

CHAPTER 2 TRADE IN GOODS

Article 5

Scope

This Chapter applies to trade in goods between the Parties, except as otherwise provided.

Article 6

National Treatment

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, and to this end Article III of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement.

Article 7

Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing import customs duty, or adopt any new import customs duty, on goods of the other Party.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its import customs duties on originating goods of the other Party in accordance with Annex I.
3. For each product the base rate of customs duties, to which the successive reductions set out in Annex I are to be applied, shall be the most-favoured nation customs duty rate applied on 1 January 2012. If a Party reduces its applied most favoured nation import customs duty rate after the entry into force of this Agreement and before the end of the tariff elimination period, the tariff elimination schedule (hereinafter referred to as the “Schedule”) of that Party shall apply to the reduced rate.
4. On the request of either Party, the Parties shall consult to consider accelerating elimination of import customs duties set out in their Schedules. An agreement between the Parties to accelerate the elimination of an import customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each Party in accordance with their respective applicable legal procedures, and enter into force according to Article 126.
5. “Import customs duty” means the duties which are collected in connection with the importation of a good, but does not include:

- (a) charges equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) anti-dumping or countervailing duty; and
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered.

Article 8

Import and Export Restrictions

The rights and obligations of the Parties in respect of import and export restrictions shall be governed by Article XI of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

Article 9

Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than import customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of the GATT 1994, and anti-dumping 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. Each Party shall make available through the Internet or a comparable computer-based telecommunications network a list of the fees and charges and changes thereto levied by the central government in connection with importation or exportation.

Article 10

Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.
2. Neither Party shall introduce or maintain any export subsidy, as defined in the WTO Agreement on Agriculture, on any agricultural good destined for the territory of the other Party.

Article 11

General Exceptions

For the purpose of this Agreement, Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement.

Article 12

Essential Security

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security.

Article 13

Taxation

1. For the purposes of this Article:
 - (a) “tax agreement” means an agreement for the avoidance of double taxation or other international taxation agreement or arrangement in force between the Parties; and
 - (b) “taxation measures” do not include an “import customs duty” as defined in paragraph 5 of Article 7.
2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under Article III of the GATT 1994.

4. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax agreement in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and such tax agreement, the latter shall prevail to the extent of the inconsistency. In the case of a tax agreement between the Parties, the competent authorities under that agreement shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that agreement.

Article 14

Measures to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the WTO Agreement and consistent with the Articles of the Agreement of the International Monetary Fund, adopt measures deemed necessary.

Article 15

Countervailing Measures

1. The Parties maintain their rights and obligations under Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures which form part of the WTO Agreement.

2. Countervailing actions taken pursuant to the WTO Agreement on Subsidies and Countervailing Measures shall not be subject to Chapter 11 of this Agreement.

3. Before a Party initiates an investigation to determine the existence, degree and effect of any alleged subsidy, 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 as soon as possible the Party whose products are subject to investigation and allow for a consultation with a view to finding a mutually acceptable solution. The consultation shall take place under the framework of the FTA Joint Commission established under Chapter 10, if either Party so requests within 10 days from the receipt of the notification.

Article 16

Anti-Dumping

1. The Parties maintain their rights and obligations under Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the GATT 1994.
2. Anti-dumping actions taken pursuant to Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the GATT 1994 shall not be subject to Chapter 11 of this Agreement.

Article 17

Global Safeguard Measures

1. The Parties maintain their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.
2. Actions taken pursuant to Article XIX of the GATT 1994 and the WTO Agreement on Safeguards shall not be subject to Chapter 11 of this Agreement.

Article 18

Bilateral Safeguard Measures

1. During the transition period only, if as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of a Party is being imported into the other Party's territory in such increased quantities in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat of serious injury to domestic industry producing a like or directly competitive product, the importing Party may:
 - (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
 - (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the MFN applied rate of customs duty on the good in effect at the time the measure is taken; or
 - (ii) the MFN applied rate of customs duty on the good in effect on the date of entry into force of this Agreement.
2. The following conditions and limitations shall apply to an investigation or the application of a measure.
 - (a) A Party shall immediately deliver written notice to the other Party upon:

