

# Chapter 2: National Treatment and Market Access – Text of the 2023 Canada - Ukraine Free Trade Agreement

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The 2017 CUFTA will remain in force until entry into force of the 2023 modernized agreement. Until such time, please refer to the [2017 CUFTA text](#) for information on the existing trade agreement between Canada and Ukraine.

## Article 2.1: Definitions

For the purposes of this Chapter:

**Agreement on Agriculture** means the *Agreement on Agriculture*, contained in Annex-1A of the WTO Agreement;

**agricultural good** means a product listed in Annex 1 of the Agreement on Agriculture; and

**export subsidy** means an export subsidy as defined in Article 1(e) of the Agreement on Agriculture.

## Article 2.2: Scope and Coverage

This Chapter applies to trade in goods of a Party except as otherwise provided in this Agreement.

## Section A – National Treatment

### Article 2.3: 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, and to this end Article III of the GATT 1994 is incorporated into and made part of this Agreement.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded by that sub-national government to a like, directly competitive or substitutable good, as the case may be, of the Party of which it forms a part.

3. This Article does not apply to a measure set out in Annex 2-A (Exceptions to Articles 2.3 and 2.5).

## **Section B – Tariffs**

### **Article 2.4: Tariff Elimination on Imports**

1. Except as otherwise provided in this Agreement, a Party may not increase an existing customs duty, or adopt a customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall apply its customs duties on originating goods in accordance with its Schedule to Annex 2-B (Tariff Elimination).

3. During the tariff elimination process, each Party shall apply to originating goods traded between the Parties the lesser of the customs duties resulting from a comparison between the rate established in accordance with the Schedule to Annex 2-B (Tariff Elimination) and the applied most-favoured-nation (MFN) rate.

4. At the request of a Party, the Parties shall discuss accelerating the elimination of customs duties set out in their Schedules to Annex 2-B (Tariff Elimination) or incorporating into a Party's Schedule a good that is not subject to tariff elimination. An agreement between the Parties to accelerate the elimination of a customs duty on a good or to include a good in a Party's Schedule to Annex 2-B (Tariff Elimination) shall supersede a duty rate or staging category determined pursuant to a Schedule for that good when approved by each Party in accordance with its applicable internal procedures.

5. For greater certainty, a Party may:

- (a) modify a tariff outside this Agreement on a good for which no tariff preference is claimed under this Agreement;
- (b) increase a customs duty to the level established in its Schedule to Annex 2-B (Tariff Elimination) following a unilateral reduction;
- (c) maintain or increase a customs duty as authorized by this Agreement, the Dispute Settlement Body of the WTO or any agreement under the WTO Agreement; or
- (d) create a new tariff line more specific than the subheading level, provided that the Party does not impose customs duties on a good classified under that new tariff line greater than the rate of customs duty applicable to the good under the Party's Schedule to Annex 2-B (Tariff Elimination) before the new tariff line was created.

## **Section C – Non-Tariff Measures**

### **Article 2.5: Import and Export Restrictions**

1. Except as otherwise provided in this Agreement, a Party may not adopt or maintain a prohibition or restriction on the importation of a good of the other Party or on the exportation or sale for export of a good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994, and to this end Article XI of the GATT 1994 is incorporated into and made a part of this Agreement.

2. The rights and obligations of the GATT 1994 incorporated by paragraph 1 prohibit:

- (a) an export price requirement in a circumstance in which another form of restriction is prohibited; and
- (b) an import price requirement, except as permitted in enforcement of countervailing and antidumping orders and undertakings.

3. If a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, this Agreement does not prevent the Party from:

- (a) limiting or prohibiting the importation from the territory of the other Party a good of that non-Party; or
- (b) requiring as a condition of export of 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. If a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, at the request of the other Party, the Parties shall discuss with a view to avoiding undue interference with or distortion of pricing, marketing or distribution arrangements in the other Party.

5. This Article does not apply to a measure set out in Annex 2-A (Exceptions to Articles 2.3 and 2.5).

#### **Article 2.6: Customs User Fees and Similar Charges**

1. A Party shall not adopt or maintain a fee or charge imposed on or in connection with importation of a good of the other Party, except in accordance with Article VIII of the GATT 1994, and to this end Article VIII of the GATT 1994 is incorporated into and made part of this Agreement.

2. Paragraph 1 does not prevent a Party from imposing a customs duty or a charge set out in paragraphs (a), (b), or (d) of the definition of "customs duty" in Article 1.5 (Definitions of General Application).

#### **Article 2.7: Balance-of Payments Exception**

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.

2. A Party in serious balance-of-payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994, the *Understanding on the Balance-of-Payments Provisions of the GATT 1994* and

the *Declaration on Trade Measures Taken for Balance of Payments Purposes*, adopt a trade restrictive measure, which shall be of limited duration and non-discriminatory and shall not go beyond what is necessary to remedy the balance-of-payments situation.

