

CHAPTER 2
TRADE IN GOODS

SECTION 1
GENERAL RULES

Article 2.1
Definitions

For the purposes of this Chapter:

- (a) the term "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;
- (b) the term "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;
- (c) the term "Agreement on Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;
- (d) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 1 of Article 2.13;
- (e) the term "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;
- (f) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (g) the term "export subsidy" means any subsidy as defined in subparagraph 1(a) of Article 3 of the Agreement on Subsidies and Countervailing Measures or export subsidies listed in subparagraphs 1(a) through 1(f) of Article 9 of the Agreement on Agriculture;

- (h) the term "import licensing" means an administrative procedure used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the importing Party;
- (i) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in paragraph 1 of Article 2.17;
- (j) the term "serious injury" means a significant overall impairment in the position of a domestic industry;
- (k) the term "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
- (l) the term "transition period" means, in relation to a particular originating good, the period from the entry into force of this Agreement until eight years after the date of entry into force of this Agreement or five years after the date on which elimination or reduction of the customs duty on that good is completed in accordance with Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), whichever is longer.

Article 2.2 Classification of Goods

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

Article 2.3
National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994. To this end, Article III of the GATT 1994 is incorporated into and made a part of this Agreement, *mutatis mutandis*.

Article 2.4
Elimination or Reduction of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).
2. On request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedules in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), in accordance with the terms and conditions set out in such Schedules.
3. If, as a result of the elimination or reduction of its customs duty applied on a particular good on a most-favoured-nation basis, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.
4. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

Article 2.5
Customs Valuation

Each Party shall determine the customs value of goods traded between the Parties in accordance with Part I of the Agreement on Customs Valuation.

Article 2.6
Export Duties

Neither Party shall adopt or maintain any duties on a good exported from the Party into the other Party, unless such duties are not in excess of those imposed on the like good destined for domestic consumption.

Article 2.7
Export Subsidies

Neither Party shall introduce or maintain any export subsidy on any good destined for the other Party.

Article 2.8
Non-Tariff Measures

1. Neither Party shall adopt or maintain any non-tariff measures, including quantitative restrictions, on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party, except in accordance with its rights and obligations under the WTO Agreement or as otherwise provided for in this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1, including quantitative restrictions, and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

Article 2.9
Administrative Fees and Charges

1. Each Party shall ensure that all fees and charges imposed on or in connection with the importation or exportation of goods are consistent with Article VIII of the GATT 1994.
2. Each Party shall make available on the Internet details of fees and charges it imposes in connection with the importation and exportation of goods as soon as practically possible.

Article 2.10
Administration of Trade Regulations

1. Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings of general application respecting any matter covered by this Chapter. To this end, Article X of the GATT 1994 is incorporated into and made a part of this Agreement, *mutatis mutandis*.
2. To the extent possible, each Party shall make its laws, regulations, decisions and rulings of the kind referred to in paragraph 1 publicly available on the Internet.

Article 2.11
Import Licensing

1. Each Party shall ensure that all automatic and non-automatic import licensing measures are administered in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures.
2. Promptly after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing procedures. The notification shall include the information specified in Article 5 of the Agreement on Import Licensing Procedures.

3. Any new import licensing procedure or change to an import licensing procedure shall be made available on the Internet and published in the sources notified to the Committee on Import Licensing established by Article 4 of the Agreement on Import Licensing Procedures, whenever practicable, 21 days prior to the effective date of such new procedure or change but in all events not later than the effective date.

4. On request of the other Party, a Party shall, promptly and to the extent possible, respond to the request of that Party for information on an import licensing measure of general application.

Article 2.12

Anti-Dumping Measures and Countervailing Measures

With respect to anti-dumping measures and countervailing measures, the Parties reaffirm their commitment to the provisions of the Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures.

