

## CHAPTER 2

### NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

#### Section A: Definitions and Scope

##### Article 2.1: Definitions

For the purposes of this Chapter:

**advertising films and recordings** means recorded visual media or audio materials, consisting essentially of images or sound, showing the nature or operation of goods or services offered for sale or lease by a person of a Party, that 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 or trade 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 Party; or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for 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, with respect to a good:

- (a) actually consumed; or
- (b) further processed or manufactured:
  - (i) so as to result in a substantial change in the value, form or use of the good; or
  - (ii) in the production of another good;

**duty-free** means free of customs duty;

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

**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 of the importing Party as a prior condition for importation into the territory of that Party;

**Import Licensing Agreement** means the *Agreement on Import Licensing Procedures*, set out in Annex 1A to the WTO Agreement;

**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 licence be substituted for imported goods;
- (c) a person benefiting from a waiver of customs duties or a requirement for an import licence purchase other goods or services in the territory of the Party that grants the waiver of customs duties or the import licence or accord a preference to domestically produced goods;
- (d) a person benefiting from a waiver of customs duties or a requirement for an import licence produce goods or supply services in the territory of the Party that grants the waiver of customs duties or the import licence, 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; and

**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, publicise or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

## **Article 2.2: Scope**

Unless otherwise provided in this Agreement, this Chapter shall apply to trade in goods of a Party.

## **Section B: National Treatment and Market Access for Goods**

### **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 GATT 1994, including its interpretative notes, and to this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment that the 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. Paragraph 1 shall not apply to the measures set out in Annex 2-A.

### **Article 2.4: Elimination of Customs Duties**

1. Unless otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Unless 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 request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties or improving the market access conditions set out in their Schedules to Annex 2-B.

4. An agreement between the Parties to accelerate the elimination of a customs duty on an originating good shall supersede any duty rate or staging category determined pursuant to the Parties' Schedules to Annex 2-B for that good once approved by each Party in accordance with its applicable legal procedures.

5. A Party may at any time unilaterally accelerate the elimination of customs duties set out in its Schedule to Annex 2-B on originating goods of the other Party. A Party shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

6. For greater certainty, neither Party shall prohibit an importer from claiming for an originating good the rate of customs duty applied under the WTO Agreement.

7. For greater certainty, a Party may raise a customs duty to the level set out in its Schedule to Annex 2-B following a unilateral reduction for the respective year.

#### **Article 2.5: Waiver of Customs Duties**

1. Neither Party shall adopt any new waiver of a customs duty, or expand with respect to an existing recipient or extend to any new recipient the application of an existing waiver of a customs duty, that is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. Neither Party shall, explicitly or implicitly, condition the continuation of any existing waiver of a customs duty on the fulfilment of a performance requirement.

#### **Article 2.6: Goods Re-entered after Repair and Alteration**

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

2. Neither Party shall 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 the 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 Material**

Each Party shall grant duty-free entry to commercial samples of negligible value and printed advertising materials imported from the territory of the other Party, regardless of their origin, but may require that:

- (a) commercial samples of negligible value 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) printed advertising material be imported in packets that each contain no more than one copy of the material and that neither that material nor those packets form part of a larger consignment.

## **Article 2.8: 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, that is 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; and
- (c) commercial samples and advertising films and recordings.

2. Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for duty-free temporary admission beyond the period initially fixed.

3. Neither Party shall condition the duty-free temporary admission of the goods referred to in paragraph 1, other than to require that those goods:

- (a) be used solely by or under the personal supervision of a national of the other Party in the exercise of the business activity, trade or profession of that national of the other Party;
- (b) not be sold or leased while in its territory;

- (c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the goods;
- (d) be capable of identification when imported and exported;
- (e) be exported on the departure of the national referred to in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission that the Party may establish, or within one year, unless extended;
- (f) be admitted in no greater quantity than is reasonable for their intended use; and
- (g) be otherwise admissible into the Party's territory under its laws.

4. Neither Party shall apply import duties or taxes on the temporary admission of containers, pallets or packing material used in the international transportation of goods.

5. 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 in addition to any other charges or penalties provided for under its law.

6. Each Party shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, those procedures shall provide that when a good admitted under this Article accompanies a national of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national.

7. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than the port through which it was admitted.

8. Each Party shall, in accordance with its law, 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 was destroyed within the period fixed for temporary admission, including any lawful extension.

## **Article 2.9: Import and Export Restrictions**

1. Unless otherwise provided in this Agreement, neither Party shall 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 part of this Agreement, *mutatis mutandis*.

2. The Parties understand that 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;
- (b) import licensing conditioned on the fulfilment of a performance requirement; or
- (c) voluntary export restraints.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A.

4. Neither Party shall, 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.

5. For greater certainty, paragraph 4 does not prevent a Party from requiring a person referred to in that paragraph to designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.

6. For the purposes of paragraph 4:

**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 2.10: Import Licensing**

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notice shall include the information specified in Article 5.2 of the Import Licensing Agreement.

3. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has, with respect to that procedure, met the requirements of paragraph 2.

### **Article 2.11: Administrative Fees and Formalities**

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than export taxes, 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 shall require consular transactions, including related fees and charges, in connection with the importation of a good of the other Party.
3. Each Party shall make publicly available online a current list of the fees and charges it imposes in connection with importation or exportation.
4. Each Party shall periodically review its fees and charges, with a view to reducing their number and diversity, if practicable.

