

CHAPTER 3 TRADE IN GOODS

ARTICLE 3.1 DEFINITIONS

For the purposes of this Chapter:

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the 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;

customs duties includes any customs or import duty and a charge of any kind imposed in connection with the import of a good, including any form of surtax or surcharge in connection with such import, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, including excise duties and goods and services tax or sales tax;
- (b) anti-dumping or countervailing duty applied consistently with the provisions of GATT 1994, the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (hereinafter referred to as "the Anti-Dumping Agreement"), and the *WTO Agreement on Subsidies and Countervailing Measures*; and
- (c) fee or other charge in connection with importing commensurate with the cost of services rendered and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

duty-free means free of customs duty; and

goods originating in the territories of the Parties means goods of the Parties that are treated as originating goods in accordance with Chapter 4 (Rules of Origin).

ARTICLE 3.2 SCOPE AND COVERAGE

Except as otherwise provided, this Chapter applies to the trade in goods between the Parties.

ARTICLE 3.3 NATIONAL TREATMENT

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994.

2. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 3.4 ELIMINATION OF CUSTOMS DUTIES

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territories of the Parties.

2. Each Party shall eliminate its customs duties on originating goods of the other Party in accordance with the tariff schedules set out in Annexes 3A and 3B.

3. Each Party shall not increase an existing customs duty, introduce a new customs duty or impose an additional customs duty to that determined under paragraph 2, on the importation of originating goods.

4. Each Party shall refrain from applying any measure that reduces or nullifies the commitment of this Chapter.

5. The classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized System.

ARTICLE 3.5 EXPORT DUTIES

Each Party shall not adopt or maintain any duty, tax or other charge on the exportation of goods to the territory of the other Party.

ARTICLE 3.6 ADMINISTRATIVE FEES AND FORMALITIES

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

ARTICLE 3.7 CONSULAR FEES

1. No Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

2. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

ARTICLE 3.8 GOODS RE-ENTERED AFTER REPAIR AND ALTERATION

1. A Party may not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its own territory.
2. A Party may not apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.
3. For the purposes of this Article, repair and alteration does not include an operation or process that:
 - (a) destroys a good's essential characteristics or creates a new or commercially different good; or
 - (b) transforms an unfinished good into a finished good.

ARTICLE 3.9 NON-TARIFF MEASURES

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

ARTICLE 3.10 PUBLICATION

1. Each Party shall promptly publish the following information in the English language, in a non-discriminatory and convenient manner, in order to enable interested persons and the other Party to become acquainted with them:
 - (a) importation, exportation or transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
 - (b) applied rates of duties, taxes or charges of any kind imposed on or in connection with importation or exportation;
 - (c) rules for the classification or the valuation of products for customs purposes;
 - (d) laws, regulations and administrative rulings of general application relating to rules of origin;
 - (e) import, export or transit restrictions or prohibitions;

- (f) relevant trade-related legislation;
- (g) all fees and charges imposed on or in connection with importation, exportation or transit formalities;
- (h) penalty provisions against breaches of import, export or transit formalities;
- (i) appeal procedures;
- (j) agreements or parts thereof with any non-Parties relating to the importation, exportation or transit of goods; and
- (k) administrative procedures relating to the imposition of tariff quotas including quota size, in and out of quota rates, opening dates, allocation methods, licensing procedures and requirements, levels of utilisation, and additional terms and conditions, including any requirements imposed by government bodies or importing authorities.

ARTICLE 3.11 IMPORT AND EXPORT RESTRICTIONS

Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretive notes are incorporated into and made a part of this Agreement, *mutatis mutandis*¹.

ARTICLE 3.12 SUBSIDIES AND COUNTERVAILING MEASURES

1. The Parties reaffirm their commitment to abide by the provisions of Article VI and XVI of the GATT 1994, the *WTO Agreement on Subsidies and Countervailing Measures*, and the *WTO Agreement on Agriculture*.

2. Notwithstanding paragraph 1, the Parties agree to prohibit export subsidies on all goods, including agriculture goods.

ARTICLE 3.13 ANTI-DUMPING

The Parties maintain their rights and obligations under Article VI of GATT 1994 and the Anti-Dumping Agreement, contained in Annex 1A to the WTO Agreement.

¹ For greater certainty, this paragraph applies, *inter alia*, to prohibitions or restrictions on the importation of remanufactured goods.

