

CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 2.1 : Scope

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

Section A : National Treatment

Article 2.2 : National Treatment on Internal Taxation and Regulation

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

Section B : Reduction or Elimination of Customs Duties

Article 2.3 : Reduction or Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall progressively reduce or eliminate its customs duties on originating goods in accordance with its Schedule to Annex 2-A.
2. Upon request of a Party, the Parties will consult to consider accelerating the reduction or elimination of customs duties set out in their Schedules to Annex 2-A. An agreement by the Parties to accelerate the reduction or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules to Annex 2-A for that good when approved by each Party in accordance with its applicable legal procedures.
3. A Party may unilaterally accelerate the reduction or elimination of customs duties set out in its Schedule to Annex 2-A at any time if it wishes to amend the Schedule to Annex 2-A. That Party shall promptly notify the other Party through a diplomatic note after completion of the internal procedures required for the amendments to enter into force. Such amendments shall enter into force on the date specified in the diplomatic note, or in any event, within 90 days of such notification. Any concession granted by the Party according to the unilateral acceleration set out therein shall not be withdrawn.
4. If at any moment a Party reduces its applied most-favored-nation (hereinafter referred to as "MFN") customs duty rate after the date of entry into force of this Agreement, that duty rate shall apply as regards trade covered by this Agreement if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule to Annex 2-A.

Article 2.4 : Standstill

Except as otherwise provided for in this Agreement, neither Party may increase any existing customs duty as specified in that Party's Schedule to Annex 2-A, or adopt any new customs duty, on an originating good of the other Party. This shall not preclude that a Party may:

- (a) raise a customs duty on an originating good of the other Party that was unilaterally reduced other than as provided for in paragraph 2 or 3 of Article 2.3 to the lower of the levels established either in its Schedule to Annex 2-A or pursuant to paragraph 2 or 3 of Article 2.3; or
- (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Section C : Special Regimes

Article 2.5 : Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods imported into the customs territory of a Party for specific purposes and intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the usage made of them, and meeting all the requirements of this Article, regardless of their origin:

- (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity or profession of a 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 materials¹; and
- (d) goods admitted for sports purposes.

2. Each Party shall, upon 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 in accordance with its domestic laws and regulations.

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:

¹ Definitions and contents can be regulated by the competent authority of the importing Party.

- (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, 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 admitted in no greater quantity than is reasonable for its intended use; and
- (g) be otherwise admissible into the Party's territory under its domestic laws and regulations.

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 plus any other charges or penalties provided for under its domestic laws and regulations.

5. Each Party shall endeavor to adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good 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. In accordance with its domestic laws and regulations, each Party shall provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters 8 (Trade in Services) and 9 (Investment):

- (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 container²;

² For greater certainty, nothing in this subparagraph shall be construed to prevent a Party from adopting or maintaining highway and railway safety or security measures of general application, or from preventing a vehicle or container from entering or exiting its territory in a location where the Party does not maintain a

- (b) neither Party may require any security or impose any penalty or charge solely by reason 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 security, that it imposes in respect of the entry of a container into its territory on its exit through any certain 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 the container to the territory of the other Party.

Article 2.6 : Goods Re-Entered after Repair or Alteration

1. In accordance with its domestic laws and regulations, neither Party may 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 the repair or alteration:

- (a) could be performed in the territory of the Party from which the good was exported for repair or alteration; or
- (b) has increased the value of the good.

2. In accordance with its domestic laws and regulations, neither Party may 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 or 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 2.7 : Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

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

customs port. Each Party may provide a list of ports available for exit of containers in accordance with its domestic laws and regulations.

- (a) the 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) the advertising materials be imported in packets that each contain no more than one copy of each such material and that neither the materials nor the packets form part of a larger consignment.

Section D : Non-Tariff Measures

Article 2.8 : Import and Export Restrictions

1. Except as otherwise provided for 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 of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations. To this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

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 the enforcement of countervailing and antidumping duty orders and undertakings;
- (b) import licensing conditioned 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 SCM Agreement and Article 8.1 of the Anti-Dumping Agreement.