SECTION 2

SAFEGUARD MEASURES

Article 2.13

Application of Bilateral Safeguard Measures

1. Subject to the provisions of this Section, during the transition period, each Party may apply a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 2.4, is being imported into the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury or threat thereof, to the domestic industry of the former Party.

2. A Party may, as a bilateral safeguard measure:

- (a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or
- (b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty in effect at the time when the bilateral safeguard measure is applied; and
 - (ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 2.14
Investigation

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards.

2. The investigation referred to in paragraph 1 shall in all cases be completed within one year following its date of initiation.

3. In the investigation referred to in paragraph 1, to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Section, the competent authorities of a Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in paragraph 1 demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than increased imports of the originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4 are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

Article 2.15 Conditions and Limitations

1. With regard to a bilateral safeguard measure, a Party shall immediately deliver a written notice to the other Party upon:

- (a) initiating an investigation referred to in Article 2.14 relating to serious injury, or threat thereof, and the reasons for it;
- (b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4;

- (c) taking a decision to apply or extend a bilateral safeguard measure; and
- (d) taking a decision to modify the bilateral safeguard measure for progressive liberalisation.

2. The Party delivering the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

- (a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation including its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and
- (b) in the written notice referred to in subparagraphs 1(b), (c), and (d), evidence of serious injury or threat thereof caused by the increased imports of the originating good as a result of the elimination or reduction of a customs duty in accordance with Article 2.4, a precise description of the originating good subject to the proposed bilateral safeguard measure including its subheading of the Harmonized System, a precise description of the bilateral safeguard measure including the grounds for not selecting the measure described in subparagraph 2(a) of Article 2.13, and, where applicable, the proposed date of the application, extension or modification of the bilateral safeguard measure, its expected duration and the timetable for the progressive liberalisation of the measure provided for in paragraph 4.

3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in Article 2.14 and notified under paragraph 1, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in Article 2.16. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided.

4. No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three years. However, in very exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total period of the bilateral safeguard measure, including such extensions, shall not exceed four years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.

5. No bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.

6. Neither Party shall apply or maintain a bilateral safeguard measure beyond the expiration of the transition period, except with the consent of the other Party.

7. Upon the termination of a bilateral safeguard measure, the rate of customs duty for an originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

8. The Parties shall review the provisions of this Section, if necessary, in the tenth year following the date of entry into force of this Agreement.

9. A written notice referred to in paragraphs 1 and 2 and any other communication between the Parties pursuant to this Section shall be done in the English or Japanese language.

Article 2.16 Compensation

1. A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties which are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.

2. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to paragraph 3 of Article 2.15, the Party against whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

3. The Party exercising the right of suspension provided for in paragraph 2 shall notify the other Party, in writing, at least 30 days before suspending the application of concessions.

Article 2.17
Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2(a) or (b) of Article 2.13, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4 have caused or are threatening to cause serious injury to a domestic industry.

2. A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Articles 2.14 and 2.15 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 4 of Article 2.15.

4. Paragraph 7 of Article 2.15 shall be applied *mutatis mutandis* to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article 2.14 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

Article 2.18

Special Safeguard Measures on Specific Agricultural Goods

1. A Party may apply a special safeguard measure on specific originating agricultural goods classified under the tariff lines indicated with "PS*" or "PS**" in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), hereinafter referred to as "special safeguard measure", only under the conditions set out in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

2. In proposing to apply a special safeguard measure, a Party may, in lieu of paragraph 2 of Article 2.13, increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

- (a) the most-favoured-nation applied rate of customs duty in effect at the time the special safeguard measure is applied;
- (b) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; and
- (c) the Base Rate set out in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

3. The applied special safeguard measure shall only be maintained until the end of the year in which it has been imposed.

Note: For the purposes of this paragraph, the term "year" means the twelve-month period which starts on 1 April of that year.

4. Neither Party shall apply or maintain a special safeguard measure under this Article and at the same time apply or maintain a bilateral safeguard measure, a provisional bilateral safeguard measure, or a measure applied pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, on the same goods.