### **Article 2.12: Export Duties, Taxes or Other Charges**

Neither Party shall 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 that good when destined for domestic consumption.

### **Article 2.13: Treatment of Certain Spirits**

1. Australia confirms that the Australia New Zealand Food Standards Code (“the Code”) allows recognition of *Pisco Peru* as a product exclusively produced in Peru and that no variation of the Code is necessary for such recognition.
2. To the extent contemplated in the Code, Australia shall not permit the sale of any product as *Pisco Peru* unless such product has been produced in Peru according to the laws and regulations of Peru governing the production of *Pisco Peru* and complies with all applicable Peruvian laws and regulations for the consumption, sale or export as *Pisco Peru*.
3. Australia shall only permit the sale of a product that uses the term *Pisco* in the identification of a product in accordance with its domestic laws, including the Code, and its international obligations, including this Agreement.

## **Article 2.14: Committee on Goods**

1. The Parties hereby establish a Committee on Goods (Committee), comprised of government representatives of each Party.
2. 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;
  - (b) monitoring the implementation, and administration of this Chapter, Chapter 3 (Rules of Origin and Origin Procedures) and Chapter 7 (Technical Barriers to Trade);
  - (c) as it considers appropriate, reporting to the Joint Commission on the implementation and administration of these Chapters;
  - (d) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures and, if appropriate, refer these matters to the Joint Commission for its consideration;
  - (e) reviewing future amendments to the Harmonized System to ensure that each Party's commitments under this Chapter are not altered, and consulting to resolve any conflicts between:
    - (i) amendments to the Harmonized System and Annex 2-B or Annex 3-B (Product Specific Rules); or
    - (ii) Annex 2-B and national nomenclatures;
  - (f) consulting on and endeavouring to resolve any differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2-B;
  - (g) considering solutions to address issues related to the interpretation, application and administration of Chapter 3 (Rules of Origin and Origin Procedures) or amendments to take into account developments in technology, production processes or other related matters;
  - (h) referring for the consideration of the Joint Commission any possible amendments or modifications to Chapter 3 (Rules of Origin and Origin Procedures); and

- (i) promptly addressing any issue that either Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures.
3. The Committee shall undertake any additional work that the Joint Commission may assign to it.
4. The Committee shall meet when the Parties consider it appropriate.

## **Section C: Agriculture**

### **Article 2.15: Definitions**

For the purposes of this Section:

**agricultural goods** means those goods referred to in Article 2 of the Agreement on Agriculture;

**export subsidies** shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture;

**modern biotechnology** means the application of:

- (a) *in vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (rDNA) and direct injection of nucleic acid into cells or organelles; or
- (b) fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection; and

**products of modern biotechnology** means agricultural goods, as well as fish and fish products<sup>1</sup>, developed using modern biotechnology, but does not include medicines and medical products.

### **Article 2.16: Scope**

This Section shall apply to measures adopted or maintained by a Party relating to trade in agricultural goods.

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<sup>1</sup> For the purposes of Article 2.18 and the definition of “products of modern biotechnology”, “fish and fish products” are defined as products in Chapter 3 of the Harmonized System.

### **Article 2.17: Agricultural Export Subsidies**

Neither Party shall adopt or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

### **Article 2.18: Trade of Products of Modern Biotechnology**

1. The Parties confirm the importance of transparency, cooperation and exchanging information related to the trade of products of modern biotechnology.
2. Nothing in this Article shall prevent a Party from adopting measures in accordance with its rights and obligations under the WTO Agreement or other provisions of this Agreement.
3. Nothing in this Article shall require a Party to adopt or modify its laws, regulations and policies for the control of products of modern biotechnology within its territory.
4. Each Party shall, when available and subject to its laws, regulations and policies, make available publicly:
  - (a) any documentation requirements for completing an application for the authorisation of a product of modern biotechnology;
  - (b) a summary of any risk or safety assessment that has led to the authorisation of a product of modern biotechnology; and
  - (c) a list or lists of the products of modern biotechnology that have been authorised in its territory.
5. Each Party shall designate and notify a contact point or contact points for the sharing of information on issues related to low level presence (LLP)<sup>2</sup> occurrences, in accordance with Article 26.5 (Contact Points).
6. To reduce the likelihood of trade disruptions from LLP occurrences:

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<sup>2</sup> For the purposes of this Article, “LLP occurrence” means the inadvertent low level presence in a shipment of plants or plant products, except for a plant or plant product that is a medicine or medical product, of rDNA plant material that is authorised for use in at least one country, but not in the importing Party, and if authorised for food use, a food safety assessment has been done based on the *Codex Guideline for the Conduct of a Food Safety Assessment of Foods Derived from Recombinant-DNA Plants* (CAC/GL 45-2003).

- (a) the exporting Party shall, consistent with its laws, regulations and policies, endeavour to encourage technology developers to submit applications to the importing Party for authorisation of plants and plant products of modern biotechnology; and
- (b) a Party authorising plant and plant products derived from modern biotechnology shall endeavour to:
  - (i) allow year-round submission and review of applications for authorisation of plants and plant products of modern biotechnology; and
  - (ii) increase communications between the Parties regarding new authorisations of plants and plant products of modern biotechnology so as to improve global information exchange.