3. Before adopting a measure pursuant to paragraph 2, the Party shall notify the other Party.

4. The Party adopting the measure shall immediately consult the other Party and shall make every effort to hold such consultations before adopting the measure.

5. A measure under this Article shall not impair the relative benefits accorded to the other Party under this Agreement.

6. For greater certainty, the balance-of-payments exception contained in this Article applies only to balance-of-payments measures imposed on trade in goods.

#### **Article 2.8: Customs Valuation**

The *Customs Valuation Agreement* governs the customs valuation rules applied by the Parties to their reciprocal trade. A Party shall not make use, in its reciprocal trade, of the options and reservations permitted under Article 20 and paragraphs 2, 3 and 4 of Annex III of the *Customs Valuation Agreement*.

#### **Article 2.9: Customs Duties on Exports**

For greater certainty, each Party may apply export duties, in accordance with their rights and obligations under the WTO.

#### **Article 2.10: Agriculture Export Subsidies**

A Party shall not adopt or maintain an export subsidy on an agricultural good that is exported, or incorporated in a product that is exported, to the territory of the other Party after the other Party has, immediately or after the transitional period, fully eliminated the tariff, on that agricultural good in accordance with Annex 2-B (Tariff Elimination).

### **Article 2.11: Special Safeguard on Agricultural Goods**

A Party may not apply duties under Article V of the Agreement on Agriculture on goods of the other Party that are subject to tariff elimination under Annex 2-B (Tariff Elimination), including its tariff schedule.

### **Article 2.12: Distilled Spirits**

A Party may not adopt or maintain a measure requiring that distilled spirits imported from the territory of the other Party for bottling be blended with distilled spirits of the Party.

## **Section D – Institutional Provisions**

### **Article 2.13: Committee on Trade in Goods and Rules of Origin**

1. The Parties continue the Committee on Trade in Goods and Rules of Origin established under the 2017 Agreement composed of government representatives of each Party.
2. The Committee shall meet at the request of a Party or the Joint Commission to consider any matter arising under this Chapter, Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Trade Facilitation) or Chapter 5 (Trade Remedies) but not less than once every two years unless otherwise decided by the Parties.
3. The Committee's functions shall include:
  - (a) promoting trade in goods between the Parties, including through discussions on accelerating tariff elimination under this Agreement and other issues as appropriate;
  - (b) promptly addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring those matters to the Joint Commission for its consideration;

- (c) recommending to the Joint Commission a modification of or addition to this Chapter, Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Trade Facilitation), Chapter 5 (Trade Remedies), or any other provision of this Agreement related to the Harmonized System; and
- (d) considering any other matter referred to it by a Party relating to the implementation and administration by the Parties of this Chapter, Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Trade Facilitation), or Chapter 5 (Trade Remedies).

4. The Parties continue the Sub-Committee on Agriculture established under the 2017 Agreement that shall:

- (a) except as otherwise provided in this Chapter, meet within 60 days of a request by a Party;
- (b) provide a forum for the Parties to discuss issues resulting from the implementation of this Agreement for agricultural goods;
- (c) refer to the Committee any matter under subparagraph (b) on which it has been unable to reach an understanding; and
- (d) report to the Committee for its consideration an understanding under this paragraph.

5. At the request of a Party, the Parties shall convene a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, or regulation of transportation, as appropriate, for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.

## **Annex 2-A: Exceptions to Articles 2.3 and 2.5**

### **Canadian Measures**

1. Articles 2.3 and 2.5 do not apply to:

- (a) a measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:
  - (i) the export of logs of all species;
  - (ii) the export of unprocessed fish pursuant to applicable provincial legislation;
  - (iii) the importation of a goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00 and 9899.00.00 referred to in the Schedule of the *Customs Tariff*;
  - (iv) Canadian excise duties on absolute alcohol used in manufacturing under the provisions of the *Excise Act, 2001*, S.C. 2002, c. 22, as amended;
  - (v) the use of ships in the coasting trade of Canada;
  - (vi) the internal sale and distribution of wine and distilled spirits; or
- (b) an action by Canada authorized by the Dispute Settlement Body of the WTO in a dispute between the Parties under the WTO Agreement.

## **Annex 2-B: Tariff Elimination**

1. As provided in each Party's Schedule attached to this Annex, the following staging categories shall apply to the elimination or reduction of customs duties by each Party pursuant to Article 2.4(2), starting from 1 January 2024:

- (a) duties on originating goods shall be eliminated entirely and these goods shall be duty-free on the date this Agreement enters into force, as follows:
  - (i) for Ukraine, for goods of Chapters 1 through 97 of the Harmonised System that provide for an MFN rate of customs duty and that are not listed in the Schedule of Ukraine; and
  - (ii) for Canada, for goods of Chapters 1 through 97 of the Harmonised System that provide for an MFN rate



of customs duty and that are not listed in the Schedule of Canada;

- (b) duties on originating goods provided for in the items in staging category A in a Party's Schedule shall be reduced by one fifth of the base rate;
- (c) duties on originating goods provided for in the items in staging category B in the Schedule of the Parties shall be reduced by three-tenths of the base rate;
- (d) duties on originating goods provided for in the items in staging category C in a Party's Schedule shall be reduced by one-half of the base-rate; and
- (e) goods provided for in the items in staging category E in a Party's Schedule are excluded from obligations regarding customs duties.

