

CHAPTER TWO

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1: SCOPE AND COVERAGE

Except as otherwise provided, this Chapter applies to trade in goods of a Party.

Section A: National Treatment

ARTICLE 2.2: NATIONAL TREATMENT

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretive notes, and to this end Article III of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.
2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.
3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A.

Section B: Tariff Elimination

ARTICLE 2.3: TARIFF ELIMINATION

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with its schedule to Annex IV (Tariff Elimination).

3. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex IV. An agreement by the Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex IV for that good when approved by each Party in accordance with its applicable legal procedures.

4. For greater certainty, a Party may:

- (a) raise a customs duty back to the level established in its Schedule to Annex IV following a unilateral reduction; or
- (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Section C: Special Regimes

ARTICLE 2.4: WAIVER OF CUSTOMS DUTIES

1. Neither Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. Neither Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties, except as provided in Annex 2-B.

ARTICLE 2.5: TEMPORARY ADMISSION OF GOODS

1. Each Party shall grant duty-free temporary admission for:

- (a) professional equipment, including equipment for the press or television, software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a business person who qualifies for temporary entry pursuant to the laws of the importing Party;

- (b) goods intended for display or demonstration;
- (c) commercial samples and advertising films and recordings; and
- (d) goods imported for sports purposes,

regardless of their origin.

2. Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

- (a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;
- (b) not be sold or leased while in its territory;
- (c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
- (d) be capable of identification when exported;
- (e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish;
- (f) be imported in no greater quantity than is reasonable for its intended use; and
- (g) be otherwise admissible into the Party's territory under its laws.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good.
5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, these procedures shall provide that when such goods accompany a national or resident of the other Party who is seeking temporary entry, the goods shall be released simultaneously with the entry of that national or resident.
6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.
7. Each Party, through its customs authority, shall relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on destruction of the good in the presence of the Party's customs authority or presentation of satisfactory proof to its customs authority, in accordance with its laws, that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.
8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):
- (a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container;
 - (b) neither Party may require any bond or impose any penalty or charge solely because of any difference between the port of entry and the port of departure of a container;
 - (c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

- (d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes such container to the territory of the other Party.

ARTICLE 2.6: GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been 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 territory.
2. Neither Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.
3. For purposes of this Article, **repair or alteration** means restoration, renovation, cleaning, resterilizing, or other operation or process that does not:
 - (a) destroy a good's essential characteristics or creates a new or commercially different good; or
 - (b) transform an unfinished good into a finished good.

ARTICLE 2.7: DUTY-FREE ENTRY OF COMMERCIAL SAMPLES AND PRINTED ADVERTISING MATERIALS OF NEGLIGIBLE VALUE

Each Party shall grant duty-free entry to commercial samples of negligible value and to printed advertising materials of negligible value, imported from the territory of the other Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party; or
- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Section D: Non-Tariff Measures

ARTICLE 2.8: IMPORT AND EXPORT RESTRICTIONS

1. Except as otherwise provided in this Agreement, neither Party may 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

2. The Parties understand that GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

- (a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;
- (b) measures conditioning the grant of an import license on the fulfillment of a performance requirement; or
- (c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the WTO Agreement on Subsidies and Countervailing Measures and Article 8.1 of the WTO Agreement on Implementation of Article VI of GATT 1994.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

- (a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or

¹ For greater certainty, paragraph 1 applies to prohibitions or restrictions on the importation of remanufactured products.

- (b) requiring as a condition for exporting the good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 2-A.

ARTICLE 2.9: ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties applied pursuant to a Party's law) 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. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

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

ARTICLE 2.10: EXPORT TAXES

Except as provided in Annex 2-C, neither Party may adopt or maintain any tax, duty, or other charge on the export of any good to the territory of other Party, unless the tax, duty, or charge is also adopted or maintained on the good when destined for domestic consumption.

Section E: Definitions

ARTICLE 2.11: DEFINITIONS

For purposes of this Chapter:

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in Moroccan currency, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples;

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;

consumed means

- (a) actually consumed; or
- (b) further processed or manufactured so as to result in a substantial change in value, form, or use of the good or in the production of another good;

duty-free means free of customs duty;

goods imported for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the importing Party;

goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;

import license means a license issued by a Party pursuant to an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the Party;

performance requirement means a requirement that:

- (a) a given level or percentage of goods or services be exported;
- (b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods or services;
- (c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;
- (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or
- (e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that:

- (f) an imported good be subsequently exported;
- (g) an imported good be used as a material in the production of another good that is subsequently exported;
- (h) an imported good be substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

- (i) an imported good be substituted by an identical or similar good that is subsequently exported; and

printed advertising materials of negligible value means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge, having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in Moroccan currency.

ANNEX 2-A
NATIONAL TREATMENT AND IMPORT AND EXPORT RESTRICTIONS

Section A: Measures of the United States

Articles 2.2 and 2.8 shall not apply to:

- (a) controls on the export of logs of all species;
- (b)
 - (i) measures under existing provisions of the Merchant Marine Act of 1920, 46 App. U.S.C. § 883; the Passenger Vessel Act, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time the United States acceded to the *General Agreement on Tariffs and Trade 1947* (“GATT 1947”) and have not been amended so as to decrease their conformity with Part II of GATT 1947;
 - (ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and
 - (iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.2 and 2.8;
- (c) actions authorized by the Dispute Settlement Body of the WTO; and
- (d) actions authorized by the Agreement on Textiles and Clothing.

Section B: Measures of Morocco

Articles 2.2 and 2.8 shall not apply to actions authorized by the Dispute Settlement Body of the WTO.

ANNEX 2-B
WAIVER OF CUSTOMS DUTIES

Measures of Morocco

Article 2.4 shall not apply to the waiver of customs duties, pursuant to Morocco's existing contracts, on imports of complete-knocked-down (CKD) parts (subheadings 8703.22.10; 8703.32.10; 8704.21.11.90; 8704.31.10.19; 8711.10.93.00; and 8712.00.10.00 of the Harmonized System), for the assembly of motor vehicles (subheadings 8703.22.83.00 and 8703.32.43.00 of the Harmonized System), light utility vehicles for cargo transport (subheadings 8704.21.99.51 and 8704.31.90.51 of the Harmonized System), bicycles (subheading 8712.00.90.90 of the Harmonized System), and motorcycles (subheading 8711.10.91.00 of the Harmonized System) until five years after the date of entry into force of this Agreement.

ANNEX 2-C
EXPORT TAXES

Measures of Morocco

Article 2.10 shall not apply to a tax on exports of processed or unprocessed phosphates, provided that the tax rate is no higher than 34 *dirhams* per ton of unprocessed phosphates, for five years beginning on the date of entry into force of this Agreement.

COURTESY TRANSLATION

Washington, D.C.
June 15, 2004

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Two (National Treatment and Market Access for Goods) of the Free Trade Agreement between our Governments signed this day:

Morocco intends to continue to apply its existing parafiscal tax, at a rate of no more than 0.25 percent *ad valorem*, to imports of goods, including imports from the United States, after the date of entry into force of the Agreement.

I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation

Washington, D.C.

June 15, 2004

The Honorable Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation
Kingdom of Morocco

Dear Minister Fassi Fihri:

I am pleased to receive your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Two (National Treatment and Market Access for Goods) of the Free Trade Agreement between our Governments signed this day:

Morocco intends to continue to apply its existing parafiscal tax, at a rate of no more than 0.25 percent *ad valorem*, to imports of goods, including imports from the United States, after the date of entry into force of the Agreement.

I would be grateful if you would confirm that this understanding is shared by your Government."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government.

Sincerely,

Robert B. Zoellick