5. Provisions on special safeguard measures shall be subject to review in the tenth year following entry into force of this Agreement, or a year on which the Parties otherwise agree, whichever comes first. The review shall proceed with a view to improving market access for the specific originating agricultural goods referred to in paragraph 1, through, for example, such measures as increasing the trigger level as set out in paragraph 3 of Section 1 (Notes for Schedule of Japan) of Part 3 of Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), reducing the applied customs duties on those goods, or if market conditions allow, terminating the special safeguard measure.

Article 2.19

Relation to Safeguard Measures under the WTO Agreement

1. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with:

- (a) Article XIX of the GATT 1994 and the Agreement on Safeguards; or
- (b) Article 5 of the Agreement on Agriculture.

2. A Party shall not apply a bilateral safeguard measure or a provisional bilateral safeguard measure under this Section on a good that is subject to a measure that the Party has applied pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, nor shall a Party continue to maintain a bilateral safeguard measure or a provisional bilateral safeguard measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture.

3. The period of application of a bilateral safeguard measure referred to in this Section shall not be interrupted by a Party's non-application of the bilateral safeguard measure in accordance with paragraph 2. That Party may resume the application of the bilateral safeguard measure to imports of the originating good upon the termination of the safeguard measures applied in accordance with subparagraph 1(a) or (b), up to the remaining period of the bilateral safeguard measure.

SECTION 3 OTHER PROVISIONS

Article 2.20

Reviews of Market Access and Protection of Competitiveness

1. For the purposes of Article 2.4, treatment of originating goods classified under the tariff lines indicated with "S" in Column 4 of the Schedule in Section 2 of a Party's Schedule to Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), shall be subject to review by the Parties in the fifth year following the date of entry into force of this Agreement or a year on which the Parties otherwise agree, whichever comes first. The review shall proceed with a view to improving market access conditions through, for example, such measures as faster reduction and/or elimination of custom duties, streamlining tendering processes and increasing quota quantities, as well as addressing issues related to levies.

2. The Parties shall also conduct a review if there is a significant change to the competitiveness in the Japanese market of such originating good designated in paragraph 1 as a result of preferential market access being granted by Japan to a non-Party based on an international agreement with that non-Party, with a view to providing equivalent treatment to the originating good of Australia. The Parties shall commence such a review within three months following the date of entry into force of the international agreement with the non-Party and will conduct the review with the aim of concluding it within six months following the same date.

Article 2.21
Sub-Committee on Trade in Goods

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues relating to the Chapter, including:
 - (i) promoting trade in goods between the Parties, including through consultations on further liberalisation of customs duties and accelerating tariff elimination under this Agreement;
 - (ii) addressing tariff and non-tariff measures to trade in goods between the Parties; and
 - (iii) addressing issues relating to each Party's administration of its tariff rate quotas, including to promote transparency in its administration;
- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions which may be delegated by the Joint Committee.

3. The Sub-Committee shall review non-tariff measures, raised by either Party for the purposes of considering approaches that may facilitate trade between the Parties. The Sub-Committee shall, if necessary, report the findings through such a review to the Joint Committee.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

Article 2.22
Amendment of Annex 1

1. Without prejudice to the legal procedures of each Party with respect to the conclusion and amendment of international agreements, amendments relating to Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)) which are made to give effect to amendments of the Harmonized System and which include no change to the rates of customs duty to be applied to the originating goods of the other Party in accordance with Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)) may be made by diplomatic notes exchanged between the Governments of the Parties.

2. Any amendment pursuant to paragraph 1 shall enter into force on the date to be agreed by the Parties.

Article 2.23
Operational Procedures

On the date of entry into force of this Agreement, the Joint Committee shall adopt Operational Procedures that provide detailed regulations pursuant to which the customs administrations, the competent governmental authorities and other authorised bodies of the Parties implement their functions in relation to the application of tariff rate quotas and other relevant issues.