3. In the event that a Party, in accordance with its WTO rights and obligations, 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 that Party from:

- (a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or
- (b) requiring as a condition for exporting the good of that 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, in accordance with its WTO rights and obligations, adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, upon request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in the territory of the other Party.

5. Neither Party may, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

6. For greater certainty, paragraph 5 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purposes of facilitating communications between its regulatory authorities and that person.

7. For the purposes of paragraph 5, distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

Article 2.9 : Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.³

2. (a) Within 30 days after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall:

(i) include the information specified in Article 5 of the Import Licensing Agreement; and

(ii) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

(b) Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government website. To the extent possible, that Party shall do so at least 20 days before the new procedure or modification takes effect.

Article 2.10 : Administrative Fees and Formalities

Each Party shall ensure that all fees and charges imposed in connection with importation and exportation shall be consistent with their obligations under Article VIII:1 of GATT 1994 and its interpretative notes, which are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 2.11 : Trade Related Non-Tariff Measures

Each Party shall ensure the transparency of its non-tariff measures affecting trade between the

³ For the purposes of this paragraph and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing Agreement, the Parties shall apply the definition of "import licensing" contained in that Agreement.

Parties and that any 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 2.12 : Administration and Implementation of Tariff Rate Quotas

1. A Party that has established tariff rate quotas (hereinafter referred to as "TRQs") as set out in Appendix 2-A-1 shall implement and administer these TRQs in accordance with Article XIII of GATT 1994 and, for greater certainty, its interpretative notes, and the Import Licensing Agreement, and any other relevant WTO Agreement.

2. A Party shall ensure that the administration measures and implementation of its TRQs are consistent, transparent and are not adopted or maintained to create discrimination against the other Party. Accordingly, a Party shall ensure all fees and charges in connection with importation through the TRQ system are commensurate with the cost of services rendered.

Section E : General and Institutional Provisions

Article 2.13 : 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 GATT 1994, which includes the Understanding on Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures. In adopting such measures, the Party shall immediately consult with the other Party.

Article 2.14 : Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The Committee shall meet upon request of a Party or the Joint Committee to consider matters arising under this Chapter.

3. The Committee's functions shall include:

- (a) promoting trade in goods between the Parties, including through consultations on accelerating the reduction or elimination of customs duties under this Agreement and other issues as appropriate;
- (b) considering issues relating to non-tariff measures and addressing barriers to trade in goods between the Parties with a view to ensuring WTO rights and obligations and facilitating trade between the Parties, and, if appropriate, referring such matters to the Joint Committee for its consideration;

- (c) reviewing the amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, and consulting to resolve any conflicts between:
 - (i) such amendments to the Harmonized System and Annex 2-A; or
 - (ii) Annex 2-A and national nomenclatures;
- (d) consulting on and endeavoring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the Harmonized System; and
- (e) providing a forum for discussion or the exchange of information on matters related to subparagraphs (a) through (d), which may, directly or indirectly affect trade between the Parties, with a view to minimizing their negative effects on trade and seeking mutually acceptable alternatives.

Section F : Definitions

Article 2.15 : Definitions

For the purposes of this Chapter:

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than the amount specified in a Party's laws, regulations, or procedures governing temporary admission, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples;

consumed means:

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

duty-free means free of customs duty;

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

goods temporarily admitted for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;

import licensing means 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 importing Party;

Import Licensing Agreement means the *Agreement on Import Licensing Procedures*, in Annex 1A to the WTO Agreement;

performance requirement means a requirement that:

- (a) a given level or percentage of goods be exported;
- (b) domestic goods of the Party granting an import license be substituted for imported goods;
- (c) a person benefiting from an import license purchase other goods or services in the territory of the Party granting the import license, or accord a preference to domestically produced goods;
- (d) a person benefiting from an import license produce goods or supply services, in the territory of the Party granting 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 an imported good be:

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

printed advertising materials means selected 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.

