

## CHAPTER 2

### TRADE IN GOODS

#### ARTICLE 2.1: DEFINITIONS

For the purposes of this Chapter,

**Anti-Dumping Agreement** means Agreement on Implementation of Article VI of the GATT 1994;

**ATA Carnet Convention** means the Customs Convention on the A.T.A. Carnet For The Temporary Admission Of Goods;

**ATA carnet** has the same meaning as defined in the ATA Carnet Convention;

**customs duties** means duties<sup>2-1</sup> imposed in connection with the importation of a good provided that such customs duties shall not include:

- (a) charges equivalent to internal taxes, including excise duties and goods and services taxes imposed consistently with a Party's WTO obligations;
- (b) any anti-dumping or countervailing duty or safeguard measures applied consistently with provisions of the relevant WTO Agreements;
- (c) fees or other charges that are limited in amount to the approximate cost of services rendered, and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

**domestic industry** means the producers as a whole of the like or directly competitive product operating in the territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

**MFN** means "most favoured nation" treatment in accordance with Article I of GATT 1994;

**originating goods** has the same meaning as defined in Chapter 3;

**preferential treatment** means any concession or privilege granted under this Agreement by a Party;

**products** means all products including manufactures and commodities in their raw, semi processed and processed forms;

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<sup>2-1</sup> Customs duties for India refer to basic customs duties as included in the National Customs Schedules of India.

**serious injury** means a significant overall impairment in the position of a domestic industry;

**threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

#### ARTICLE 2.2: NATIONAL TREATMENT

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.

#### ARTICLE 2.3: REDUCTION AND/OR ELIMINATION OF CUSTOMS DUTIES

1. Each Party shall reduce and/or eliminate its customs duties on originating goods of the other Party in accordance with Annex 2A and Annex 2B and their respective headnotes.

2. Upon request by a Party, the Parties shall consult each other to consider the possibility of accelerating the reduction and/or elimination of customs duties as set out in the Annexes referred to in paragraph 1. An agreement by the Parties to accelerate the reduction and/or elimination of customs duties on any goods, shall replace the terms established for those goods in this Article and the Annexes referred to in paragraph 1 in accordance with Article 16.7.

#### ARTICLE 2.4: RULES OF ORIGIN

Products covered by the provisions of this Agreement shall be eligible for preferential treatment provided they satisfy the Rules of Origin as set out in Chapter 3.

#### ARTICLE 2.5: NON TARIFF MEASURES

1. Neither Party shall adopt or maintain any non-tariff measures on the importation of any goods of the other Party or on the exportation of any goods destined for the territory of the other Party except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.

2. Each Party shall ensure that such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

#### ARTICLE 2.6: CUSTOMS VALUE

Each Party shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994.

## ARTICLE 2.7: ANTI-DUMPING

### ARTICLE 2.7.1: NOTIFICATION OF PETITION FOR INVESTIGATION AND EXCHANGE OF INFORMATION

1. The investigating authority of a Party shall, upon accepting a properly documented application for the initiation of an anti-dumping investigation in respect of goods from the other Party, and before proceeding to initiate such anti-dumping investigation, notify the other Party at least 7 working days in advance of the date of initiation of such an investigation.

2. In addition to the usual practice regarding notification in anti-dumping investigations, and without prejudice to Article 16.2, each Party shall, for the purposes of paragraph 1, designate a contact point to which such notification shall be conveyed through electronic means. Both Parties recognise that it may not always be practicable for such notification to include attachments and enclosures referred to therein.

3. A Party whose good is subject to an anti-dumping investigation by the other Party, may, by the due date for the submission of the response to the questionnaire<sup>2-2</sup>, inform, where applicable, the investigating Party that there are no exports of that good to the investigating Party. Such information, together with all relevant information on record, shall be taken into account by the investigating authority of the other Party in its findings.

### ARTICLE 2.7.2: INCOMPLETE INFORMATION

Where the information provided by the exporter or producer under anti-dumping investigation may not be ideal in all respects and provided that the producer or exporter concerned has acted to the best of his ability, the investigating authority of a Party shall, before rejecting the information, use its best endeavours to obtain more complete information for the purposes of the investigation including, where requested, granting a reasonable extension of time to the producer or exporter concerned to make a more detailed and proper response in accordance with the provisions of the Anti-Dumping Agreement.

### ARTICLE 2.7.3: USE OF INFORMATION

1. Where originating goods are subject to an anti-dumping investigation, the export price of such goods before adjustment for fair comparison in accordance with Article 2.4 of the Anti-Dumping Agreement shall, subject to paragraph 2, be based on the value which appears in relevant documents, including the Certificate of Origin for the goods.

2. In cases where the investigating authority of a Party determines that the value referred to in paragraph 1 is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed in accordance with Article 2.3 of the Anti-Dumping Agreement. In such instances, the investigating authority may rely on other sources of information, in accordance with its practice, to arrive at the export price.

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<sup>2-2</sup> This relates to the questionnaire referred to in Article 6 of the Anti-Dumping Agreement.