ARTICLE 3.14 SAFEGUARD MEASURES

Bilateral Safeguard Measures

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, originating goods of a Party are being imported into the territory of the other 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 injury² to a domestic industry producing like or directly competitive goods, the importing Party may:

- (a) suspend further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level which does not exceed the lesser of the most-favoured nation (hereinafter referred to as “MFN”) applied rate of customs duty on the good in effect:
 - (i) at the time the measure is taken; or
 - (ii) on the day immediately preceding the date of entry into force of this Agreement.

2. A Party shall notify the other Party in writing of the initiation of an investigation described in paragraph 3 and consult with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

3. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authorities in accordance with Articles 3 and 4.2(c) of the Agreement on Safeguards and to this end, Articles 3 and 4.2(c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

4. In the investigation described in paragraph 3, the Party shall comply with the requirements of Article 4.2(a) of the Agreement on Safeguards and to this end, Article 4.2(a) of the Agreement on Safeguards is incorporated into and made part of this Agreement, *mutatis mutandis*.

5. Each Party shall ensure that its competent authorities complete any such investigation within one year following the date of initiation.

6. Neither Party may apply a bilateral safeguard measure:

- (a) except to the extent, and for such period of time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment; or

² **Serious injury** and **threat of serious injury** shall be understood in accordance with Article 4.1(a) and (b) of the *Agreement on Safeguards* contained in Annex 1A to the WTO Agreement (hereinafter referred to as the “Agreement on Safeguards”). To this end, Article 4.1(a) and (b) of the Agreement on Safeguards is incorporated into and made part of this Agreement, *mutatis mutandis*.

- (b) for a period exceeding three (3) years, except that the period may be extended by up to two (2) years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting.
- 7. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.
- 8. Provisional Measure:
 - (a) In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry.
 - (b) The duration of any provisional measure shall not exceed two hundred (200) days, during which time the Party shall comply with the requirements of paragraphs 3 and 4. The Party shall promptly refund any tariff increased if the investigation described in paragraph 3 does not result in a finding that the requirements of paragraph 1 are met. The duration of any provisional measure shall be counted as part of the period prescribed by subparagraph 6(b).
- 9. Compensation:
 - (a) A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate 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 safeguard measure. The Party shall provide an opportunity for such consultations no later than thirty (30) days after the application of the bilateral safeguard measure.
 - (b) If the consultations under subparagraph (a) do not result in an agreement on trade liberalising compensation within thirty (30) days after the consultations begin, the Party whose goods are subject to the safeguard measure may take action with respect to goods of the other Party that has trade effects substantially equivalent to the safeguard measure. The Party taking such action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects, and in any event, only while the measure under paragraph 1 is being applied.

Global Safeguard Measures

- 10. The Parties maintain their rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards.

11. At the request of the other Party, the Party intending to take safeguard measures shall immediately provide written notification of all pertinent information on the initiation of a safeguard investigation, the provisional findings, and the final findings of the investigation.

12. No Party shall apply, with respect to the same good, at the same time:

- (a) a bilateral safeguard measure; and
- (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards.

ARTICLE 3.15 STANDSTILL

1. Between the time of the signing of the Agreement and the time when the Agreement comes into force, each Party shall not increase an existing customs duty or introduce a new customs duty on the importation of originating goods.

2. Paragraph 1 does not apply to automatic restoration of customs duty to its previous normal level in the context of the temporary tariff adjustments as provided for in the domestic customs regulations of the Parties.

ARTICLE 3.16 COMMITTEE ON TRADE IN GOODS

1. Parties hereby establish a Committee on Trade in Goods, comprising government representatives of the Parties. The Committee shall meet on the request of a Party to consider any matter arising under this Chapter and the Chapter on Rules of Origin.

2. The Committee's functions shall include:

- (a) monitoring the implementation of this Chapter and Chapter 4 (Rules of Origin) and their Annexes;
- (b) promoting trade in goods between the Parties, including through consultations on modifications to the rules of origin³, and other issues as appropriate; and
- (c) such other activities as the Parties may agree.

3. As a result of the consultations under subparagraph 2(b), the Committee may, by decision, amend this Chapter, Chapter 4 (Rules of Origin) and the Annexes to the two aforementioned Chapters, as required. Such amendments shall be deemed to be made under paragraph 1 of Article 17.4 (Amendments) and shall enter into force in accordance with paragraph 2 of Article 17.4 (Amendments).

³ For example, to take into account developments in production processes, lack of supply of originating materials, or other relevant factors.