

CHAPTER TWO

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1: SCOPE AND COVERAGE

Except as otherwise provided in this Agreement, 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 interpretive notes are incorporated into and made 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 of 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: Elimination of Customs Duties

ARTICLE 2.3: ELIMINATION OF CUSTOMS DUTIES

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 2-B.
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 2-B. 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 2-B 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 to the level established in its Schedule to Annex 2-B 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.

ARTICLE 2.5: TEMPORARY ADMISSION OF GOODS

1. Each Party shall grant 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.
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 110 percent of 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, or within one year, unless extended;

- (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 law.

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 law.

5. Each Party shall 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. 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 Eleven (Investment) and Twelve (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 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 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 the 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 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 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 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, imported from the territory of the other Party, regardless of their origin, but may require that:

- (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 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 interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.¹
- 2. The Parties understand that the 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;

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

- (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 AD Agreement.
- 3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A.
- 4. 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
 - (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.
- 5. 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, or distribution arrangements in the territory of the other Party.
- 6. 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.
- 7. For greater certainty, paragraph 6 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purpose of facilitating communications between its regulatory authorities and that person.
- 8. For purposes of paragraph 6, **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.²
- 2. (a) 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:

² For purposes of paragraph 1 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.

- (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 Internet site 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.
3. Neither Party may apply an import licensing procedure to a good of the other Party unless the Party has complied with the requirements of paragraph 2 with respect to that procedure.

ARTICLE 2.10: 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 customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties) 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 and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.
4. Neither Party may adopt or maintain a merchandise processing fee on originating goods.

ARTICLE 2.11: EXPORT DUTIES, TAXES, OR OTHER CHARGES

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 the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

ARTICLE 2.12: ENGINE DISPLACEMENT TAXES

1. Korea:
- (a) shall amend the Special Consumption Tax, established under Article 1 of the *Special Consumption Tax Act*, to provide that:
 - (i) vehicles with engines of 1000 cubic centimeters (ccs) or less are not taxed, vehicles with engines of between 1001 ccs and 2000 ccs

are taxed at a single rate of no more than 5 percent,³ and vehicles with engines of more than 2000 ccs are taxed at a single rate of no more than 8 percent; and

- (ii) within 3 years of the date this Agreement enters into force, vehicles with engines of more than 1000 ccs are taxed at a single rate of no more than 5 percent;
- (b) shall amend the Annual Vehicle Tax, established under Article 196-5 of the *Local Tax Act*, to provide that vehicles with engines of 1000 ccs or less are taxed at a single rate of no more than 80 Korean won per cc, vehicles with engines of between 1001 ccs and 1600 ccs are taxed at a single rate of no more than 140 Korean won per cc, and vehicles with engines of more than 1600 ccs are taxed at a single rate of no more than 200 Korean won per cc; and
- (c) may not modify its Subway Bonds or Regional Development Bonds⁴ so as to increase the existing disparity in bond purchase rates between categories of vehicles.

2. Korea shall make the rate reduction prescribed by paragraph 1(a)(ii) for vehicles with engines of more than 2000 ccs in three equal annual stages. Each annual stage of reduction made after the date this Agreement enters into force shall take effect on January 1 of the relevant year.

3. Korea may not adopt new taxes based on vehicle engine displacement or modify an existing tax to increase the disparity in tax rates between categories of vehicles.

4. The Parties recognized that consumers in Korea are eligible for a refund of approximately 80 percent⁵ of Subway Bonds and Regional Development Bonds immediately on the purchase of a new motor vehicle. Korea will take steps to promote public awareness of these refund programs, including by ensuring that information on how to obtain a refund is made publicly available, including on the Internet.

³ The percentages referred to in subparagraph (a) are percentages of the value of the vehicle, determined in accordance with the *Special Consumption Tax Act*.

