

CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Scope

This Chapter applies to trade in goods between the Parties.

ARTICLE 2.2

Import Duties

1. Unless otherwise provided for in this Agreement, each Party shall grant tariff concessions on goods originating in another Party in accordance with Annexes II to V (Schedules on Tariff Commitments on Goods).
2. Unless otherwise provided for in this Agreement, a Party shall not increase import duties, or introduce new import duties, on goods originating in another Party covered by Annexes II to V (Schedules on Tariff Commitments on Goods).
3. Paragraph 2 shall not preclude a Party from:
 - (a) raising an import duty to the level established in Annexes II to V (Schedules on Tariff Commitments on Goods) following a unilateral reduction; or
 - (b) maintaining or increasing an import duty as authorised by the Dispute Settlement Body of the WTO.
4. If a Party, after the entry into force of this Agreement, reduces its applied most favoured nation (MFN) import duty, that import duty shall apply to trade in goods originating in another Party if it is lower than the import duty calculated in accordance with Annexes II to V (Schedules on Tariff Commitments on Goods).
5. Consultations may be held in the Joint Committee to consider further improvements of the tariff concessions set out in the respective Annexes II to V (Schedules on Tariff Commitments on Goods), taking account of the pattern of trade between the Parties and the sensitivities of the goods.
6. For the purposes of this Agreement, “import duties” means any duties, taxes or charges applied in connection with the importation of goods, except those applied in conformity with:
 - (a) Article III of the GATT 1994;

- (b) Articles 2.14 (Subsidies and Countervailing Measures), 2.15 (Anti-dumping), 2.16 (Global Safeguard Measures) or 2.17 (Bilateral Safeguard Measures);
- (c) Article VIII of the GATT 1994.

ARTICLE 2.3

Export Duties

A Party shall not adopt or maintain any duties, taxes or charges other than internal charges applied in conformity with Article 2.8 (National Treatment on Internal Taxation and Regulations), in connection with the exportation of goods to another Party.

ARTICLE 2.4

Rules of Origin and Administrative Cooperation in Customs Matters

1. The rules of origin and administrative cooperation in customs matters are set out in Annex I (Rules of Origin and Mutual Administrative Cooperation in Customs Matters).
2. For the purposes of this Agreement, “originating product” is that which qualifies under the rules of origin set out in Annex I (Rules of Origin and Mutual Administrative Cooperation in Customs Matters).

ARTICLE 2.5

Customs Valuation¹

Article VII of the GATT 1994 and Part I of the Agreement on Implementation of Article VII of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.6

Quantitative Restrictions

1. Article XI of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. A Party intending to apply a measure in accordance with paragraph 2 of Article XI of the GATT 1994, which may affect trade between the Parties, shall notify the Joint Committee.

¹ Switzerland applies customs duties based on weight and quantity rather than *ad valorem* duties.

3. A measure applied in accordance with this Article may be discussed in the Joint Committee with a view to mitigating the effects on trade between the Parties.

4. Paragraph 1 shall not apply to the measures set out in Annex VI (National Treatment and Quantitative Restrictions).

ARTICLE 2.7

Fees and Formalities

Without prejudice to Article 9 (Fees and Charges) of Annex VII (Trade Facilitation), Article VIII of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.8

National Treatment on Internal Taxation and Regulations

1. Article III of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Paragraph 1 shall not apply to the measures set out in Annex VI (National Treatment and Quantitative Restrictions).

ARTICLE 2.9

Andean Price Band System

Ecuador may maintain the Andean Price Band System established in 1994 by Decision 371 of the Andean Community and its modifications, or subsequent systems for agricultural goods covered by such Decision.

ARTICLE 2.10

Agricultural Export Subsidies

1. The Parties shall not apply export subsidies, as defined in the WTO Agreement on Agriculture, to trade in originating goods for which tariff concessions are granted in accordance with this Agreement.

2. If a Party adopts, maintains, introduces or re-introduces export subsidies on a product subject to a tariff concession in accordance with Article 2.2 (Import Duties), the other Parties may increase the duty rate on imports of that product to the applied MFN tariff duty rate. The Party increasing its duty rate shall notify the other Parties within 30 days from the date the duty is applied.

