

CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 6: Scope and Coverage

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

Section A: National Treatment

Article 7: 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 the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Paragraph 1 shall not apply to the measures set out in Annex 1 (Exceptions to National Treatment and Import and Export Restrictions).

Section B: Tariff Elimination

Article 8: Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may 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 eliminate its customs duties on originating goods of the other Party, in accordance with its Schedule to Annex 2 (Tariff Elimination).
3. The tariff elimination program established in this Chapter shall not apply to used goods, including those identified as such in headings or subheadings of the HS. Used goods also

include those goods that are reconstructed, repaired, remanufactured or any other similar name given to goods that, after having been used, have been subject to some kind of process to restore their original characteristics or specifications, or to restore the functionality they had when they were new.

4. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2 (Tariff Elimination).

5. Notwithstanding Article 170 (Free Trade Commission) of Chapter 14 (Administration of the Agreement), an agreement between the Parties to accelerate the elimination of a customs duty on a good, shall supersede any duty rate or staging category determined pursuant to their Schedules to Annex 2 (Tariff Elimination) for such good, when approved by the Parties in accordance with its applicable legal procedures.

6. For greater certainty, a Party may:

(a) raise a customs duty to the level established in its Schedule to Annex 2 (Tariff Elimination) following a unilateral reduction, for the year respective; or

(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO or in accordance with Chapter 15 (Dispute Settlement).

7. Except for the goods included in Article 19 (Price Band System), the Parties agree that the base rates for tariff elimination are the Parties' applied customs duties on January 1st, 2008, which are established in their Schedules to Annex 2 (Tariff Elimination).

Section C: Special Regimes

Article 9: Waiver of Customs Duties

1. No 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. No Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

Article 10: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, such as for scientific research, pedagogical or medical activities, the press or television, and cinematographic purposes necessary for a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration at exhibitions, fairs, meetings, or similar events;

(c) commercial samples; and

(d) goods admitted for sports purposes.

2. Each Party, at the request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed in accordance with the domestic law.

3. No Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than 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 business, trade, profession or sport activity of that person;

(b) not be sold or leased while in its territory;

(c) be accompanied by the deposit of bond or 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, or 6 months, 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 permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

6. Each Party shall provide that its customs authority or other competent authority relieves the importer or another person responsible for a good admitted under this Article of any liability for failure to re-export the good on presentation of proof to the satisfaction of the customs authority of the importing Party that the good has been destroyed by reason of force majeure.

Section D: Non-Tariff Measures

Article 11: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any non-tariff measures that prohibits or restricts 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 the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the GATT 1994 rights and obligations incorporated in 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; or

(b) voluntary export restraints inconsistent with Article VI of the 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 1 (Exceptions to National Treatment and Import and Export Restrictions).

Article 12: Import Licensing

1. No Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Each Party shall notify the other Party of any existing import licensing procedure before

the entry into force of this Agreement.

3. Each Party shall publish any new import licensing procedures and any modification to its existing import licensing procedures or list of products, whenever practicable, 21 days prior to the effective day of the requirement but in all events no later than such effective date.

4. Each Party shall notify the other Party of any other new import licensing procedures and any modifications to its existing import licensing procedures within 60 days of publication. Such publication shall be in accordance with the procedures as set out in the Import Licensing Agreement.

5. Notification provided under paragraphs 2 and 4 shall include the information specified in Article 5 of the Import Licensing Agreement.

Article 13: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII.1 of the GATT 1994 and its interpretative 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 the GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited 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. No 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 or a comparable

computer based telecommunications network a current list of the fees and charges it imposes in connection with importation or exportation.

Section E: Other Measures

Article 14: Customs Valuation

The Customs Valuation Agreement and the Decisions taken by the WTO Committee on Customs Valuation are incorporated into and shall form part of this Agreement, which the custom laws of the Parties shall comply with.

Section F: Agriculture

Article 15: Scope and Coverage

1. This section applies to the measures adopted or maintained by the Parties related to agricultural trade.
2. For purposes of this Agreement, agricultural goods mean those goods referred in Article 2 of the *WTO Agreement on Agriculture*.

Article 16: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods, and shall work together toward an agreement in the WTO to eliminate those subsidies, and avoid its reintroduction in any form.
2. No Party may maintain, introduce or reintroduce any export subsidy on any agricultural good destined for the territory of the other Party.
3. If either Party considers that the other Party has failed to carry out its obligations under this Agreement by maintaining, introducing or re-introducing an export subsidy, such Party may

request consultations with the other Party according to Chapter 15 (Dispute Settlement) with a view to arriving at a mutually satisfactory solution.

Article 17: State Trading Enterprises

The rights and obligations of the Parties in respect of state trading enterprises shall be governed by Article XVII of the GATT 1994 and the *Understanding on the Interpretation of Article XVII of the GATT 1994*, which are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 18: Domestic Support Measures for Agricultural Products

In order to establish a fair and market-oriented agriculture trading system, the Parties agree to cooperate in the WTO agricultural negotiations on domestic support measures to provide for substantial progressive reduction in agriculture support and protection, resulting in correcting and preventing restrictions and distortions in world agricultural markets.

Article 19: Price Band System

Peru may maintain its Price Band System established in the D.S. N° 115-2001-EF and its amendments, respect to the products subject to the application of the system and provided in Annex 3 (Price Band System).

Section G: Institutional Provisions

Article 20: 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 Free Trade Commission to consider matters arising under this Chapter, Chapter 3 (Rules of Origin and Operational Procedures Related to Origin) or Chapter 4 (Customs Procedures and Trade Facilitation).

3. The Committee on Trade in Goods shall be coordinated by:

(a) for China, the Ministry of Commerce, or its successor; and

(b) for Peru, the Ministry of Foreign Trade and Tourism, or its successor.

4. The Committee's functions shall include, *inter alia*:

(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Free Trade Commission for its consideration;

(c) reviewing the future amendments to the HS to ensure that each Party's obligations under this Agreement are not altered, and consulting to resolve any conflicts between:

(i) subsequent amendments to Harmonized System 2007 and Annex 2 (Tariff Elimination); or

(ii) the Annex 2 (Tariff Elimination) and national nomenclatures;

(d) consulting on and endeavoring to resolve any difference that may arise among the Parties on matters related to the classification of goods under the HS; and

(e) establishing Ad-Hoc Working Groups with specific mandates.

5. The Committee shall meet at least once a year. When special circumstances arise, the

Parties shall meet at any time upon agreement at the request of a Party.

6. The Committee shall establish an Ad-Hoc Working Group on Trade in Agricultural and Fishery Goods. In order to solve any obstacle to the trade of agricultural and fishery goods between the Parties, the Working Group shall meet within 30 days after the Parties agree.

Section H: Definitions

Article 21: Definitions

For purposes of this Chapter:

AD Agreement means the *WTO Agreement on Implementation of Article VI of the GATT 1994*;

SCM Agreement means the *WTO Agreement on Subsidies and Countervailing Measures*;

Import Licensing Agreement means the *WTO Agreement on Import Licensing Procedures*;

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;

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;

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

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;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the WTO *Agreement on Agriculture*, including any amendment of that Article; and

consular transactions means requirements that goods of a Party intended for export to the territory of another 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.