

Chapter 2
Trade in Goods

Section 1
General Rules

Article 17
Scope of Application

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

Article 18
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 Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;
- (c) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in Article 30;
- (d) the term "competent investigating authorities" means:
 - (i) for Japan, the Ministry of Finance, the Ministry of Economy, Trade and Industry, and any Ministry which has jurisdiction over the industry subject to investigation in Japan or their successors; and
 - (ii) for Peru, the Ministry of Foreign Trade and Tourism, or its successor;

- (e) the term "customs duty" means any customs or import duty or a charge of any kind imposed on or in connection with the importation of a good, but does not include any:
 - (i) charge equivalent to an internal tax imposed consistently with the provisions of subparagraph 2(a) of Article II of the GATT 1994;
 - (ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Anti-dumping, and the Agreement on Subsidies and Countervailing Measures; or
 - (iii) fee or other charge commensurate with the cost of services rendered;
- (f) the term "domestic industry" means, with respect to an imported good, 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 subsidies" means export subsidies defined in Article 1(e) of the Agreement on Agriculture;
- (h) the term "import licensing" means an administrative procedure used for the operation of import license regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation to the importing Party;
- (i) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in Article 33;
- (j) the term "serious injury" means a significant overall impairment in the position of a domestic industry; and

- (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.

Article 19 Classification of Goods

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

Article 20 National Treatment

Except as otherwise provided for in Annex 2, each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, and to this end Article III of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 21 Elimination or Reduction of Customs Duties

1. Except as otherwise provided for in this Agreement, neither Party shall increase or introduce any customs duty on originating goods of the other Party beyond the rate to be applied in accordance with its Schedule in Annex 1.
2. 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.
3. If the rate of customs duty on an originating good of a Party applied in accordance with Annex 1 is higher than the most-favored-nation applied rate of customs duty on the same good, the latter rate shall be applied to that originating good.

4. (a) Upon 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 in accordance with the terms and conditions set out in such Schedules.
- (b) Upon request of either Party, the Parties shall consult to consider accelerating the reduction or broadening the scope of the elimination of customs duties set out in their Schedules in Annex 1 since the fifth calendar year following the calendar year in which this Agreement enters into force.
5. For greater certainty, a Party may:
 - (a) raise a rate of customs duty to be applied on the originating good of the other Party up to the rate established in its Schedule in Annex 1 following a unilateral reduction of the rate; or
 - (b) suspend the further reduction of or increase any customs duty on the originating good of the other Party, as authorized by the Dispute Settlement Body of the WTO pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement.

Article 22 Non-Tariff Measures

1. Except as otherwise provided for in Annex 2 and other relevant provisions of this Agreement, neither Party shall introduce or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party or on the exportation or sale for export of any good destined to the other Party, which is inconsistent with its obligations under Article XI of the GATT 1994 and the relevant provisions of the WTO Agreement, and to this end Article XI of the GATT 1994, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Neither Party shall require the other Party or exporter to adopt or maintain:

- (a) voluntary undertakings inconsistent with Article 8 of the Agreement on Anti-dumping and Article 18 of the Agreement on Subsidies and Countervailing Measures; or
- (b) voluntary export restraints inconsistent with Article 11 of the Agreement on Safeguards.

3. Neither Party shall require its importer to have a contractual or other relationship with a distributor in the importing Party as a condition for engaging in importation or for the import of a good, which is inconsistent with paragraph 1 of Article XI of the GATT 1994.

Article 23 Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Import Licensing Procedures") and to this end the Agreement on Import Licensing Procedures is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has provided notification in accordance with Article 5 of the Agreement on Import Licensing Procedures.

Article 24 Administrative Fees and Formalities

1. Each Party shall ensure that all fees and charges imposed on or in connection with importation or exportation of goods are consistent with subparagraph 1(a) of Article VIII of the GATT 1994. To this end, Article VIII of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

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

Note: For the purposes of this paragraph, "consular transactions" means requirements by the consul of the importing Party located in the exporting Party for the purpose 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.

3. Each Party shall make available on its websites details of fees and charges that it imposes on or in connection with importation or exportation of goods as soon as possible.

Article 25 Export Duties, Fees or Other Charges

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

Article 26 Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, the provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Customs Valuation"), which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*, shall apply.

Article 27 Agricultural Export Subsidies

1. Neither Party shall introduce, maintain or reintroduce any export subsidies on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture and exported to the other Party.

2. If either Party considers that the other Party has failed to carry out its obligations under this Agreement by introducing, maintaining or reintroducing an export subsidy, such Party may request consultations with the other Party according to Chapter 15 with a view to arriving at a mutually satisfactory solution, in particular, agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports.

Article 28 Price Band System

Peru may maintain its Price Band System referred to in Note 2 of Section 1 of the Schedule of Peru in Annex 1 with respect to the agricultural goods specified with one asterisk ("*") in column 5 of its Schedule.

Section 2 Safeguard Measures

Article 29 General Provisions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994, the Agreement on Safeguards and Article 5 of the Agreement on Agriculture.

2. A Party applying a safeguard measure to the importation of an originating good of the other Party in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not apply at the same time a bilateral safeguard measure under this Section to that importation.

3. In the case a Party has applied a bilateral safeguard measure under this Section to an importation of an originating good of the other Party prior to the application of a safeguard measure in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, the duration of the bilateral safeguard measure referred to in paragraph 1 of Article 31 to that importation shall not be interrupted by the Party's non-application of the bilateral safeguard measure in accordance with paragraph 2. The Party may resume the application of the bilateral safeguard measure to that importation upon the termination of the latter safeguard measure up to the remaining period of the bilateral safeguard measure.