- (i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
 - (ii) taking a provisional safeguard measure according to paragraph 3;
 - (iii) making a finding of serious injury or threat thereof caused by increased imports;
 - (iv) taking a decision to apply or extend a safeguard measure; and
 - (v) taking a decision to modify a measure previously undertaken.
- (b) In making the notification referred to in sub-paragraphs (a)(ii) to (v), the Party proposing to apply or extend a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the good involved and the proposed measure, proposed date of introduction and expected duration; the Party proposing to apply a measure shall also provide any additional information which the other Party considers pertinent;
- (c) a Party proposing to apply a measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on compensation set out in paragraph 4. The Parties shall in such consultations review, *inter alia*, the information provided under sub-paragraph (b), to determine:
- (i) compliance with the other provisions of this Article;
 - (ii) whether any proposed measure should be taken; and
 - (iii) the appropriateness of the proposed measure, including consideration of alternative measures;
- (d) a Party shall apply the measure only following an investigation by the competent authorities of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made part of this Agreement *mutatis mutandis*;
- (e) in undertaking the investigation described in paragraph (d), a Party shall comply with the requirements of sub-paragraphs 2(a) and (b) of Article 4 of the WTO Agreement on Safeguards; and to this end, sub-paragraphs 2(a) and (b) of Article 4 are incorporated into and made part of this Agreement *mutatis mutandis*;
- (f) no bilateral safeguard measure shall be maintained:
- (i) except to the extent and for such time as may be necessary to remedy serious injury and to facilitate adjustment;

- (ii) for an initial period exceeding one year, with an extension exceeding one year; or
 - (iii) beyond the expiration of the transition period, regardless of its duration or whether it has been subject to extension;
- (g) no measures shall be applied to the import of a product, which has previously been subject to such a measure, for a period of, at least, two years from the expiry of the measure;
- (h) no bilateral safeguard measure shall be taken against a particular product while a global safeguard measure in respect of that product is in place; in the event that a global safeguard measure is taken in respect of a particular product, any existing bilateral safeguard measure which is taken against that product shall be terminated; and
- (i) upon the termination of the safeguard measure under this Article, the rate of duty shall be the duty set out in the Party's Schedule in Annex I as if the measure had never been applied.

3. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days. Such a measure should take the form of tariff increase, to be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension of a definitive measure.

4. The Party proposing to apply a measure described in paragraph 1 shall provide to the other Party a mutually agreed adequate means of trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation within 30 days in the consultations referred to in subparagraph 2(c), the Party against whose originating goods the measure is applied may take action having trade effects substantially equivalent to the measure applied under this Article. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects, and in any case shall be terminated no later than the date of the termination of the safeguard measure.

5. In applying measures under this Article, each Party shall:

- (a) ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all safeguard investigation proceedings;
- (b) entrust determinations of serious injury or threat thereof in safeguard investigation proceedings to a competent investigating authority; and
- (c) adopt or maintain equitable, timely, transparent and effective procedures for safeguard investigation proceedings.

6. For the purposes of this Article:
- (a) “domestic industry” means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;
 - (b) “provisional safeguard measure” means a provisional safeguard measure described in paragraph 3;
 - (c) “safeguard measure” means a safeguard measure described in paragraph 1;
 - (d) “serious injury” means a significant overall impairment in the position of a domestic industry;
 - (e) “threat of serious injury” means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and
 - (f) “transition period” means the three year period beginning on the date of entry into force of this Agreement; except that in the case of a product where the liberalisation process lasts five or more years, the transition period shall last until such a product reaches zero tariff according to the Schedule as set out in Annex I.

Article 19

Sanitary and Phytosanitary Measures

1. The objectives of this Article are to:
 - (a) avoid unfair distortion in trade of animals, products of animal origin, plants and products of plant origin between the Parties, while protecting at the same time the human, animal or plant life or health;
 - (b) ensure that the Parties’ sanitary and phytosanitary measures (hereinafter referred to as “SPS measures”) do not arbitrarily or unjustifiably discriminate between the Parties;
 - (c) resolve the trade issues in this field in a prompt and efficient manner; and
 - (d) provide opportunities to expand trade between the Parties.
2. This Article applies to all SPS measures of the Parties which may, directly or indirectly, affect trade between the Parties.