2. Tariff rate quota for pork:

- (a) originating goods in the aggregate quantity of 20 000 metric tonnes and provided for in items listed with the notation "TRQ Pork" in the Schedule of Ukraine shall be duty-free;
- (b) duties on originating goods entered in aggregate quantities in excess of the aggregate quantities in subparagraph (a) shall be subject to a rate of customs duty no higher than the base rate of duty specified for that item in the Schedule of Ukraine;
- (c) Ukraine shall administer this tariff rate quota pursuant to paragraph 3;
- (d) following entry into force of this Agreement, should Ukraine accord to another country more favourable treatment on the tariff items listed in subparagraph (e), at the request of a Party, the Parties shall hold consultations to discuss providing to Canada the treatment accorded to those goods of the other country; and
- (a)
- (e) subparagraphs (a), (b), (c) and (d) shall apply to the following items:

0203.21.10.00, 0203.21.90.00, 0203.22.11.00, 0203.22.19.00, 0203.22.90.00, 0203.29.11.00, 0203.29.13.00, 0203.29.15.00, 0203.29.55.00, 0203.29.59.00, 0203.29.90.00, 0206.41.00.00, 0206.49.00.00, 0209.10.11.00.

3. Administration and implementation of the tariff rate quota:

- (a) Ukraine shall implement and administer its TRQ established under this Annex in accordance with this Agreement, Articles I and XIII of the GATT 1994, and the *WTO Agreement on Import Licensing Procedures*;
- (b) Ukraine shall ensure that:
  - (i) its procedures for administering its TRQ are transparent, made available to the public, administered in a timely manner, non-discriminatory, responsive to market conditions, and no more administratively burdensome than necessary;
  - (ii) any person of a Party that fulfills Ukraine's legal and administrative requirements shall be eligible to utilize Ukraine's TRQ;
  - (iii) the TRQ is administered exclusively by its national government, and that this administration is not delegated to another person; and,
  - (iv) every effort is made to administer its TRQ in a manner that facilitates trade and allows importers to fully utilize it;
- (c) from 1 January 2024 the applicable annual quantities shall be made available from 1 January until 31 December of each calendar year;
- (d) all TRQ quantities shall enter Ukraine on a first-come, first-served basis;
- (e) during the course of each year, the administering authority of Ukraine shall publish, in a timely and ongoing fashion on its designated publicly available internet site, administration procedures, utilisation rates, and remaining available quantities for the TRQ established under this Agreement;

- (f) when the actual annual quantities imported under the TRQ reach the annual aggregate quantities of a tariff rate quota in a given year, Ukraine shall publish a notice to this effect on its designated publicly available website within 10 days;
- (g) Canada shall notify Ukraine if any Canadian-issued documentation requirements are established for products exported from Canada under a tariff rate quota pursuant to this Agreement;
- (h) if Ukraine receives notification as pursuant to subparagraph (g), Ukraine shall allow only those products accompanied by that documentation to enter under the applicable TRQ;
- (i) upon entry into force of this Agreement, each Party shall designate a contact point to facilitate communication on TRQ-related matters and provide the contact point information to the other Party;
- (j) Ukraine shall not condition application for or use of an in-quota quantity under a TRQ on the re-export of an agricultural good or any specified end use;
- (k) Ukraine shall not count non-commercial shipments toward the in-quota aggregate quantity under a TRQ; and
- (l) upon the written request of a Party, the Parties shall, within 30 days, convene a meeting of the Sub-Committee on Agriculture to discuss the administration of a TRQ established under this Agreement in order to arrive at a mutually satisfactory resolution.

4. For Canada, the base rate for determining the interim staged rate of customs duty for an item shall be the MFN rate of customs duty applied on 1 January 2010. For Ukraine, the base rate for determining the interim staged rate of customs duty shall be the MFN rate of customs duty applied on 1 January 2011.

5. For the purpose of the reduction of customs duties in accordance with Article 2.4, rates of customs duty shall be rounded down at least to the nearest tenth of a percentage point or, if the customs rate of duty is expressed in monetary

units, at least to the nearest 0.001 of the official monetary unit of the Party.

6. For the purpose of this Agreement:

- (a) Canada's Schedule is authentic in the English and French languages; and
- (b) Ukraine's Schedule is authentic in the Ukrainian language.