ANNEX 2-A

REDUCTION OR ELIMINATION OF CUSTOMS DUTIES

1. Except as otherwise provided for in a Party's Schedule to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to paragraph 1 of Article 2.3:

- (a) customs duties on originating goods provided for in the items in staging category "Y-1" in Section A of a Party's Schedule shall be eliminated entirely on the date this Agreement enters into force;
- (b) customs duties on originating goods provided for in the items in staging category "Y-3" in Section A of a Party's Schedule shall be eliminated in three equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year three;
- (c) customs duties on originating goods provided for in the items in staging category "Y-5" in Section A of a Party's Schedule shall be eliminated in five equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year five;
- (d) customs duties on originating goods provided for in the items in staging category "Y-7" in Section A of a Party's Schedule shall be eliminated in seven equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year seven;
- (e) customs duties on originating goods provided for in the items in staging category "Y-8" in Section A of a Party's Schedule shall be eliminated in eight equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year eight;
- (f) customs duties on originating goods provided for in the items in staging category "Y-10" in Section A of a Party's Schedule shall be eliminated in 10 equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year 10;
- (g) customs duties on originating goods provided for in the items in staging category "Y-15" in Section A of a Party's Schedule shall be eliminated in 15 equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year 15; and

- (h) customs duties on originating goods provided for in the items in staging category “E” in Section A of a Party’s Schedule shall remain at base rates.
2. The elimination of customs duties on originating goods placed in Section B of a Party’s Schedule to this Annex shall be in accordance with the rate provided for that year in Section B.
3. The base rate of customs duty set out in a Party’s Schedule to this Annex reflects;
- (a) for Section A, the lower of each Party’s MFN applied customs duty rates in effect on 1 January 2012, and its preferential customs duty rates under the ASEAN-Korea FTA, in effect on 1 January 2012; and
- (b) for Section B, the preferential customs duty rates of each Party under the ASEAN-Korea FTA on 1 January 2015.
4. The base rate of customs duty and staging category for determining the interim customs duty rate at each stage of reduction for an item are indicated for the item in each Party’s Schedule.
5. Interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the customs duty rate is expressed in monetary units, at least to the nearest Korean Won in the case of Korea.
6. For the purposes of this Annex and a Party’s Schedule, **year one** means the year this Agreement enters into force as provided for in Article 17.8(Entry into Force).
7. For the purposes of this Annex and a Party’s Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on 1 January of the relevant year.
8. If a customs duty on an originating good under this Agreement pursuant to (b), (c), (d), (e), (f) or (g) of paragraph 1 differs from a customs duty on the same good under the ASEAN-Korea FTA, the lower customs duty rate shall apply on the originating good under this Agreement.
9. The Parties shall ensure that the transposition of HS code shall not affect the value of tariff concessions under this Annex.

GENERAL NOTES

TARIFF SCHEDULE OF VIET NAM

1. Relation to the Harmonized Tariff Schedule of Viet Nam (hereinafter referred to as “HSVN”). The provisions of this Schedule are generally expressed in terms of the HSVN, and the interpretation of the provisions of this Schedule, shall be governed by the General Notes, Section Notes, and Chapter Notes of the HSVN. To the extent that provisions of this Schedule are identical to the corresponding provisions of the HSVN, the provisions of this Schedule shall have the same meaning as the corresponding provisions of the HSVN.

2. Staging. In addition to the staging categories listed in paragraph 1 of Annex 2-A, this Schedule contains staging category S-2, S-3, A and B-2 :

- (a) customs duties on originating goods provided for in the items in staging category “S-2” shall remain at base rates before 1 January 2021, and be reduced to zero to five percent not later than 1 January 2021;
- (b) customs duties on originating goods provided for in the items in staging category “S-3” shall remain at base rates before 1 January 2017, and be reduced to 20 percent not later than 1 January 2017 and remain at the reduced rate before 1 January 2021, and be reduced to zero to five percent not later than 1 January 2021;
- (c) customs duties on originating goods provided for in the items in staging category “A” shall remain at base rates before 1 January 2021 and be reduced to not more than 50 percent not later than 1 January 2021; and
- (d) customs duties on originating goods provided for in the items in staging category “B-2” shall remain at base rates before 1 January 2021, and be reduced not less than by 20 percent of the ASEAN-Korea FTA’s applied MFN customs duty rates⁴ not later than 1 January 2021⁵.

