

## CHAPTER 2

### TRADE IN GOODS

#### Article 2.1: Definitions

For the purposes of this Chapter:

**AD Agreement** means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

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

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

**commercial samples of negligible value** means commercial or trade samples: having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar or the equivalent amount in the currency of either Party; or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for 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 the 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, with respect to a good:

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

**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;

**duty-free** means free of customs duty;

**export subsidy** means a subsidy as defined in Article 3 of the SCM Agreement and includes export subsidies listed in Article 9 of the Agreement on Agriculture;

**goods admitted for sports purposes** means sports requisites admitted into the territory of the importing Party for use in sports contests, demonstrations or training in the territory of that Party;

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

**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 of the importing Party as a prior condition for importation into the territory of that Party;

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

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

**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 licence be substituted for imported goods;
- (c) a person benefiting from a waiver of customs duties or a requirement for an import licence purchase other goods or services in the territory of the Party that grants the waiver of customs duties or the import licence or accord a preference to domestically produced goods;
- (d) a person benefiting from a waiver of customs duties or a requirement for an import licence produce goods or supply services in the territory of the Party that grants the waiver of customs duties or the import licence 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;

**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 service, are essentially intended to advertise a good or service and are supplied free of charge;

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

**SCM Agreement** means the *Agreement on Subsidies and Countervailing Measures*, set out in Annex 1A to the WTO Agreement.

## **Article 2.2: Scope**

Except as otherwise provided, this Chapter shall apply to trade in all goods between the Parties.

## **Article 2.3: National Treatment on Internal Taxation and Regulation**

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes. To this end, Article III of the GATT 1994 and its interpretative notes are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

## **Article 2.4: Customs Duties**

1. Each Party shall eliminate all customs duties on originating goods of the other Party at the date of entry into force of this Agreement and such customs duties shall remain free after that date.
2. Each Parties shall classify goods traded between the Parties in conformity with the Harmonized System.

## **Article 2.5: Waiver of Customs Duties**

1. Neither Party shall adopt any new waiver of a customs duty, or expand with respect to an existing recipient or extend to any new recipient the application of an existing waiver of a

customs duty, that is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. Neither Party shall, explicitly or implicitly, condition the continuation of any existing waiver of a customs duty on the fulfilment of a performance requirement.

### **Article 2.6: Customs Value**

Each Party shall determine the customs value of goods traded between the Parties in accordance with Article VII of the GATT 1994 and the Customs Valuation Agreement.

### **Article 2.7: Goods Re-entered after Repair and Alteration**

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

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 the 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 2.8: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material**

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

- (a) commercial samples of negligible value 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) printed advertising material be imported in packets that each contain no more than one copy of the material and that neither that material nor those packets form part of a larger consignment.

## **Article 2.9: 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, that is necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry pursuant to the laws and regulations 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 shall, at the request of the person concerned and for reasons its customs administration considers valid, extend the time limit for duty-free temporary admission beyond the period initially fixed.

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

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

4. Each Party shall grant duty-free temporary admission for containers and pallets regardless of their origin, that are in use or to be used in the shipment of goods in international traffic.

(a) For the purposes of this paragraph, **container** means an article of transport equipment that is: fully or partially enclosed to constitute a compartment intended for containing goods; substantial and has an internal volume of one cubic metre or more; of a permanent character and accordingly strong enough to be suitable for repeated use; used in significant numbers in international traffic; specially designed to facilitate the carriage of goods by more than one mode of transport without intermediate reloading; and designed both for ready handling, particularly when being transferred from one mode of transport to another, and to be easy to fill and to empty, but does not include vehicles, accessories or spare parts of vehicles or packaging.

(b) For the purposes of this paragraph, **pallet** means a small, portable platform, which consists of two decks separated by bearers or a single deck supported by feet, on which goods can be moved, stacked, and stored, and which is designed essentially for handling by means of fork lift trucks, pallet trucks, or other jacking devices.

5. 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 in addition to any other charges or penalties provided for under its laws and regulations.

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

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

8. Each Party shall, in accordance with its laws and regulations, provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good was destroyed within the period fixed for temporary admission, including any lawful extension.

