

CHAPTER 2

MARKET ACCESS FOR GOODS

Article 2.1 Definitions

For the 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 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;

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 purposes 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;

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; and

printed advertising materials means those goods classified in Chapter 49 of the HS Code, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicise, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

Article 2.2 : Scope and Coverage

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

Section A: National Treatment

Article 2.3 : National Treatment

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 interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

Section B: Elimination of Customs Duties

Article 2.4 : Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 2-A.
3. If at any moment a Party reduces its applied most-favoured-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 in Annex 2-A.
4. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in their Schedules in Annex 2-A. An agreement by the Parties to accelerate the elimination of customs duties on originating goods shall supersede any duty rate determined pursuant to their Schedules in Annex 2-A for such goods and shall enter into force following approval by each Party in accordance with Chapter 18 (Institutional Provisions) and their respective applicable legal procedures.
5. For greater certainty, a Party may raise a customs duty to the level established in its Schedule in Annex 2-A following a unilateral reduction.
6. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 2-A. A Party considering

doing so shall announce¹ its intention to do so as early as practicable before the new rate of customs duty takes effect.

Section C: Special Regimes

Article 2.5 : Temporary Admission of Goods

1. Each Party shall grant customs duty-free temporary admission for the following goods, 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, trade, 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 films and recordings; and
- (d) goods admitted for sports purposes, including racing or other similar events.

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

3. Neither Party shall condition the duty-free temporary admission of goods referred to in paragraph 1, other than to require that such goods:

- (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, leased, disposed of, or transferred while in its territory;
- (c) be accompanied by a security which is consistent with the importing Party's obligations under the international customs conventions to which it has acceded;
- (d) be capable of identification when imported and exported;
- (e) be exported on or before 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, or within one year, unless extended;
- (f) be admitted in no greater quantity than is reasonable for its intended use; and

¹ Including through the internet or in print form.

(g) be otherwise admissible into the Party's territory under its domestic 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 plus any other charges or penalties provided for under its domestic laws.

5. Each Party, through its customs administration, shall adopt 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 authorised point of departure other than that through which it was admitted.

7. Each Party shall relieve the importer or other person responsible for a good admitted under this Article of liability for failure to export a temporarily admitted 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.

Article 2.6 : Goods Re-entered after Repair or Alteration

1. Neither Party shall 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. Neither Party shall 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

With the exception of tobacco products, each Party shall grant customs duty-free entry to commercial samples of negligible value, and to printed advertising materials, 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 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 in this Agreement, neither 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 interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. Neither Party shall, 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.

3. For greater certainty, paragraph 2 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.

4. For the purposes of paragraph 2, “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.

5. Where a Party proposes to adopt an export prohibition or restriction on foodstuffs or energy and mineral resources in accordance with paragraph 2(a) of Article XI of GATT 1994, the Party shall:

- (a) seek to limit such proposed prohibition or restriction to the extent necessary, giving due consideration to its possible effects on the other Party’s foodstuffs or energy and mineral resources security;

- (b) publish, as far in advance as practicable, information to the other Party of such proposed prohibition or restriction and its reasons together with its nature and expected duration; and
- (c) on request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to the proposed prohibition or restriction.

Article 2.9 : Non-Tariff Measures

1. Further to Chapter 17 (Transparency), the Parties recognise the importance of ensuring the transparency of non-tariff measures permitted in Article 2.8.1 and that any such measures should not create an unnecessary obstacle to trade between the Parties.
2. To this end, the Committee on Trade in Goods established under Article 2.15 shall, when a Party identifies a specific non-tariff measure, review that measure. The Committee on Trade in Goods shall review the non-tariff measure only after either Party objectively demonstrates that the relevant co-ordination mechanism, technical meeting, committee or working group, if any, that is most closely related to such a measure has failed to produce a satisfactory resolution within a reasonable period of time.
3. The Committee on Trade in Goods shall, for the non-tariff measure referred to in paragraph 2 consider approaches that may better facilitate trade between the Parties and present to the Parties the results of its consideration, including any recommendations, preferably within 12 months. If necessary, the results of the consideration and recommendations of the Committee on Trade in Goods shall be submitted to the next meeting of the Joint Commission for consideration or action.

Article 2.10 : Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.²
2. Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall:
 - (a) include the information specified in Article 5 of the Import Licensing Agreement; and
 - (b) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

² 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.

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

4. Neither Party shall apply an import licensing procedure to a good of the other Party unless the Party has complied with the requirements of paragraphs 2 and 3 with respect to that procedure.

5. Each Party shall answer promptly and to the extent possible all reasonable enquiries from the other Party concerning the granting and denying of import licences, including in relation to the criteria employed. The importing Party shall also consider publication of such criteria.

6. Where a Party has denied an import license application in relation to trade in goods between the Parties, it shall, on the request of the applicant and within a reasonable period of receiving that request, explain the reasons for denying the application.