⁴ “ASEAN-Korea FTA’s applied MFN customs duty rates” means Viet Nam’s applied rates as of 1 January 2005.

⁵ For greater certainty, if the reduced customs duty rate in this subparagraph is higher than the base rate, the base rate shall apply and remain thereafter.

TARIFF SCHEDULE OF KOREA

1. Relation to the Harmonized Tariff Schedule of Korea (hereinafter referred to as "HSK"). The provisions of this Schedule are generally expressed in terms of the HSK, and the interpretation of the provisions of this Schedule, shall be governed by the General Notes, Section Notes, and Chapter Notes of the HSK. To the extent that provisions of this Schedule are identical to the corresponding provisions of the HSK, the provisions of this Schedule shall have the same meaning as the corresponding provisions of the HSK.

2. Staging. In addition to the staging categories listed in paragraph 1 of Annex 2-A, this Schedule contains staging category S-1, B-1, C and R:

- (a) customs duties on originating goods provided for in the items in staging category "S-1" shall remain at base rates before 1 January 2016, and be reduced to zero to five percent not later than 1 January 2016;
- (b) customs duties on originating goods provided for in the items in staging category "B-1" shall remain at base rates before 1 January 2016, and be reduced not less than by 20 percent of the ASEAN-Korea FTA's applied MFN customs duty rates⁶ not later than 1 January 2016⁷;
- (c) customs duties on originating goods provided for in the items in staging category "C" shall remain at base rates before 1 January 2016, and be reduced not less than by 50 percent of the ASEAN-Korea FTA's applied MFN customs duty rates not later than 1 January 2016⁸; and
- (d) no obligations regarding customs duties in this Agreement shall apply with respect to items in staging category "R". Nothing in this Agreement shall affect Korea's rights and obligations with respect to its implementation of the commitments set out in the WTO document WT/Let/492 (Certification of Modifications and Rectifications to Schedule LX – Republic of Korea) dated 13 April 2005 and any amendments thereto.

⁶ "ASEAN-Korea FTA's applied MFN customs duty rates" means Korea's applied rates as of 1 January 2005.

⁷ For greater certainty, if the reduced customs duty rate in this subparagraph is higher than the base rate, the base rate shall apply and remain thereafter.

⁸ For greater certainty, if the reduced customs duty rate in this subparagraph is higher than the base rate, the base rate shall apply and remain thereafter.

APPENDIX 2-A-1

TARIFF RATE QUOTA ADMINISTRATION OF KOREA

1. This Appendix shall apply to TRQs provided for in this Agreement and set out modifications to the HSK that reflect the TRQs that Korea shall apply to certain originating goods under this Agreement. In particular, originating goods of Viet Nam included under this Appendix shall be subject to the rates of duty as set out in this Appendix in lieu of the rates of duty specified in Chapters 1 through 97 of the HSK. Notwithstanding any other provision of the HSK, originating goods of Viet Nam in the quantities described in this Appendix shall be permitted entry into the territory of Korea as provided for in this Appendix. Furthermore, any quantity of originating goods imported from Viet Nam under a TRQ provided for in this Appendix shall not be counted toward the in-quota amount of any TRQ provided for such goods elsewhere in the HSK.

2. (a) The aggregate quantity of originating goods of Viet Nam described in subparagraph (c) that shall be permitted to enter free of customs duties in a particular year is specified below:

Year	Quantity (Metric Tons)
1	10,000
2	11,000
3	12,100
4	13,310
5	14,641
6	15,000

After year six, the in-quota quantity shall remain the same as the quantity of year six;

- (b) Customs duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be treated in accordance with staging category "E" as described in subparagraph 1(h) of Annex 2-A.; and
- (c) Subparagraphs (a) and (b) shall apply to the following HSK provisions: 0306161090, 0306169090, 0306171090, 0306179090, 0306261000, 0306271000, and 1605219000.