9. Subject to Chapter 7 (Investment) and Chapter 8 (Services):

(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 that container;

- (b) neither Party shall require any security or impose any penalty or charge solely by reason of any difference between the customs port of entry and the customs port of departure of a container;
- (c) neither Party shall condition the release of any obligation, including any security, that it imposes in respect of the entry of a container into its territory on the exit of that container through any particular customs port of departure; and
- (d) neither Party shall require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes such container to the territory of the other Party.

### **Article 2.10: Import and Export Restrictions**

1. Except as otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative 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 fulfilment of a performance requirement; or
- (c) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. For greater certainty, paragraph 1 shall apply to the importation of commercial cryptographic goods.

4. For the purposes of paragraph 3, **commercial cryptographic goods** means any good implementing or incorporating cryptography, if the good is not designed or modified specifically for government use and is sold or otherwise made available to the public.

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent that Party from:

- (a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or
- (b) requiring, as a condition for exporting the good of that Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

6. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, it shall, on the request of the other Party, consult with the other Party with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in that other Party.

7. 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.

8. For greater certainty, paragraph 7 does not prevent a Party from requiring a person referred to in that paragraph to designate a point of contact for the purposes of facilitating communications between its regulatory authorities and that person.

#### **Article 2.11: Remanufactured Goods**

1. For greater certainty, Article 2.10.1 shall apply to prohibitions and restrictions on the importation of remanufactured goods.

2. If a Party adopts or maintains measures prohibiting or restricting the importation of used goods, it shall not apply those measures to remanufactured goods.<sup>1</sup>

#### **Article 2.12: Import Licensing**

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after the Protocol enters into force for a Party, that Party shall notify the other Party of its existing import licensing procedures, if any. The notice shall include the

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<sup>1</sup> For greater certainty, subject to its obligations under this Agreement and the WTO Agreement, a Party may require that remanufactured goods:

- (a) be identified as such for distribution or sale in its territory; and
- (b) meet all applicable technical requirements that apply to equivalent goods in new condition.



information specified in Article 5.2 of the Import Licensing Agreement and any information required under paragraph 6.

3. A Party shall be deemed to be in compliance with paragraph 2 with respect to an existing import licensing procedure if:

- (a) it has notified that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of that agreement;
- (b) in the most recent annual submission, due before the date of entry into force of the Protocol for that Party, to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure, the information requested in that questionnaire; and
- (c) it has included in either the notice described in subparagraph (a) or the annual submission described in subparagraph (b) any information required to be notified to the other Party under paragraph 6.

4. Each Party shall comply with Article 1.4(a) of the Import Licensing Agreement with respect to any new or modified import licensing procedure. Each Party shall also publish on an official government website any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement.

5. Each Party shall notify the other Party of any new import licensing procedures it adopts and any modifications it makes to its existing import licensing procedures, if possible, no later than 60 days before the new procedure or modification takes effect. In no case shall a Party provide the notification later than 60 days after the date of its publication. The notification shall include any information required under paragraph 6. A Party shall be deemed to be in compliance with this obligation if it notifies a new import licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing in accordance with Article 5.1, Article 5.2 or Article 5.3 of the Import Licensing Agreement and includes in its notification any information required to be notified to the other Party under paragraph 6.

6. (a) A notice under paragraph 2, paragraph 3 or paragraph 5 shall state if, under any import licensing procedure that is a subject of the notice:

- (i) the terms of an import licence for any product limit the permissible end users of the product; or
- (ii) the Party imposes any of the following conditions on eligibility for obtaining a licence to import any product:
  - (A) membership in an industry association;

- (B) approval by an industry association of the request for an import licence;
  - (C) a history of importing the product or similar products;
  - (D) minimum importer or end user production capacity;
  - (E) minimum importer or end user registered capital; or
  - (F) a contractual or other relationship between the importer and a distributor in the Party's territory.
- (b) A notice that states, under subparagraph (a), that there is a limitation on permissible end users or a licence-eligibility condition shall:
- (i) list all products for which the end-user limitation or licence eligibility condition applies; and
  - (ii) describe the end-user limitation or licence-eligibility condition.

