

PART TWO
TRADE IN GOODS

Chapter Three

National Treatment and Market Access for Goods

Subchapter A - National Treatment

Article 301: National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a province or state, treatment no less favorable than the most favorable treatment accorded by such province or state to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 301.3.

Subchapter B - Tariffs

Article 302: Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule set out in Annex 302.2 or as otherwise indicated in Annex 300-B.

3. At the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between any two or more Parties to accelerate the elimination of a customs duty on a good shall supersede any prior inconsistent duty rate or staging category in their Schedules for such good when approved by each such Party in accordance with Article 2202(2) (Amendments).

Article 303: Restriction on Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory that is:

(a) subsequently exported to the territory of another Party,

(b) used as a material in the production of another good that is subsequently exported to the territory of another Party, or

(c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party,

in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory, or the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

2. No Party may, by reason of an exportation described in paragraph 1, refund, waive or reduce:

(a) an antidumping or countervailing duty that is applied pursuant to a Party's domestic law and that is not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

(b) a 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;

(c) a fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture); or

(d) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:

(a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption; and

(b) may waive or reduce such customs duties to the extent permitted under paragraph 1.

4. In determining the amount of customs duties that may be refunded, waived or reduced pursuant to paragraph 1 on a good imported into its territory, each Party shall require presentation of satisfactory evidence of the amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

5. Where satisfactory evidence of the customs duties paid to the Party to which a good is subsequently exported under a duty deferral program described in paragraph 3 is not presented within 60 days after the date of exportation, the Party from whose territory the good was exported:

(a) shall collect customs duties as if the exported good had been withdrawn for domestic consumption; and

(b) may refund such customs duties to the extent permitted under paragraph 1 upon the timely presentation of such evidence under the laws and regulations of the Party.

6. This Article shall not apply to:

(a) a good entered under bond for transportation and exportation to the territory of another Party;

(b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported (processes such as testing, cleaning, repacking or inspecting the good, or preserving it in its same condition, shall not be considered to change a good's

condition). Where originating and non-originating fungible goods are commingled and exported in the same form, the origin of the good may be determined on the basis of the inventory methods provided for in the Uniform Regulations;

(c) a good imported into the territory of the Party that is deemed to be exported from the territory of a Party, or used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of another Party, by reason of

(i) delivery to a duty-free shop,

(ii) delivery for ship's stores or supplies for ships or aircraft, or

(iii) delivery for use in joint undertakings of two more of the Parties and that will subsequently become the property of the Party into whose territory the good was imported;

(d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of another Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee;

(e) a dutiable originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party; or

(f) a good set out in Annex 303.6.

7. This Article shall apply as of the date set out in each Party's section of Annex 303.7.

8. Notwithstanding any other provision of this Article and except as specifically provided in Annex 303.8, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a non-originating good provided for under tariff provision 8540.xx (cathode-ray color television picture tubes, including video monitor tubes, with a diagonal

exceeding 14") that is imported into the Party's territory and subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party.

Article 304: Waiver of Customs Duties

1. Except as set out in Annex 304.1, 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, upon the fulfillment of a performance requirement.

2. Except as set out in Annex 304.2, no Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

3. If a waiver or a combination of waivers of customs duties granted by a Party with respect to goods for commercial use by a designated person, and thus not generally available to all importers, can be shown by another Party to have an adverse impact on the commercial interests of a person of that Party, or of a person owned or controlled by a person of that Party that is located in the territory of the Party granting the waiver, or on the other Party's economy, the Party granting the waiver shall either cease to grant it or make it generally available to any importer.

4. This Article shall not apply to measures covered by Article 303 (Restriction on Drawback and Duty Deferral).

Article 305: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission 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 16 (Temporary Entry for Business Persons),

(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 and demonstration, and

(d) commercial samples and advertising films, imported from the territory of another Party, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in subparagraph 1(a), (b), or (c), other than to require that such good:

(a) be imported by a national or resident of another Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of such 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 percent of the charges that would otherwise be owed upon entry or final importation, or by another form of security, releasable upon 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 upon 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, no Party may condition the duty-free temporary admission of a good referred to in subparagraph 1(d), other than to require that such good:

(a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or 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 period as is reasonably related to the purpose of the temporary admission; and

(e) be imported in no greater quantity than is reasonable for its intended use.