ARTICLE 2.7.4: RECOMMENDATIONS OF THE WTO COMMITTEE ON ANTI-DUMPING PRACTICES

Each Party may, in all investigations conducted against goods from the other Party, take into account the recommendations by the WTO Committee on Anti-Dumping Practices.

ARTICLE 2.8: SUBSIDIES

The Parties reaffirm their commitment to abide by the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

ARTICLE 2.9: SAFEGUARDS

ARTICLE 2.9.1: IMPOSITION OF A BILATERAL SAFEGUARD MEASURE

If as a result of the reduction or elimination of a customs duty<sup>2-3</sup> under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms, and under such conditions that the imports of such good from the other Party alone<sup>2-4</sup> constitute a substantial cause of serious injury or threat of serious injury to domestic industry producing a like or directly competitive product such Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of
  - (i) The MFN applied rate of customs duty on the good in effect at the time the measure is taken; and

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<sup>2-3</sup> A determination that an originating good is being imported as a result of the reduction/ elimination of a customs duty provided for in this Agreement shall be made only if such reduction / elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement / termination of such reduction/elimination and the increase in imports shall not by itself preclude the determination referred in this footnote. If the increase in imports is demonstrably unrelated to such reduction / elimination, the determination referred in this footnote shall not be made.

<sup>2-4</sup> For purposes of certainty, the Parties understand that a Party is not prevented from initiating a bilateral safeguard measure investigation in the event of a surge of imports from the territory of non-Parties. For further certainty, the Parties understand that bilateral safeguard measures can only be imposed on the other Party when the increase in the import of such goods from that other Party alone constitute a substantial cause of serious injury or threat of serious injury, to domestic industry producing a like or directly competitive product.

- (ii) The MFN applied rate of customs duty on the good in effect on the day immediately preceding the date of the start of the period of investigation; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of customs duty to a level not to exceed the lesser of the MFN applied rate of customs duty that was in effect on the good for the corresponding season immediately preceding the date of the start of the period of investigation.

ARTICLE 2.9.2: CONDITIONS AND LIMITATIONS ON IMPOSITION OF A BILATERAL  
SAFEGUARD MEASURE

The following conditions and limitations shall apply to an investigation or a measure described in Article 2.9.1:

- (a) a Party shall immediately deliver written notice to the other Party upon:
  - (i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
  - (ii) making a finding of serious injury or threat thereof caused by increased imports; and
  - (iii) taking a decision to apply a safeguard measure;
- (b) in making the notification referred to in paragraph (a), the Party proposing to apply a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the good involved and the proposed measure, proposed date of introduction and expected duration; the Party proposing to apply a measure is also obliged to provide any additional information which the other Party considers pertinent;
- (c) a Party proposing to apply a measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on compensation set out in Article 2.9.3. The Parties shall in such consultations, review, *inter alia*, the information provided under paragraph (b), to determine:
  - (i) compliance with Article 2.9;
  - (ii) whether any proposed measure should be taken; and
  - (iii) the appropriateness of the proposed measure, including consideration of alternative measures;

- (d) a Party shall apply/take the measure only following an investigation by the competent authorities of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*;
- (e) in undertaking the investigation described in paragraph (d), a Party shall comply with the requirements of Article 4.2(a) and (b) of the WTO Agreement on Safeguards; and to this end, Article 4.2(a) and (b) are incorporated into and made a part of this Agreement, *mutatis mutandis*;
- (f) the investigation shall be promptly terminated and no measure taken if imports of the subject good represent less than 2 per cent of market share in terms of domestic sales<sup>2-5</sup> or less than 3 per cent of total imports<sup>2-6</sup>;
- (g) the investigation shall in all cases be completed within one year following its date of initiation;
- (h) no measure shall be maintained:
  - (i) except to the extent and for such time as may be necessary to remedy serious injury and to facilitate adjustment; or
  - (ii) for a period exceeding two years, except that in exceptional circumstances, the period may be extended by up to an additional one year, to a total maximum of three years from the date of first imposition of the measure if the investigating authorities determine in conformity with procedures set out paragraphs (a) through (g), that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting;
- (i) no bilateral safeguard measure shall be taken against a particular good while a global safeguard measure in respect of that good is in place; in the event that a global safeguard measure is taken in respect of a particular good, any existing bilateral safeguard measure which is taken against that good shall be terminated;
- (j) upon the termination of the safeguard measure, the rate of duty shall be the rate which would have been in effect but for the action;

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<sup>2-5</sup> Both Parties recognize that the terms “market share in terms of domestic sales” admits of more than one interpretation and agree that there could be different permissible methodologies for making a determination of the *de minimis* based on this parameter. Where the arbitral tribunal finds that the interpretation and methodology used for the determination of the domestic market share in a particular investigation rests on one of those interpretations and permissible methodologies, it shall find the determination to be in conformity with the Agreement.

<sup>2-6</sup> The time frame to be used for calculating the applicable percentages shall be the 12 month period prior to the filing of the petition.