ARTICLE 2.11

Technical Regulations

1. With respect to technical regulations, standards and conformity assessments, the WTO Agreement on Technical Barriers to Trade (TBT Agreement) applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The Parties shall ensure that all adopted technical regulations are officially published.
3. Upon request of a Party, the Parties shall initiate negotiations with a view to extend to each other equivalent treatment related to technical regulations, standards and conformity assessments, mutually agreed between each Party and a non-party.²
4. Upon request of a Party, which considers that another Party has taken a measure relating to technical regulations, standards or conformity assessments procedures, which is likely to create, or has created, an obstacle to trade, consultations shall be held with the objective of finding a mutually acceptable solution. Such consultations shall take place within 30 days from the receipt of the request and may be conducted by any technical method agreed by the consulting Parties. The Joint Committee shall be informed thereof.
5. The Parties shall exchange names and addresses of contact points in order to facilitate communication and the exchange of information regarding technical regulations, standards and conformity assessments and the implementation of this Article.

ARTICLE 2.12

Sanitary and Phytosanitary Measures

1. Except as otherwise provided for in this Article, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties acknowledge and bear in mind the decisions and reference documents adopted by the WTO Committee on Sanitary and Phytosanitary Measures.
2. The Parties shall jointly work towards the effective implementation of the SPS Agreement and this Article with the purpose of facilitating trade between them.
3. In accordance with the SPS Agreement, the application of sanitary and phytosanitary measures related to *inter alia* control, inspection, approval or certification shall be based on scientific justification.

² In case the unilateral preferential treatment granted to a non-Party may create competitive disadvantages, the Parties shall immediately enter into consultations, with the aim to remove these competitive disadvantages related to technical regulations, standards and conformity assessments.

4. To facilitate trade between them, the Parties shall, when agreed, develop bilateral arrangements or agreements, including between regulatory authorities in the field of sanitary and phytosanitary measures.
5. If the importing Party has decided to carry out a risk assessment process in accordance with its domestic laws and regulations, or has detained a consignment at the border due to a perceived serious non-compliance with the relevant import requirements, the importing Party shall notify, as soon as possible, the exporting Party that a risk assessment process has been initiated and provide all relevant information.
6. If a Party rejects a product at a port of entry due to a verified serious sanitary or phytosanitary issue, it shall inform the competent authority of the exporting Party as soon as possible about the reasons for the rejection. Upon request, the factual basis and scientific justification for the rejection shall be provided.
7. If a Party detains a product at the border due to a perceived risk, it shall take a decision on clearance as soon as possible and shall make every effort to avoid deterioration of perishable goods. That Party shall promptly inform the importer about the factual justification for the detention.
8. Goods subject to random and routine checks should not be detained at the border pending test results.
9. Upon request of a Party, which considers that another Party has taken or is considering taking a sanitary or phytosanitary measure not in conformity with the SPS Agreement or this Article, which is likely to create, or has created, an obstacle to trade, consultations shall be held with the objective of finding a mutually acceptable solution. Such consultations shall take place within 30 days from the request and may be conducted by any technical method agreed by the consulting Parties. The Joint Committee shall be informed thereof.
10. Upon request of a Party, the Parties shall initiate negotiations, without undue delay, to extend to each other equivalent³ treatment related to sanitary and phytosanitary measures mutually agreed between each Party and the European Union (EU).
11. The Parties shall exchange names and addresses of contact points in order to facilitate communication and the exchange of information regarding sanitary and phytosanitary measures and the implementation of this Article.

ARTICLE 2.13

Trade Facilitation

The provisions regarding Trade Facilitation are set out in Annex VII (Trade Facilitation).

3 For the purposes of this Article, “equivalent” shall not be understood as the term “equivalence” in the WTO SPS Agreement.

ARTICLE 2.14

Subsidies and Countervailing Measures

1. The rights and obligations of the Parties with respect to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.
2. Before a Party initiates an investigation to determine the existence, degree and effect of an alleged subsidy in another Party, as provided for in Article 11 of the WTO Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing the Party whose products are subject to an investigation and allow for a 30 day period for consultations with a view to finding a mutually acceptable solution. Consultations may take place in the Joint Committee, if the Parties agree.

ARTICLE 2.15

Anti-dumping

1. The rights and obligations of the Parties with respect to anti-dumping measures shall be governed by Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-dumping Agreement), subject to paragraphs 2 to 6.
2. When a Party receives a properly documented application and before initiating an investigation concerning imports of another Party, the Party shall immediately notify in writing the other Party whose goods are allegedly being dumped and allow for a 30 day period for consultations with a view to finding a mutually acceptable solution. Consultations may take place in the Joint Committee, if the Parties agree.
3. If an anti-dumping measure is applied by a Party, the measure shall be terminated no later than five years from its imposition.
4. A Party shall not initiate an anti-dumping investigation with regard to the same product from the same Party within one year from the termination of an anti-dumping measure or a determination, which resulted in the non-application or revocation of anti-dumping measures.
5. When anti-dumping margins are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the WTO Anti-dumping Agreement regardless of the comparison bases under Article 2.4.2 of the WTO Anti-dumping Agreement, all individual margins, whether positive or negative, shall be counted toward the average.
6. The Parties shall exchange views about the application of this Article and its effects on trade between the Parties at the meetings of the Joint Committee.