Article 30 Bilateral Safeguard Measures

1. Subject to the provisions of this Section, a Party may apply a bilateral safeguard measure if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 21, is being imported into the former Party in such increased quantities, in absolute terms, 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. If the conditions in paragraph 1 are met, a Party may, to the minimum extent necessary to prevent or remedy serious injury, and facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the originating good provided for in Section 1; or
- (b) increase the rate of customs duty on the originating good to a level not to exceed the least among:
 - (i) the most-favored-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied;
 - (ii) the Base Rate as specified in Column 3 of its Schedule in Annex 1; and

Note 1: In the case of the elimination of customs duties on the date of entry into force of this Agreement, the most-favored-nation applied rate on April 1, 2009 shall be the Base Rate.

Note 2: In the case of originating goods specified with "G" in Column 5 of the Schedule of Japan in Annex 1, the Base Rate shall be replaced by the most-favored-nation applied rate on April 1, 2009.

(iii) the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Note: Upon the entry into force of this Agreement, the Parties shall exchange the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 31 Conditions and Limitations

1. No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period of time shall not exceed a period of two years. However, in highly exceptional circumstances, if the competent investigating authorities determine in conformity with the procedures set out in Article 32, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed three years.

2. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the bilateral safeguard measure shall progressively liberalize it at regular intervals during the period of application.

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

4. 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.

Article 32 Investigating Procedures

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent investigating authorities of that Party in accordance with Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards and to this end, Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

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 serious injury or threat of serious injury to a domestic industry under the terms of this Section, the competent investigating authorities of the Party which 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 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 utilization, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused serious injury or threat of 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 the causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than the increased imports of the originating good 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 33 Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, which shall take the form of the measure set out in paragraph 2 of Article 30, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have caused or are threatening to cause serious injury to a domestic industry of the former Party.

2. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Articles 34 and 35 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 1 of Article 31.

3. Paragraph 3 of Article 31 shall apply, *mutatis mutandis*, to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure or its guarantees shall be refunded or liberated, in accordance with domestic laws and regulations, if the subsequent investigation referred to in paragraph 1 of Article 32 does not determine that increased imports of an originating good of the other Party have caused serious injury or threat of serious injury to a domestic industry.

Article 34 Notification

1. A Party shall immediately make a written notice to the other Party:

- (a) upon initiating an investigation referred to in paragraph 1 of Article 32 relating to serious injury, or threat thereof, and the reasons for it;
- (b) upon taking a decision to apply or extend a bilateral safeguard measure; and
- (c) upon adopting a provisional bilateral safeguard measure.

2. The Party making the written notice referred to in paragraph 1 shall, in accordance with its laws and regulations, provide the other Party with all pertinent information, which shall include:

- (a) in the written notice referred to in subparagraph 1(a), a summary of the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading under 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 subparagraph 1(b), a summary of the evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading under the Harmonized System, a precise description of the proposed bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.

3. A written notice referred to in paragraph 1 and any other communication between the Parties pursuant to this Section shall be made in the English language.

4. A Party shall provide the other Party with a copy of the public version of the report of its competent investigating authorities resulting from the investigation required under paragraph 1 of Article 32. This requirement is deemed to have been complied with if such report is made available on a publicly accessible website.

Article 35 Consultations and Compensation

1. 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.

2. 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 paragraph 1 of Article 32, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 3.

3. 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 whose value is substantially equivalent to that of the additional customs duties expected to result from the bilateral safeguard measure.

4. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to paragraph 2, the Party to 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.

5. The Party exercising the right of suspension provided for in paragraph 4 shall notify the other Party in writing at least 30 days before suspending the application of concessions.

Article 36 Review

Except as otherwise agreed by the Parties, the Parties shall review the provisions of this Section, if necessary, after 10 years of the date of entry into force of this Agreement, in particular, with a view to determining whether there is a need to maintain the bilateral safeguard mechanism.

Section 3 Other Provisions

Article 37 Sub-Committee on Trade in Goods

1. 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) considering any other matter related to this Chapter as the Parties may agree;
- (c) discussing any amendments to Annex 1, in accordance with the amendment of the Harmonized System to ensure that each Party's obligations under this Agreement shall not be altered;
- (d) consulting on and endeavoring to resolve any difference related to the scope of application of this Chapter that may arise between the Parties;
- (e) establishing, if necessary, *ad hoc* working groups to accomplish any specific tasks;
- (f) reporting the findings of the Sub-Committee to the Commission; and
- (g) other functions assigned by the Commission.

3. The Sub-Committee shall be composed of government officials of the Parties.

4. The Sub-Committee shall hold meetings, in principle, every two years, and at such times and venues or by means, as may be agreed by the Parties.

Chapter 3
Rules of Origin

Article 38
Definitions

For the purposes of this Chapter:

- (a) The term "certification body" means an entity or a body designated or authorized to issue a Certificate of Origin by the competent authority of a Party, in accordance with its laws and regulations;
- (b) The term "competent authority" means the authority that, in accordance with the laws and regulations of each Party, is responsible for the issuance of a Certificate of Origin or for the designation of certification bodies, for the authorization of approved exporters referred to in Article 58 and for the verification of information related to Proofs of Origin referred to in Article 66:
 - (i) in the case of Japan, the Ministry of Economy, Trade and Industry, or its successor; and
 - (ii) in the case of Peru, the Ministry of Foreign Trade and Tourism, or its successor;
- (c) The term "exporter" means a person located in the exporting Party from where a good is exported by such person;
- (d) The term "factory ships of the Party" or "vessels of the Party" respectively, means factory ships or vessels which:
 - (i) are registered in the Party;
 - (ii) sail under the flag of the Party; and
 - (iii) meet one of the following conditions: