

PART II

TRADE IN GOODS

CHAPTER 3

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A - Definitions and Scope and Coverage

Article 3.1: Definitions

For purposes of this Chapter:

advertising films means recorded visual media, with or without sound-tracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of any Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film and that do not form part of a larger consignment;

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture, which is part of the WTO Agreement;

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 the currency of either of the Parties, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for 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 value, form or use of the good or in the production of another good;

customs duty means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT, or any equivalent provision of a successor agreement to which both Parties are party;
- (b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law and consistently with Chapter 7;
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered; and
- (d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

goods imported 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 imported;

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

printed advertising materials means those goods classified in Chapter 49 of the Harmonised System, 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; and

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good. 1)

1)An operation or process that is part of the production or assembly of an unfinished good into a finished good is not a repair or alteration of the unfinished good; a component of a good is a good that may be subject to repair or alteration.

Article 3.2: Scope and Coverage

This Chapter shall be applied to the trade in goods between the Parties.

Section B - National Treatment

Article 3.3: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT, including its interpretative notes, and to this end, Article III of GATT 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. For the purpose of paragraph 1, each Party shall grant to the goods of the other Party a treatment no less favourable than the most favourable treatment granted by that Party to its own like or directly competitive or substitutable goods of national origin.

Section C - Tariffs

Article 3.4: Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty or adopt any customs duty on a good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Tariff Elimination Schedule set out in Annex 3.4.

3. If at any moment a Party reduces its most-favoured-nation customs duties

to non-Parties for one or more goods included in the Agreement, the Parties shall consult to consider adjusting the customs duties applicable to reciprocal trade.

4. Upon request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Tariff Elimination Schedules.

5. The agreement reached pursuant to paragraph 4 regarding the accelerated elimination of customs duties on an originating good shall be put into effect in accordance with Article 18.1 and each Party's applicable legal procedures, and shall prevail over any other duty rate or staging category, determined pursuant to its Tariff Elimination Schedule for the good.

6. Except as otherwise provided in this Agreement, either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 3.4, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

Article 3.5: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission, including exemption from fees as specified in Annex 3.5 for:

- (a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter 13,
- (b) equipment for the press or for sound or television broadcasting and cinematographic equipment,
- (c) goods imported for sports purposes and goods intended for display or demonstration, and
- (d) commercial samples and advertising films,

admitted from the territory of the other Party, regardless of their origin and regardless of whether like or directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in subparagraph 1(a), (b) or (c), other than the requirement that such a good:

- (a) be admitted by a national or resident of the other Party who seeks temporary entry;
- (b) be used solely by or under the personal supervision of such a person in the exercise of the business activity, trade or profession of that person;
- (c) not be sold or leased while in its territory;
- (d) be accompanied by a bond in an amount no greater than 110 per cent of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;
- (e) be capable of identification when exported;
- (f) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the

- temporary admission; and
- (g) be imported in no greater quantity than is reasonable for its intended use.

3. Except as otherwise provided in this Agreement, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in subparagraph 1(d), other than the requirement that such a good:

- (a) be admitted solely for the solicitation of orders for goods or services provided from the territory of the other Party or a non-Party;
- (b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;
- (c) be capable of identification when exported;
- (d) be exported within such a period as is reasonably related to the purpose of the temporary admission; and
- (e) be admitted in no greater quantity than is reasonable for its intended use.

4. Where a good is temporarily admitted duty-free under paragraph 1 and any condition the Party imposes under paragraphs 2 and 3 has not been fulfilled, a Party may impose:

- (a) the customs duty and any other charge that would be owed on entry or final importation of the good; and
- (b) any applicable criminal, civil or administrative responsibilities that the circumstances may warrant.

5. Subject to Chapters 10 and 11:

- (a) each Party shall allow a container used in international traffic, which 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 a container;
- (b) neither Party may require any bond 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 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 the container to the territory of the other Party.

Article 3.6: Duty-Free Entry of Certain Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible or non-commercial 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, regardless of whether they are originating goods, or whether services are 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 of such materials and that neither such materials nor packets form part of a larger consignment.