Article 2.11 : Administrative Fees and Formalities

1. Each Party shall ensure that fees, charges, formalities and requirements imposed in connection with the importation and exportation of goods are consistent with Article VIII:1 of GATT 1994 and its interpretive notes.

2. Neither Party shall 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 and maintain through the internet a current list of the fees and charges it imposes in connection with importation or exportation.

Article 2.12 : Export Duties, Taxes, or Other Charges

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

Section E : Administration and Implementation of Tariff-Rate Quotas

Article 2.13 : Administration and Implementation of Tariff-Rate Quotas

1. Each Party shall implement and administer the tariff-rate quotas (hereinafter referred to as “TRQ”) set out in Appendix 2-A-1 in accordance with Article XIII of GATT 1994, including its interpretive notes, and the Import Licensing Agreement.

2. Each Party shall ensure its procedures for administering its TRQs are transparent, made available to the public, timely, non-discriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end-user preferences.
3. Any enterprise or person of a Party that fulfils the importing Party's legal and administrative requirements shall be eligible to be considered for a quota allocation under the Party's TRQs.
4. Over the course of each year, the importing Party's administering authority shall publish, in a timely fashion on its designated publicly available website, utilisation rates and remaining available quantities for each TRQ. If either Party uses a first-come, first-served at the border administration method, it shall publish, within 10 days, that the TRQ has been filled.
5. Each Party shall identify the entity or entities responsible for administering its TRQs and promptly notify the other Party of any amendments to the entity or entities.
6. Each Party shall notify the other Party of any new or modified administration of a TRQ established in Appendix 2-A-1 prior to its application. On the written request of a Party, the Parties shall exchange information or initiate consultations promptly regarding a Party's administration of its TRQs to arrive at a mutually satisfactory agreement on administration. The Parties shall consider prevailing supply and demand conditions in the consultations.
7. Except as otherwise provided in Appendix 2-A-1, each Party shall make the entire quota quantity established in the Appendix available to quota applicants beginning on the date the Agreement enters into force during the first year, and on the first business day of each year thereafter.
8. If either Party uses a first-come, first-served at the border administration method, the over-quota tariff rates shall not be applied to products en-route prior to the importing Party's authorities having reported the tariff quota as being filled under paragraph 4. Such products shall have a contract settled during the quota year in question. Products en-route shall be counted in the TRQ volumes for the subsequent calendar year.

Section F : Agricultural Safeguard Measures

Article 2.14 : Agricultural Safeguard Measures

1. Notwithstanding Article 2.4, a Party may apply a safeguard measure, in the form of a higher import duty on an originating agricultural good listed in that Party's Schedule in Annex 2-B, if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in Annex 2-B.
2. The duty under paragraph 1 shall not exceed the lesser of:

- (a) the prevailing MFN applied rate;
 - (b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
 - (c) the duty rate set out in Annex 2-B.
3. Neither Party shall apply or maintain an agricultural safeguard measure under this Article and at the same time apply or maintain, with respect to the same good:
- (a) a safeguard measure under this Agreement;
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement; or
 - (c) an Agriculture Safeguard measure taken under the Agreement on Agriculture.
4. A Party shall maintain an agricultural safeguard measure under this Section only until the end of the calendar year in which it applies the measure.
5. A Party shall implement any agricultural safeguard measure in a transparent manner. Within 60 days after applying a measure, the Party applying the measure shall notify the other Party in writing and provide it with relevant data concerning the measure. On the written request of the other Party, the Party applying the measure shall consult with the Party whose good is subject to the measure regarding the application of the measure. A Party shall ensure that the remaining volume of imports available before application of the safeguard is published regularly in a manner which is readily accessible to the other Party and traders.
6. A good which is en-route on the basis of a contract settled before the agricultural safeguard measure is applied shall be exempted from the application of the safeguard measure provided that it may be counted in the volume of imports of the good in question during the following calendar year for the purposes of triggering the provisions of paragraph 1 in that calendar year.
7. The implementation and operation of this Article may be the subject of discussion and review in the Committee on Trade in Goods established under Article 2.15.

Section G: Institutional Provisions

Article 2.15 : 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 on the request of a Party or the Joint Commission to consider any matter arising under this Chapter, or Chapter 7 (Trade Remedies). Meetings of

the Committee may be conducted in person or via teleconference, via video-conference or through any other means mutually determined by the Parties.

3. The Committee's functions shall include:

- (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
- (b) reviewing implementation of the Chapters referred to in paragraph 2;
- (c) addressing tariff and non-tariff barriers to trade in goods between the Parties; and
- (d) where appropriate, referring matters considered by the Committee to the Joint Commission.

Article 2.16 : Contact Points and Consultations

1. Each Party shall designate a contact point to facilitate communication between the Parties on any matter relating to this Chapter.

2. Where a Party considers that any proposed or actual measure of the other Party may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party shall respond promptly to such requests for information and consultations.