- (k) within 5 years after entry into force of this Agreement, the Parties shall meet to review this Article with a view to determining whether there is a need to maintain any bilateral safeguard mechanism; and
- (l) if the Parties do not agree to remove the bilateral safeguard mechanism during the review pursuant to paragraph (k), they shall thereafter conduct reviews to determine the necessity of a bilateral safeguard mechanism, in conjunction with the review of the Agreement pursuant to Article 16.3.

#### ARTICLE 2.9.3: COMPENSATION

1. The Party proposing to apply a measure described in Article 2.9.1 shall provide to the other Party mutually agreed adequate means of 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 measure. If the Parties are unable to agree on compensation within 30 days in the consultations under Article 2.9.2, the Party against whose originating good the measure is applied may take action having trade effects substantially equivalent to the measure applied under this Article. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.

2. Such compensation described in paragraph 1 shall not be provided if the measure described in Article 2.9.1 is applied for:

- (a) up to two years; or
- (b) up to three years, and the Party imposing the measure described in Article 2.9.1 provides to the other Party evidence that the industry concerned is adjusting during the period up to the end of the second year respectively.

#### ARTICLE 2.9.4: ADMINISTRATION OF EMERGENCY ACTION PROCEEDINGS

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all safeguard investigation action proceedings.

2. Each Party shall entrust determinations of serious injury or threat thereof in safeguard investigation proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard investigation proceedings.

#### ARTICLE 2.9.5: GLOBAL SAFEGUARD MEASURES

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. This Agreement does not confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX and the Agreement on Safeguards, except that a Party taking a safeguard measure under Article XIX and the Agreement on Safeguards may, to the extent consistent with the obligations under the WTO Agreements, exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.

#### ARTICLE 2.10: RESTRICTIONS TO SAFEGUARD BALANCE OF PAYMENTS

Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994 shall be incorporated into and made a part of this Agreement, for measures taken for balance of payments purposes for trade in goods.

#### ARTICLE 2.11: MOST-FAVOURLED NATION TREATMENT

1. This Chapter and Annexes thereto as well as any legal instrument agreed upon by the Parties pursuant to provisions of this Chapter shall be integral parts of this Agreement and shall be binding on the Parties.
2. Except as otherwise provided in this Chapter, this Chapter or any action taken under it shall not affect or nullify the rights and obligations of the Party under existing agreements to which it is already a party.
3. If a Party concludes a preferential agreement with a non-party, subsequent to the signing of this Agreement, it shall, upon request from the other Party, afford adequate opportunity to negotiate for the more favourable concessions and benefits granted therein.

#### ARTICLE 2.12: TARIFF CLASSIFICATION

For the purposes of this Chapter and Chapter 3, the basis for tariff classification would be the Harmonized Commodity Description and Coding System Nomenclature.

#### ARTICLE 2.13: GENERAL AND SECURITY EXCEPTIONS

1. For the purposes of this Chapter, Articles XX and XXI of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to the other Party, or the goods of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers



necessary for the protection of its essential security interests with respect to a non-Party, or goods of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such goods.

#### ARTICLE 2.14: STATE TRADING ENTERPRISES

Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of the GATT 1994.

#### ARTICLE 2.15: TEMPORARY ADMISSION

1. Each Party shall accept in lieu of its national Customs documents, and as due security for the sums referred to in Article 6 of the ATA Carnet Convention, ATA carnets valid for its territory and issued and used in accordance with the conditions laid down in the ATA Carnet Convention, for temporary admission of:

- (a) professional equipment necessary for representatives of the press or of broadcasting or television organizations for purposes of reporting or in order to transmit or record material for specified programs, cinematographic equipment<sup>2-7</sup> necessary in order to make a specified film or films or other professional equipment necessary for the exercise of the calling, trade or profession of a person to perform a specified task;
- (b) goods intended for display or demonstration at an event; and
- (c) goods intended for use in connection with the display of foreign products at an event, including:
  - (i) goods necessary for the purpose of demonstrating foreign machinery or apparatus to be displayed,
  - (ii) construction and decoration material, including electrical fittings, for the temporary stands of foreign exhibitors,
  - (iii) advertising and demonstration material which is demonstrably publicity material for the foreign goods displayed, for example, sound recordings, films and lantern slides, as well as apparatus for use therewith; and
  - (iv) equipment including interpretation apparatus, sound recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses.

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<sup>2-7</sup> It would not include equipment which is to be used for internal transport or for the industrial manufacture or packaging of goods or (except in the case of hand-tools) for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects.

2. The facilities referred to in paragraph 1 shall be granted provided that:
- (a) the goods in all respects conform to the description, quantity, quality, value and other specifications given in the ATA Carnet duly certified by the customs authorities at the country of exportation;
  - (b) the goods are capable of identification on re-exporting;
  - (c) the number or quantity of identical articles is reasonable having regard to the purpose of importation; and
  - (d) the goods shall be re-exported within three months from the date of importation or such other longer period in accordance with the domestic laws and practices of the Parties.