

PART TWO: TRADE IN GOODS

Chapter III: National Treatment and Access of Goods to the Market

Article III.01 Definitions

For purposes of this chapter:

agricultural goods means the products listed in Annex 1 (Product Coverage) of the WTO Agreement on Agriculture with any subsequent changes agreed in the WTO to be automatically effective for this Agreement;

advertising films means recorded visual media, with or without soundtracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of either Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets each of which contains no more than one copy of each film and that do not form part of a larger consignment;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one (1) U.S. dollar, or the equivalent amount in the currency of the other Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

consumed means:

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

duty-free means free of customs duties;

export subsidies means subsidies contingent upon export performance including the export subsidies listed in Article 9 (Export Subsidy Commitments) of the WTO Agreement on Agriculture; any subsequent changes agreed to in the WTO would be automatically incorporated into this Agreement;

goods imported 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 imported;

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

printed advertising materials means the 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 service, are essentially intended to advertise a good or service, and are supplied free of charge, classified in Chapter 49 of the Harmonised System; and

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good.

Article III.02 Scope of Application

This chapter shall apply to the trade in goods between the Parties.

SECTION I: National Treatment

Article III.03 National Treatment

1. Each Party shall accord national treatment to the goods of the other Party, in accordance with Article III (National Treatment on Internal Taxation and Regulation) of the GATT 1994, including its interpretative notes. To this end, Article III (National Treatment on Internal Taxation and Regulation) of the GATT 1994, including its interpretative notes and any other equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, in relation to a Party, including its departments, municipalities or provinces, a treatment no less favourable than the most favourable treatment accorded by that Party, including its departments, municipalities or provinces, to any, directly competitive or substitutable goods of domestic origin.

SECTION II: Tariffs

Article III.04 Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt a new customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with the Tariff Elimination Schedule established in Annex III.04.2.

3. Upon the request of any Party, the Parties shall consult to consider the possibility of accelerating the elimination of customs duties set out in Annex III.04.2 or incorporating into one Party's Tariff Elimination Schedule goods not subject to the elimination schedule. An agreement between the Parties to accelerate the elimination of a customs duty on a good or to include a good in a Party's elimination schedule shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.

4. The agreement adopted based on paragraph 3, regarding the accelerated elimination of a customs duty for an originating good, shall prevail over any customs duty or tariff elimination schedule set out in the Annexes to this Article.

5. Notwithstanding paragraphs 1 and 2, any Party may maintain or increase

a customs duty as authorised by the Dispute Settlement Understanding of the WTO, or any other agreement under the WTO Agreement.

6. Originating goods produced in free trade zones in the territory of a Party shall be subject to the most favoured nation treatment (MFN tariff) when imported into the territory of the other Party, except for the products included in Annex III.04.6, which shall benefit from the Tariff Elimination Schedule.

7. The Parties agree that, from the date of entry into force of this Agreement, and in accordance with the functions assigned to the Joint Council in Article I.06.8(a), upon request of either Party, the Joint Council may meet with the purpose of including other goods into Annex III.04.6.

Article III.05 Temporary Admission of Goods

1. Each Party shall grant temporary duty-free admission for:

- (a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter XI (Temporary Entry);
- (b) equipment for the press or for sound or television broadcasting and cinematographic equipment;
- (c) goods imported for sports purposes and goods intended for display or demonstration; and
- (d) commercial samples and advertising films;

imported from the territory of the other Party regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, neither Party may condition the temporary duty-free admission of a good referred to in paragraph 1(a), (b) or (c), other than to require that such good:

- (a) be imported by a national or resident of the other Party who seeks temporary entry;
- (b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;
- (c) not be sold or leased while in its territory;
- (d) be accompanied by a bond in an amount no greater than hundred and ten percent (110%) of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good;
- (e) be capable of identification when exported;
- (f) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission; and

- (g) be imported in no greater quantity than is reasonable for its intended use.

3. Except as otherwise provided in this Agreement, neither Party may condition the temporary duty-free admission of a good referred to in paragraph 1(d), other than to require that such good:

- (a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or non-Party;
- (b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;
- (c) be capable of identification when exported;
- (d) be exported within such period as is reasonably related to the purpose of the temporary admission; and
- (e) be imported in no greater quantity than is reasonable for its intended use.

4. When a good is temporarily admitted duty-free under paragraph 1 and does not fulfill all the required conditions set out in paragraphs 2 and 3, the importing Party may impose:

- (a) the customs duty and any other charge on the good that would be owed on entry or final importation of such good; and
- (b) any criminal, civil or administrative sanction that the circumstances determine.

5. Subject to Chapters IX (Services) and X (Investment):

- (a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container;
- (b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;
- (c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and
- (d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the carrier that takes such container to the territory of the other Party.

