor Agreement shall govern the customs valuation rules applied by the Parties to their trade. To this end, the Customs Valuation Agreement and any successor Agreement, as well as the WTO Decisions of Committee on Customs Valuation, are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The custom laws of the Parties shall comply with Article VII of GATT 1994 and the Customs Valuation Agreement.

SECTION E: OTHER MEASURES

ARTICLE 2.14: AGRICULTURAL SAFEGUARD MEASURES

1. Notwithstanding Article 2.3, a Party may apply a measure in the form of a higher import duty on an originating agricultural good listed in that Party's Schedule set out in Annex 2C, consistent with this Article if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in its Schedule set out in Annex 2C.
2. The higher import duty under paragraph 1 shall not exceed the lesser of:
 - (a) the prevailing most-favored-nation (MFN) applied rate;
 - (b) the most-favored-nation (MFN) applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement;
 - (c) the base rate set out in its Schedule set out in Annex 2B; or
 - (d) the duty set out in its Schedule set out in Annex 2C.
3. Neither Party shall apply or maintain an agricultural safeguard measure under this Article and at the same time apply or maintain, with respect to the same good:
 - (a) a bilateral safeguard measure under Chapter Eight (Trade Remedies);
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement;
or
 - (c) a special safeguard measure under Article 5 of the Agriculture Agreement.
4. A Party shall implement any agricultural safeguard measure in a transparent manner. Within 60 days after imposing an agricultural safeguard measure, the Party applying the measure shall notify the other Party in writing and provide the other Party with relevant data

concerning the measure. Upon written request of the exporting Party, the Parties shall consult regarding application of the measure.

5. The Committee on Trade in Goods established under Article 2.17 may review and discuss the implementation and operation of this Article.

6. Neither Party shall apply or maintain an agricultural safeguard measure on an originating agricultural good if the period specified in the agricultural safeguard provisions of the Party's Schedule set out in Annex 2C has expired.

ARTICLE 2.15: AGRICULTURAL EXPORT SUBSIDIES

Neither Party shall introduce or reintroduce an export subsidy on an agricultural good destined for the territory of the other Party.³

ARTICLE 2.16: PRICE BAND SYSTEM

Peru may maintain its price band system established in its Supreme Decree N° 115-2001-EF and its amendments, with respect to the goods subject to the application of the system and listed in Annex 2D.

SECTION F: INSTITUTIONAL PROVISIONS

ARTICLE 2.17: COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods comprising officials of each Party. The meetings of the Committee and any *ad-hoc* working group shall be coordinated by the *Ministry of Foreign Affairs and Trade* of Korea and the *Ministry of Foreign Trade and Tourism* of Peru, or their respective successors.

2. The Committee shall meet upon request of a Party or the Joint Commission to consider matters arising under this Chapter, Chapter Three (Rules of Origin), Four (Origin Procedures) or Five (Customs Administration and Trade Facilitation).

3. The Committee's functions shall include, *inter alia*:

- (a) promoting trade in goods between the Parties, including through consultations on accelerating, or broadening the scope of, tariff elimination under this Agreement and other issues as appropriate;
- (b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Joint Commission for its consideration;

³ Korea confirms that no subsidized agricultural goods is or will be exported to Peru.

- (c) reviewing the future amendments to the HS to ensure that each Party's obligations under this Agreement are not altered, and consulting to resolve any conflicts between:
 - (i) subsequent amendments to HS 2007 and Annex 2B; or
 - (ii) Annex 2B and national nomenclatures;
- (d) consulting on and endeavoring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the HS;
- (e) consulting on matters related to this Chapter in coordination with other committees, working groups or any other bodies established under this Agreement; and
- (f) establishing *ad-hoc* working groups with specific commands.

4. The Committee shall meet at least once a year unless otherwise agreed by the Parties. When special circumstances arise, the Committee shall meet at any time upon request of a Party.

5. The Parties hereby establish an *ad-hoc* Working Group on Trade in Agricultural and Fishery Goods. In order to solve any obstacle to the trade of agricultural and fishery goods between the Parties, the *ad-hoc* Working Group shall meet upon request of a Party. The *ad-hoc* Working Group shall report to the Committee on Trade in Goods.

SECTION G: DEFINITIONS

ARTICLE 2.18: DEFINITIONS

For purposes of this Chapter:

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

agricultural goods means those goods referred to in Article 2 of the Agriculture 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;

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for purposes of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

consumed means:

- (a) actually consumed; or
- (b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good or in the production of another good;

duty-free means free of customs duty;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the Agriculture Agreement, including any amendment of that Article;

goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;

goods temporarily admitted for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;

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;

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

performance requirement means a requirement that:

- (a) a given level or percentage of goods or services be exported;
- (b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods;
- (c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;
- (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the

waiver of customs duties or the import license, with a given level or percentage of domestic content; or

- (e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be:

- (f) subsequently exported;
- (g) used as a material in the production of another good that is subsequently exported;
- (h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or
- (i) substituted by an identical or similar good that is subsequently exported; and

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