

production means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

self-produced material means a material that is produced by the producer of a good and used in the production of that good;

similar materials means, with respect to a material, materials that, although not alike in all respects, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material when used in the production of a good;

transaction value means the price actually paid or payable for the good or material with respect to the transaction between the producer of the good and the buyer of the good or the seller of the material, respectively, adjusted in accordance with paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code; and

used means used or consumed in the production of a good.

Chapter Four

National Treatment and Other Border Measures

NATIONAL TREATMENT

Article 4.1: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes, and to this end Article III of GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

2. Paragraph 1 does not apply to the measures set out in Annex 4.1.

TECHNICAL BARRIERS TO TRADE

Article 4.2: Technical Barriers to Trade

1. The rights and obligations of the Parties relating to standards-related measures shall be governed by the Agreement on Technical Barriers to Trade, part of Annex 1A of the WTO Agreement.

2. The Parties shall endeavour to enter into an agreement on mutual recognition respecting conformity assessment.

Article 4.3: Sanitary and Phytosanitary Measures

1. The rights and obligations of the Parties relating to sanitary and phytosanitary measures shall be governed by the Agreement on the Application of Sanitary and Phytosanitary Measures, part of Annex 1A of the WTO Agreement.

BORDER MEASURES

Article 4.4: 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, including its interpretative notes. To this end Article XI of GATT 1994 and its interpretative notes, or any equivalent provisions of a successor agreements to which both Parties are party, are incorporated into and made a part of this Agreement.

2. The Parties reaffirm that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

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, nothing in this Agreement shall be construed to prevent the Party from:

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

(b) requiring as a condition of export of such 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 shall consult, on request of the other Party, 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 4.1.

EMERGENCY ACTION

Article 4.5: Bilateral Emergency Actions

1. Subject to paragraphs 2 and 3, if a good originating in the territory of one Party is, as a result of the reduction or elimination of a duty provided for in Chapter Two, being imported into the territory of the other Party in such increased quantities, in absolute terms, and under such conditions so that the imports of such good from the exporting Party alone constitute a substantial cause of serious injury to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to remedy the injury:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on such good; or

(b) increase the rate of duty on such good to a level not to exceed the lesser of:

(i) the most-favoured nation (MFN) rate of duty in effect at the time,

(ii) the applicable MFN or GPT rate of duty in effect on the day immediately preceding the date of the entry into force of this Agreement.

2. The following conditions and limitations shall apply to an action authorized by paragraph 1:

(a) notification and consultation shall precede the action;

(b) no action shall be maintained for a period exceeding three years;

(c) no action may be taken or maintained by a Party against any particular good originating in the territory of the other Party after July 1, 1999; and

(d) upon the termination of the action, the rate of duty shall be the rate which would have been in effect but for the action.

3. The Party taking an action pursuant to this Article may provide to the Party against whose good the action is taken mutually agreed trade liberalizing 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 action. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1.

Article 4.6: Global Emergency Actions

1. The Parties retain their rights and obligations under Article XIX of the GATT 1994 or any safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. A Party taking emergency action under Article XIX or any such agreement shall exclude from the action imports of a good from the other Party unless:

(a) imports from the other Party account for a substantial share of total imports; and

(b) imports from the other Party, contribute importantly to the serious injury, or threat thereof, caused by imports.

2. In determining whether:

(a) imports from the other Party account for a substantial share of total imports, those imports normally shall not be considered to account for a substantial share of total imports if the other Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of the other Party, and the level and change in the level of imports from the other Party. In this regard, imports from the other Party normally shall not be deemed to contribute importantly to a serious injury or threat thereof if the growth rate of imports from the other Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

3. A Party taking such action, from which a good from the other Party is initially excluded, pursuant to paragraph 1, shall have the right subsequently to include that good from the other Party in the action in the event that the competent investigating authority determines that a surge in imports of such good from the other Party undermines the effectiveness of the action.

4. A Party shall, without delay, deliver written notice to the other Party of the institution of a proceeding that may result in emergency action under paragraph 1 or 3.

5. Neither Party may impose restrictions on a good in an action under paragraph 1 or 3:

(a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the other Party against whose good the action is proposed to be taken, as far in advance of taking the action as practicable; and

(b) that would have the effect of reducing imports of such good from a Party below the trend of imports of the good from that Party over a recent representative base period with allowance for reasonable growth.

6. The Party taking an action pursuant to this Article may provide to the Party against whose good the action is taken mutually agreed trade liberalizing 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 action. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 4.7: Export Taxes

1. Neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.

2. Paragraph 1 does not apply to the measures set out in Annex 4.1.

Article 4.8: Temporary Entry of Business Persons

In view of the preferential trading relationship between the Parties, the Parties will facilitate temporary entry on a reciprocal basis for business persons who are otherwise qualified for entry under applicable measures of the Parties relating to public health, safety and national security and governed by the principles established in the General Agreement on Trade in Services, Annex 1B of the WTO Agreement, in particular the Annex on Movement of Natural Persons Supplying Services under the Agreement.

CONSULTATIONS

Article 4.9: Consultations

1. The Parties shall meet on the request of either Party to consider any matter arising under this Chapter.
2. Where a Party requests consultations under paragraph 1, the Parties may refer the matter for non-binding technical advice or recommendations to a committee or working group, including an ad hoc committee or working group, or to another forum.
3. Where the Parties have consulted pursuant to this Article, the consultations shall, on the agreement of the Parties, constitute consultations under Article 8.6.

Chapter Five

Customs Procedures

Section A - Certification of Origin

Article 5.1: Certificate of Origin

1. The Parties shall establish, prior to the implementation of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.
2. Each Party may require that a Certificate of Origin for a good imported into its territory be completed at the option of the exporter in an official language of either Party.
3. Each Party shall:
 - (a) require that, for a Certificate of Origin to be considered valid by the Party into whose territory a good is imported with respect to which a claim for preferential tariff treatment is made, the Certificate be completed and signed by the exporter of that good in the territory of the Party from which the good is exported; and