Article III.06 Duty-Free Entry of Certain Commercial Samples 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 another 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 non-Party; or
- (b) such advertising materials be imported in packets each of which contains no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Article III.07 Goods Re-Entered after Repair, Renovation or Improvement

Where a non-originating good is exported by a Party to the territory of the other Party for repair, renovation or improvement, that good on its re-entry shall be granted treatment as an originating good if the value of the non-originating materials used in the repair, renovation or improvement did not exceed sixty five percent (65%) of the cost of repair, renovation or improvement. This treatment is subject to the condition that the essential character of the good is not altered.

The temporary admission of a good exported by a Party to the territory of the other Party for repair, renovation or improvement shall be allowed without the payment of customs duty for that period of time as stated in the national law of that Party.

Article III.08 Customs Valuation

The Customs Valuation Agreement and any successor agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade.

SECTION III: Non-Tariff Measures

Article III.09 Import and Export Restrictions

1. Subject to this Article and the Parties' rights set out in Article XX (General Exceptions) and Article XXI (Security Exceptions) of the GATT 1994, the Parties shall eliminate immediately all non-tariff barriers upon entry into force of this Agreement.

2. Except where otherwise provided in this Agreement, the Parties undertake not to apply restrictions with respect to trade under this Agreement.

3. The Parties affirm that the GATT 1994 rights and obligations prohibit, in any circumstances in which any form of restriction is prohibited, export price requirements and, except as permitted in the enforcement of countervailing and antidumping orders and undertakings, import price requirements.

4. Where one of the Parties maintains a prohibition or restriction on the importation or exportation of goods originating in the other Party, that Party shall

establish that the measure is compatible with this Agreement or the WTO Agreement as the case may require.

5. The Parties agree not to introduce any new prohibition or restriction on the importation or exportation of goods originating in the other Party, after the entry into force of this Agreement.

Article III.10 Customs User Fees

Customs User Fees shall be applied according to the internal legislation of each Party.

Article III.11 Consular Fees

Upon entry into force of this Agreement, no Party shall require consular fees or duties, nor shall require consular formalities for originating goods of the other Party.

Article III.12 Marks of Origin

The Parties confirm their rights and obligations under Article IX (Marks of origin) of the GATT 1994 and any successor agreement.

Article III.13 Support, Internal Aid and Subsidies to Exports

The Parties hereby reaffirm their rights and obligations derived from the relevant *WTO Agreements* in all that pertains to support, internal aid, and subsidies to exports.

Article III.14 Export Competition and Domestic Support for Agricultural Goods

1. To the extent possible, the Parties share the objective of the progressive reduction and elimination of all forms of trade distorting export competition measures on agricultural goods and shall pursue expansion in the scope of coverage of disciplines in this area.

2. The Parties share, to the extent possible, the objective of achieving the maximum possible reduction or elimination of domestic support measures that distort production and trade of agricultural goods.

3. To the extent possible, the Parties agree to cooperate within the Agriculture Negotiations in the WTO to achieve the effective implementation of Special and Differential Treatment Provisions for developing countries and a review of the criteria for the "green box" category to ensure that it does not distort production and trade.

Article III.15 Export Taxes

Except as set out in Annex III.15 neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party.

Article III.16 Safeguard Measures

1. The Parties reaffirm their rights and obligations under Article XIX (Emergency Action on Imports of Particular Products) of the GATT 1994, the WTO Agreement on Safeguards, and any other successor agreement.
2. The Parties shall, within one (1) year of the entry into force of this Agreement, meet to review this Article.

Article III.17 Consultations and Committee on Market Access

1. The Parties hereby establish a Committee on Market Access, comprising representatives of each Party.
2. The Committee on Market Access shall meet periodically, and at any other time on the request of either Party or the Council, to ensure the effective implementation and administration of Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any Uniform Regulations. In this regard, the Committee on Market Access shall:
 - (a) monitor the implementation and administration by the Parties of Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any Uniform Regulations to ensure their uniform interpretation;
 - (b) at the request of either Party, review any proposed modification of or addition to Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) or any Uniform Regulations;
 - (c) recommend to the Council any modification of or addition to Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) or any Uniform Regulations and to any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and
 - (d) consider any other matter relating to the implementation and administration by the Parties of Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any Uniform Regulations referred to it by a Party; and
 - (e) recommend to the Council the establishment of subcommittees or technical groups, where appropriate.

3. Each Party shall to the greatest extent practicable, take all necessary measures to implement any modification of or addition to Chapter III (National Treatment and Access of Goods to the Market, Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any Uniform Regulations within one hundred and eighty (180) days after the Council agrees on such modification or addition, or in such time as the relevant amendment to the legislation may be enacted.

4. The Parties shall convene on the request of either Party a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.

5. Nothing in Chapter III (National Treatment and Access of Goods to the Market) shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Committee on Market Access or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.