Article 3.7: 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 or if it was under a temporary exit 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.

Article 3.8: Customs Valuation

The Customs Valuation Agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade.

Section D - Non-Tariff Measures

Article 3.9: 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, including its interpretative notes, and to this end, Article XI of GATT 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. The Parties understand that the rights and obligations under GATT, 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 a good of that non-Party; or
- (b) requiring as a condition of export of such a 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, upon request of the other 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 3.9.

Article 3.10: Customs User Fees

Customs user fees shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes. They shall be based on specific rates that correspond to the real value of the service rendered.

Article 3.11: Export Taxes

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 such a good when destined for domestic consumption.

Article 3.12: Emergency Clause for Agricultural Goods

1. Notwithstanding Chapter 6 of this Agreement and Article 5 of the Agreement on Agriculture, if, given the particular sensitivity of the agricultural markets, a product originating in a Party is being imported into the other Party in such increased quantities and under such conditions as to cause or threaten to cause serious injury or disturbance in the markets of like or directly competitive products of the other Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. If the conditions set out in paragraph 1 are met, the importing Party may:

- (a) suspend the further reduction of any customs duties on the products concerned provided for under this Chapter; or
- (b) increase the customs duty on the product to a level which does not exceed the lesser of:
 - (i) the most-favoured-nation customs duty; or
 - (ii) the basic customs duty to which the successive reductions are to be applied, pursuant to its Tariff Elimination Schedule.

3. Before applying the measure as defined under paragraph 2, the Party concerned shall refer the matter to the Commission for a thorough examination of the situation, with a view to seeking a mutually acceptable solution. If the other Party so requests, the Parties shall hold consultations within the Commission. If no solution is found within 30 days of the request for such consultations, safeguard measures may be applied.

4. Where exceptional circumstances require immediate action, the importing Party may take the measures provided for in paragraph 2 on a transitional basis without complying with the requirements of paragraph 3 for a maximum period of 120 days. Such measures shall not exceed what is strictly necessary to limit or redress the injury or disturbance. The importing Party shall inform the other Party immediately.

5. The measures taken under this Article shall not exceed what is necessary to remedy the difficulties that have arisen. The Party imposing the measure shall preserve the overall level of preferences granted for the agricultural sector. To achieve this objective, the Parties may agree on compensation for the adverse effects of the measure on their trade, including the period during which a transitional measure applied in accordance with paragraph 4 is in place. To this effect, the Parties shall hold consultations to reach a mutually agreed solution. If no agreement is reached within 30 days, the affected exporting Party may, after notification to the Commission, suspend the application of substantially equivalent concessions under this Chapter.

6. For purposes of this Article:

- (a) "serious injury" shall be understood to mean a significant overall impairment in the position of the producers as a whole of the like or directly competitive products operating in a Party; and
- (b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent based on facts and not merely on allegations, conjecture or remote possibility.

Article 3.13: Committee on Trade in Goods

1. The Parties hereby establish the Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall ensure the effective implementation and administration of this Chapter, Chapter 4, Chapter 5 and Uniform Regulations.

3. The Committee shall have the following functions:

- (a) to review and recommend to the Commission issues relating to market access, including the application of non-tariff measures; and
- (b) to promote trade in goods between the Parties through consultations and studies on matters relating to market access, including the periods established in Annex 3.4, in order to accelerate the tariff elimination process.

Annex 3.5 Temporary Admission of Goods

The temporary admission of goods from Korea specified in subparagraph 1 of Article 3.5 shall not be subject to the payment of the fees established in Article 106 of the Chilean Customs Ordinance (Ordenanza de Aduanas) contained in Decree with Force of Law 2 of the Ministry of Finance, Official Gazette, July 21, 1998 ("Decreto con Fuerza de Ley 2 del Ministerio de Hacienda, Diario Oficial, 21 de julio de 1998").

Annex 3.9 Import and Export Measures

Chilean Measures

Notwithstanding Article 3.9, Chile may continue or adopt measures related to

imports of used vehicles.