4. A Party may impose the customs duty and any other charge on a good temporarily admitted duty-free under paragraph 1 that would be owed upon entry or final importation of such good if any condition that the Party imposes under paragraph 2 or 3 has not been fulfilled.

5. Subject to Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services):

(a) each Party shall allow a locomotive, truck, truck tractor, or tractor trailer unit, railway car, other railroad equipment, trailer ("vehicle") or container, used in international traffic, that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) no 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 vehicle or container;

(c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

(d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.

Article 306: Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials

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

(a) such samples be imported solely for the solicitation of

orders for goods of, or services provided from, the territory of another Party or non-Party; or

(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Article 307: Goods Re-entered after Repair or Alteration

1. Except as set out in Annex 307.1, no Party may apply a customs duty on a good, regardless of its origin, that re-enters its territory after that good has been exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Notwithstanding Article 303 (Duty Drawback), no Party shall apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of another Party for repair or alteration.

3. Each Party shall act in accordance with Annex 307.3 respecting the repair and rebuilding of vessels.

Article 308: Most-Favored-Nation Rates of Duty on Certain Goods

1. Each Party shall act in accordance with Annex 308.1 respecting certain automatic data processing goods and their parts.

2. Each Party shall act in accordance with Annex 308.2 respecting certain color television tubes.

3. Each Party shall accord most-favored-nation duty-free treatment to Local Area Network (LAN) apparatus imported into its territory as set out in each Party's section of Annex 308.3.

Subchapter C - Non-Tariff Measures

Article 309: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another

Party, except in accordance with Article XI of the GATT, including its interpretative notes, and to this end Article XI of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

2. The Parties understand that the GATT rights and obligations 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 another Party of such good of that non-Party; or

- (b) requiring as a condition of export of such good of the Party to the territory of another Party, that the good not be re-exported to that non-Party, directly or indirectly, without having been increased in value and improved in condition [subject to review].

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 any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Paragraphs 1 through 4 shall:

- (a) not apply to the measures set out in Annex 301.3;

- (b) apply to automotive goods as modified in Annex 300-A (Trade and Investment in the Automotive Sector); and

- (c) apply to trade in textile and apparel goods, as modified in Annex 300-B (Textile and Apparel Goods).

6. For purposes of this Article, goods of another Party shall mean [under review].

Article 310: Non-Discriminatory Administration of Restrictions
(GATT Article XIII)

[need for this Article is under review]

Article 311: Customs User Fees

1. No Party may adopt any customs user fee of the type referred to in Annex 311 for originating goods.

2. Each Party may maintain existing such fees only in accordance with Annex 311.2.

Article 312: Country of Origin Marking

Each Party shall comply with Annex 312 with respect to its measures relating to country of origin marking.

Article 313: Blending Requirements

No Party may adopt or maintain any measure requiring that distilled spirits imported from the territory of another Party for bottling be blended with any distilled spirits of the Party.

Article 314: Distinctive Products

Each Party shall comply with Annex 314 respecting standards and labelling of the distinctive products set out therein.

Article 315: Export Taxes

Except as set out in Annex 315 or Article 604 (Energy - Export Taxes), no Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless such duty, tax, or charge is adopted or maintained on:

(a) exports of any such good to the territory of all other Parties; and

(b) any such good when destined for domestic consumption.

Article 316: Other Export Measures

1. Except as set out in Annex 316, a Party may adopt or maintain a restriction otherwise justified under the provisions of Articles XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of a good of the Party to the territory of another Party, only if:

(a) the restriction does not reduce the proportion of the

total export shipments of the specific good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

(b) the Party does not adopt any measure, such as a license, fee, tax or minimum price requirement, that has the effect of raising the price for exports of a good to that other Party above the price charged for such good when consumed domestically, except that a measure taken pursuant to subparagraph (a) that only restricts the volume of exports shall not be considered to have such effect; and

(c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific goods or categories of goods supplied to that other Party.

2. The Parties shall cooperate in the maintenance and development of effective controls on the export of each other's goods to a non-Party in implementing this Article.

Subchapter D - Consultations

Article 317: 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 at the request of any Party or the Commission to consider any matter arising under this Chapter.