3. The rights and obligations of the Parties in respect of SPS measures shall be governed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as “the SPS Agreement”). The Parties agree to follow the principles of scientific justification, harmonisation, equivalence and regionalisation of the SPS Agreement when they establish the relevant SPS measures.
4. The Parties agree to the full implementation of Article 7 (Transparency) of the SPS Agreement in accordance with the provisions of Annex B to the SPS Agreement.
5. The competent authorities of the Parties are responsible for the implementation of the measures referred to in this Article. The names and addresses of the competent authorities and the contact points are identified in Annex II. The Parties shall inform each other of any significant change with regard to the structure, organisation and division of responsibility of their respective competent authorities.
6. The contact points referred to in paragraph 5 shall be responsible for communication and exchange of information. The Parties shall, through the contact points, exchange information on SPS issues arising from bilateral trade and the SPS measures taken by the Parties, which may affect trade between the Parties.
7. The Parties recognise that the principle of equivalence as set out in Article 4 (Equivalence) of the SPS Agreement, as applied to SPS measures, has mutual benefits for both exporting and importing countries. The importing Party shall give favourable consideration to accept the SPS measures of the exporting Party as equivalent, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party’s appropriate level of sanitary or phytosanitary protection.
8. The Parties shall strengthen their co-operation in the field of SPS measures, with a view to increasing mutual understanding of their respective regulatory systems and facilitating access to their respective markets.
9. At the written request of a Party, expert consultations shall be convened as soon as possible if that Party considers that the other Party has taken measures which are likely to affect, or have affected, access to its market. Such consultations shall aim at finding an appropriate solution in conformity with the SPS Agreement. In order to permit the efficient use of resources, the Parties shall, to the extent possible, endeavour to use modern technological means of communication, such as electronic communication, video or telephone conference. If necessary, the results of expert consultations shall be reported to the FTA Joint Commission established under Chapter 10.

Article 20

Technical Barriers to Trade

1. The objectives of this Article are to:
 - (a) facilitate the establishment of a more comprehensive mechanism of information exchange and co-operation between the Parties, and enhance mutual understanding of each Party’s administrative system;

- (b) strengthen co-operation between the Parties in the field of technical regulations, standards and conformity assessment procedures, reduce the costs of trade, promote and facilitate bilateral trade between the Parties; and
 - (c) effectively solve any problem arising from bilateral trade.
- 2. This Article applies to all technical regulations, standards and conformity assessment procedures that may, directly or indirectly, affect the trade in goods between the Parties, except SPS measures which are covered by Article 19.
- 3. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment procedures shall be governed by the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as “the TBT Agreement”). Nothing in this Article shall prevent a Party from adopting or maintaining technical regulations, standards and conformity assessment procedures in accordance with its rights and obligations under the TBT Agreement.
- 4. The competent authorities of the Parties are responsible for the implementation of the measures referred to in this Article. The names and addresses of the competent authorities and the contact points are identified in Annex III. The Parties shall inform each other of any significant change with regard to the structure, organisation and division of responsibility of their respective competent authorities.
- 5. The contact points referred to in paragraph 4 shall be responsible for communication and exchange of information.
- 6. The Parties shall establish a mechanism for exchange of information between the TBT National Enquiry Points as per transparency requirements set out in the TBT Agreement.
- 7. Where relevant international standards exist or their completion is imminent, the Parties shall use them, or the relevant parts of them, as a basis for their technical regulations and related conformity assessment procedures, except when such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate regulatory objectives.
- 8. The Parties recognise that the principle of equivalence as set out in Article 2 of the TBT Agreement has mutual benefits for both exporting and importing countries. If the technical regulations of a Party can achieve the same results in fulfilling legitimate objectives and the same level of protection as the other Party, the other Party shall give positive consideration to accepting these as equivalent technical regulations.
- 9. As regards conformity assessment procedures:
 - (a) the Parties recognise the differences of legal systems regarding conformity assessment between the Parties and agree to explore the possibilities of mutual recognition of conformity assessment procedures in accordance with the TBT Agreement;
 - (b) the Parties shall exchange information on conformity assessment systems with a view to promoting the recognition of conformity assessment procedures between the Parties; and

- (c) a Party shall give favourable consideration to a request by the other Party to recognise the conformity assessment procedures conducted by bodies in the other Party's territory through a mutual recognition agreement or arrangement.

10. With a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets, the Parties shall in particular strengthen co-operation in the following areas, including but not limited to:

- (a) strengthening co-operation, communication and co-ordination while participating in the activities of international standardisation bodies and the WTO TBT Committee;
- (b) intensifying communication between administrative organisations of each other and exchanging promptly information in the respect of technical regulations, standards, conformity assessment procedures and each other's good regulatory practice; and
- (c) with a view to implementing the requirements of this Article, expeditiously broadening the information exchange in respect of technical regulations, standards and conformity assessment procedures, and give favourable consideration to any written request for consultation.

11. Without prejudice to paragraph 3, upon written request of a Party, the Parties shall hold expert consultations as soon as possible to address any matter that may arise from the application of specific technical regulations, standards and conformity assessment procedures and that according to a Party has created or is likely to create an obstacle to trade between the Parties, with a view to finding an appropriate solution in conformity with the TBT Agreement.

12. In order to permit the efficient use of resources, the Parties shall, to the extent possible, endeavour to use modern technological means of communication, such as electronic communication, video or telephone conference. If necessary, the findings of expert consultations shall be reported to the FTA Joint Commission established under Chapter 10.