7. Each Party shall respond within 60 days to a reasonable enquiry from the other Party concerning its licensing rules and its procedures for the submission of an application for an import licence, including the eligibility of persons, firms and institutions to make an application, the administrative body or bodies to be approached and the list of products subject to the licensing requirement.

8. If a Party denies an import licence application with respect to a good of the other Party, it shall, on request of the applicant and within a reasonable period after receiving the request, provide the applicant with a written explanation of the reason for the denial.

9. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has, with respect to that procedure, met the requirements of paragraph 2 or paragraph 4, as applicable.

### **Article 2.13: Administrative Fees and Formalities**

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than export taxes, customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of a good of another Party.

3. Each Party shall make publicly available online a current list of the fees and charges it imposes in connection with importation or exportation.
4. Neither Party shall levy fees and charges on or in connection with importation or exportation on an ad valorem basis.
5. Each Party shall periodically review its fees and charges, with a view to reducing their number and diversity if practicable.

#### **Article 2.14: Export Duties**

A Party shall not adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.<sup>2</sup>

#### **Article 2.15: Non-tariff Measures**

1. Neither Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party except in accordance with its WTO rights and obligations or in accordance with this Agreement.
2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1 and that they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

#### **Article 2.16: Subsidies and Countervailing Measures**

1. Each Party shall prohibit export subsidies on all goods, including agricultural goods.
2. If either Party grants or maintains any subsidy which operates to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the other Party to the extent and nature of the subsidisation, of the estimated effect of the subsidisation on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidisation necessary. In any case in which it is determined that serious prejudice to the interests of the other Party is caused or threatened by any subsidisation, the Party granting the subsidy shall, upon request, discuss with the other Party the possibility of limiting the subsidisation. This paragraph shall be applied in conjunction with the relevant applicable provisions of the GATT 1994 and the SCM Agreement.

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<sup>2</sup> For greater certainty, this Article shall not apply to fees, charges, formalities and requirements on the exportation of goods imposed consistent with Article VIII of GATT 1994.

3. The Parties reaffirm their commitment to abide by the SCM Agreement in respect of actionable subsidies.

4. Each Party shall seek to avoid causing adverse effects to the interests of the other Party in terms of Article 5 of the SCM Agreement.

### **Article 2.17: Anti-Dumping Measures**

1. Both Parties are Members of the AD Agreement. For the purposes of trade between the Parties, the following changes are agreed in terms of implementation of the AD Agreement in order to bring greater discipline to anti-dumping investigations and to minimise the opportunities to use anti-dumping in an arbitrary or protectionist manner:

- (a) the *de minimis* dumping margin of two per cent expressed as a percentage of the export price below which no anti-dumping duties can be imposed provided for in Article 5.8 of the AD Agreement is raised to five per cent;
- (b) the new *de minimis* margin of five per cent established in sub-paragraph (a) is applied not only in new cases but also in refund and review cases;
- (c) the maximum volume of dumped imports from the exporting Party which shall normally be regarded as negligible under Article 5.8 of the AD Agreement is increased from three per cent to five per cent of imports of the like product in the importing Party. Existing cumulation provisions under Article 5.8 continue to apply;
- (d) the time frame to be used for determining the volume of dumped imports under the preceding sub-paragraphs shall be representative of the imports of both dumped and non-dumped goods for a reasonable period. Such reasonable period shall normally be at least 12 months;
- (e) the period for review or termination of anti-dumping duties provided for in Article 11.3 of the AD Agreement is reduced from five years to three years.

2. Notification procedures shall be as follows:

- (a) immediately following the acceptance of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of goods from the other Party, the Party that has accepted the properly documented application shall immediately inform the other Party;
- (b) if a Party considers that, in accordance with Article 5 of the AD Agreement, there is sufficient evidence to justify the initiation of an anti-dumping investigation, it shall give written notice to the other Party in accordance with

Article 12.1 of the AD Agreement and observe the requirements of Article 17.2 of the AD Agreement concerning consultations.

**Article 2.18: Safeguard Measures**

No Party shall initiate or take any safeguard measure within the meaning of the Safeguards Agreement against the goods of the other Party from the date of entry into force of this Agreement.

**Article 2.19: Publication and Administration of Trade Regulations**

Article X of the GATT 1994 is incorporated into and shall form part of this Agreement, *mutatis mutandis*.