Article 318: Third-Country Dumping

1. The Parties affirm the importance of cooperation with respect to actions under Article 12 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

2. Where a Party presents an application to another Party requesting anti-dumping action on its behalf, those Parties shall consult within 30 days respecting the factual basis of the request, and the requested Party shall give full consideration to

the request.

Subchapter E - Definitions

Article 319: 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;

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 another Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

customs duty includes 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 the GATT, or any equivalent provision of a successor agreement to which all Parties are party, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) antidumping or countervailing duty that is applied pursuant to a Party's domestic law and not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

(c) fee or other charge in connection with importation commensurate with the cost of services rendered;

(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions or tariff rate quotas or tariff preference levels; and

(e) fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture);

distilled spirits include distilled spirits and distilled spirit-containing beverages;

duty deferral program includes measures such as those governing foreign-trade zones, temporary importations under bond, bonded warehouses, "maquiladoras", and inward processing programs;

duty-free means free of customs duty;

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;

item means a tariff classification item at the eight- or ten-digit level set out in a Party's tariff schedule;

material means "material" as defined in Chapter Four (Rules of Origin);

most-favored-nation rate of duty does not include any other concessionary rate of duty;

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 be substituted for imported goods or services;

(c) a person benefitting from a waiver of customs duties purchase other goods or services in the territory of the Party granting the waiver or accord a preference to domestically produced goods or services; or

(d) a person benefitting from a waiver of customs duties produce goods or provide services, in the territory of the Party granting the waiver, 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;

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, publicize or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge;

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;

satisfactory evidence means:

(a) a receipt, or a copy of a receipt, evidencing payment of customs duties on a particular entry;

(b) a copy of the entry document with evidence that it was received by a customs administration;

(c) a copy of a final customs duty determination by a customs administration respecting the relevant entry;
or

(d) any other evidence of payment of customs duties acceptable under the Uniform Regulations developed in accordance with Chapter Five (Customs Procedures);

total export shipments means all shipments from total supply to users located in the territory of another Party;

total supply means all shipments, whether intended for domestic or foreign users, from:

(a) domestic production;

(b) domestic inventory; and

(c) other imports as appropriate; and

waiver of customs duties means a measure that waives otherwise applicable customs duties on any good imported from any country, including the territory of another Party.

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ANNEX 301.3

Exceptions to Articles 301 and 309

[subject to review]

Section A - Canadian Measures

1. Articles 301 and 309 shall not apply to:

(a) controls by Canada on the export of logs of all species;

(b) controls by Canada on the export of unprocessed fish pursuant to the following existing statutes:

(i) New Brunswick Fish Processing Act, R.S.N.B. c. F-18.01 (1982), as amended, and Fisheries Development Act, S.N.B. c. F-15.1 (1977), as amended;

(ii) Newfoundland Fish Inspection Act, R.S.N. 1970, c. 132, as amended;

(iii) Nova Scotia Fisheries Act, S.N.S. 1977, c. 9, as amended;

(iv) Prince Edward Island Fish Inspection Act, R.S.P.E.I. 1988, c. F-13, as amended; and

(v) Quebec Marine Products Processing Act, No. 38, S.Q. 1987, c. 51, as amended;

(c) measures by Canada respecting the importation of certain items on the Prohibited Goods List in Schedule VII of the Customs Tariff, R.S.C. 1985, c. 41 (3rd supp.), as amended, as of July 1, 1991;

(d) except as provided in Chapter Seven (Agriculture), measures by Canada respecting the importation of grains taken with respect to the United States, (Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended);

(e) measures by Canada respecting the exportation of liquor for delivery into any country into which the importation of liquor is prohibited by law under the existing provisions of Export Act, R.S.C. 1985, c. E-18, as amended;

(f) measures by Canada respecting the importation and distribution of imported liquor by designated government agencies under the existing provisions of Importation of Intoxicating Liquors Act, R.S.C. 1985, c. I-3, as amended, to the extent that it creates an import monopoly consistent with Articles II:4 and XVII of the GATT and Article 31 of the Havana Charter;

(g) except as provided in Chapter Seven (Agriculture), measures by Canada respecting preferential freight rates for grain originating in certain Canadian provinces under the existing provisions of Western

Grain Transportation Act, R.S.C. 1985, c. W-8, as amended;