ARTICLE 2.16

Global Safeguard Measures

The rights and obligations of the Parties with respect to global safeguards shall be governed by Article XIX of the GATT 1994 and the WTO Agreement on Safeguards. In taking measures under these WTO provisions, a Party shall, consistent with its obligations under the WTO Agreements, endeavour to exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury.

ARTICLE 2.17

Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to paragraphs 2 to 10⁴.

2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards.

3. The Party intending to take a bilateral safeguard measure pursuant to this Article shall immediately, and in any case before taking a measure, notify the other Parties. The notification shall contain all pertinent information, including evidence of serious injury or threat thereof caused by increased imports, a precise description of the product concerned, and the proposed measure, as well as the proposed date of introduction, expected duration and timetable for the progressive removal of the measure. A Party that may be affected by the bilateral safeguard measure shall be offered compensation in the form of substantially equivalent trade liberalisation in relation to the imports from such Party.

4. If the conditions set out in paragraph 1 are met, the importing Party may take measures consisting in:

- (a) suspending the further reduction of any rate of customs duty provided for under this Agreement for the product; or
- (b) increasing the rate of customs duty for the product to a level not to exceed the lesser of:

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It is understood that a serious injury or a threat of serious injury to domestic producers shall also mean a serious injury or a threat of serious injury in an infant industry.

- (i) the MFN rate of duty applied at the time the bilateral safeguard measure is taken; or
- (ii) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

5. Bilateral safeguard measures shall be taken for a period not exceeding two years. In very exceptional circumstances measures may be taken up to a total maximum period of three years. No bilateral safeguard measures shall be applied to the import of a product, which has previously been subject to such a measure, except for a single time, provided that the period of non-application is at least one year.

6. The Parties shall, within 30 days from the receipt of the notification, examine the information provided under paragraph 3 in order to facilitate a mutually acceptable solution. In the absence of such solution, the importing Party may adopt a bilateral safeguard measure pursuant to paragraph 4 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the bilateral safeguard measure is taken may take compensatory action. The bilateral safeguard measure and the compensatory action shall be immediately notified to the other Parties. In the selection of the bilateral safeguard measure and the compensatory action, priority must be given to the action or measure which least disturbs the functioning of this Agreement. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the bilateral safeguard measure pursuant to paragraph 4 is being applied.

7. The right of taking compensatory action shall not be exercised for the first two years that a bilateral safeguard measure is in effect.⁵

8. Upon the termination of the bilateral safeguard measure, the rate of customs duty shall be the rate, which would have been in effect but for the measure.

9. In critical circumstances, where delay would cause damage, which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify the other Parties thereof. Within 30 days from the receipt of the notification, the pertinent procedures set out in paragraphs 2 to 6 shall be initiated.

10. A provisional bilateral safeguard measure shall be terminated within 200 days at the latest. The period of application of such provisional bilateral safeguard measure shall be counted as part of the duration, and any extension thereof, of the bilateral safeguard measure, set out in paragraphs 4 and 5 respectively. Tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

⁵ A Party which extends a bilateral safeguard measure beyond two years may request that no compensatory actions shall be taken if its industry is in the process of readjustment. Upon request of a Party, consultations shall be held within 30 days from the receipt of the request with a view to finding a mutually satisfactory solution.

11. Five years from the date of entry into force of this Agreement, the Parties shall review the possibility to take safeguard measures between them and may decide not to apply this Article any longer. If the Article continues to apply, biennial reviews shall take place thereafter in the Joint Committee.

12. For the purposes of this Article, notifications shall be sent to:

- (a) The EFTA Secretariat, for the EFTA States; and
- (b) The Ministry of Foreign Trade, or its successor, for Ecuador.

ARTICLE 2.18

State Trading Enterprises

Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.19

General Exceptions

Article XX of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.20

Security Exceptions

Article XXI of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.21

Balance-of-Payments

1. A Party may, in accordance with the GATT 1994, in particular Articles XII, XV and XVIII section B, and the WTO Understanding on the Balance of Payments Provisions of the GATT 1994, adopt or maintain trade restrictive measures.

2. A Party adopting or maintaining measures according to this Article shall promptly notify the Joint Committee thereof.

ARTICLE 2.22

Sub-Committee on Trade in Goods

1. A Sub-Committee on Trade in Goods (Sub-Committee) is hereby established.
2. The mandate of the Sub-Committee is set out in Annex VIII (Mandate of the Sub-Committee on Trade in Goods).