⁴ Subway Bonds are established under Article 13.1 (2) and Article 13.2 of the *Urban Railroad Act* and Article 12.1 of the *Presidential Decree of the Urban Railroad Act*. Regional Development Bonds are established under the following local government ordinances: Article 6 of the *Ulsan Metropolitan City Ordinance for Regional Development Fund*, Article 7 of the *Gyeonggi-do Ordinance for Regional Development Fund*, Article 5 of the *Gyeongsangnam-do Ordinance for Regional Development Fund*, Article 5 of the *Gyeongsangbuk-do Ordinance for Regional Development Fund*, Article 6 of the *Jeollabuk-do Ordinance for Regional Development Fund*, Article 7 of the *Jeollanam-do Ordinance for Regional Development Fund*, Article 7 of the *Chungcheongbuk-do Ordinance for Regional Development Fund*, Article 5 of the *Chungcheongnam-do Ordinance for Regional Development Fund*, Article 5 of the *Gangwon-do Ordinance for Regional Development Fund*, and Article 9 of the *Jeju-do Ordinance for Regional Development Fund*.

⁵ The percentage available for refund varies depending on the prevailing market interest rate for bonds.

Section E: Other Measures

ARTICLE 2.13: DISTINCTIVE PRODUCTS

1. Korea shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Korea shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, if it has not been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.
2. The United States shall recognize Andong Soju and Gyeongju Beopju as distinctive products of Korea. Accordingly, the United States shall not permit the sale of any product as Andong Soju or Gyeongju Beopju, if it has not been manufactured in Korea in accordance with the laws and regulations of Korea governing the manufacture of Andong Soju and Gyeongju Beopju.
3. Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing laws and regulations governing the manufacture of these products, and thereafter shall notify the other Party of any modifications it makes to those laws and regulations.
4. For greater certainty, nothing in this Article shall be construed to create or confer any right relating to a trademark or geographical indication.

Section F: Institutional Provisions

ARTICLE 2.14: COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.
2. The Committee shall meet on the request of a Party or the Joint Committee to consider any matter arising under this Chapter, Chapter Six (Rules of Origin and Origin Procedures), or Chapter Seven (Customs Administration and Trade Facilitation).
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; and
 - (b) addressing tariff and non-tariff barriers to trade in goods between the Parties and, if appropriate, referring such matters to the Joint Committee for its consideration.
4. The Committee shall also:
 - (a) discuss and endeavor to resolve any difference that may arise between the Parties on matters related to the classification of goods under the Harmonized System;

- (b) review conversion to the Harmonized System 2007 nomenclature and its subsequent revisions to ensure that each Party's obligations under this Agreement are not altered, and consult to resolve any conflicts between,
 - (i) the Harmonized System 2007 or subsequent nomenclature and Annex 2-B; and
 - (ii) Annex 2-B and national nomenclatures; and
- (c) discuss any matter arising under Article 7.2 (Release of Goods) or 7.5 (Cooperation), including procedures for the expedited release of goods and matters related to risk management.

The Committee may convene a subcommittee on customs matters to assist the Committee in its work under this paragraph.

Section G: Definitions

ARTICLE 2.15: DEFINITIONS

For purposes of this Chapter:

AD Agreement means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

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 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 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;

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;
- (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 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;

printed advertising materials 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; and

SCM Agreement means the *Agreement on Subsidies and Countervailing Measures*, contained in Annex 1A to the WTO Agreement.

ANNEX 2-A
NATIONAL TREATMENT AND IMPORT AND EXPORT RESTRICTIONS

Section A: Measures of Korea

Articles 2.2 and paragraphs 1 and 2 of Article 2.8 shall not apply to:

- (a) any action authorized by the Dispute Settlement Body of the WTO; and
- (b) any measure that Korea applies to address market disruption pursuant to procedures that have been incorporated into the WTO Agreement.

Section B: Measures of the United States

Articles 2.2 and paragraphs 1 and 2 of Article 2.8 shall not apply to:

- (a) any control on the export of logs of all species;
- (b)
 - (i) any measure 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 of the accession of the United States 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 the 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) any action authorized by the Dispute Settlement Body of the WTO; and
- (d) any measure that the United States applies to address market disruption pursuant to procedures that have been incorporated into the WTO Agreement.