PART TWO

TRADE, TRANSPORT, FISHERIES AND OTHER ARRANGEMENTS

HEADING ONE

TRADE

TITLE I

TRADE IN GOODS

CHAPTER 1

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS (INCLUDING TRADE REMEDIES)

ARTICLE 15

Objective

The objective of this Chapter is to facilitate trade in goods between the Parties and to maintain liberalised trade in goods in accordance with the provisions of this Agreement.

ARTICLE 16

Scope

Except as otherwise provided, this Chapter applies to trade in goods of a Party.

ARTICLE 17

Definitions

For the purposes of this Chapter, the following definitions apply:

(a) "consular transactions" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of the good;

(b) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of GATT 1994;

(c) "export licensing procedure" means an administrative procedure, whether or not referred to as licensing, used by a Party for the operation of export licensing regimes, requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body as a prior condition for exportation from that Party;

(d) "import licensing procedure" means an administrative procedure, whether or not referred to as licensing, used by a Party for the operation of import licensing regimes, requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body or bodies as a prior condition for importation into the territory of the importing Party;

(e) "originating goods" means, unless otherwise provided, a good qualifying under the rules of origin set out in Chapter 2 of this Title;

(f) "performance requirement" means a requirement that:

(i) a given quantity, value or percentage of goods be exported;

(ii) goods of the Party granting an import licence be substituted for imported goods;

(iii) a person benefiting from an import licence purchase other goods in the territory of the Party granting the import licence, or accord a preference to domestically produced goods;

(iv) a person benefiting from an import licence produce goods in the territory of the Party granting the import licence, with a given quantity, value or percentage of domestic content; or

(v) relates in whatever form to the volume or value of imports, to the volume or value of exports or to the amount of foreign exchange flows;

(g) "remanufactured good" means a good classified under HS Chapters 32, 40, 84 to 90, 94 or 95 that:

(i) is entirely or partially composed of parts obtained from used goods;

(ii) has similar life expectancy and performance compared with such goods, when new; and

(iii) is given an equivalent warranty to as that applicable to such goods when new; and

(h) "repair" means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use. Repair of a good includes restoration and maintenance, with a possible increase in the value of the good from restoring the original functionality of that good, but does not include an operation or process that:

(i) destroys the essential characteristics of a good, or creates a new or commercially different good;

(ii) transforms an unfinished good into a finished good; or

(iii) is used to improve or upgrade the technical performance of a good.

ARTICLE 18

Classification of goods

The classification of goods in trade between the Parties under this Agreement is set out in each Party's respective tariff nomenclature in conformity with the Harmonised System.

ARTICLE 19

National treatment on internal taxation and regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994 including its Notes and Supplementary Provisions. To that end, Article III of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 20

Freedom of transit

Each Party shall accord freedom of transit through its territory, via the routes most convenient for international transit, for traffic in transit to or from the territory of the other Party or of any other third country. To that end, Article V of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that Article V of GATT 1994 includes the movement of energy goods via inter alia pipelines or electricity grids.

ARTICLE 21

Prohibition of customs duties

Except as otherwise provided for in this Agreement, customs duties on all goods originating in the other Party shall be prohibited.

ARTICLE 22

Export duties, taxes or other charges

1. A Party may not adopt or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party; or any internal tax or other charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. For the purpose of this Article the term "other charge of any kind" does not include fees or other charges that are permitted under Article 23.

ARTICLE 23

Fees and formalities

1. Fees and other charges imposed by a Party on or in connection with importation or exportation of a good of the other Party shall be limited in amount to the approximate cost of the services rendered, and shall not represent an indirect protection to domestic goods or taxation of imports or exports for fiscal purposes. A Party shall not levy fees or other charges on or in connection with importation or exportation on an *ad valorem* basis.

2. Each Party may impose charges or recover costs only where specific services are rendered, in particular, but not limited to, the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions relating to binding information or the provision of information concerning the application of the customs laws and regulations;

(c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved; and

(d) exceptional control measures, if these are necessary due to the nature of the goods or to a potential risk.

3. Each Party shall promptly publish all fees and charges it imposes in connection with importation or exportation via an official website in such a manner as to enable governments, traders and other interested parties, to become acquainted with them. That information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made. New or amended fees and charges shall not be imposed until information in accordance with this paragraph has been published and made readily available.

4. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

ARTICLE 24

Repaired goods

1. A Party shall not 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 its territory to the territory of the other Party for repair.

2. Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair.

ARTICLE 25

Remanufactured goods

1. A Party shall not accord to remanufactured goods of the other Party treatment that is less favourable than that which it accords to equivalent goods in new condition.

2. Article 26 applies to import and export prohibitions or restrictions on remanufactured goods. If a Party adopts or maintains import and export prohibitions or restrictions on used goods, it shall not apply those measures to remanufactured goods.

3. A Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that they meet all applicable technical requirements that apply to equivalent goods in new condition.

ARTICLE 26

Import and export restrictions

1. A Party shall not 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, including its Notes and Supplementary Provisions. To that end, Article XI of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. A Party shall not adopt or maintain:

(a) export and import price requirements, except as permitted in enforcement of countervailing and anti-dumping duty orders and undertakings; or

(b) import licensing conditioned on the fulfilment of a performance requirement.

ARTICLE 27

Import and export monopolies

A Party shall not designate or maintain an import or export monopoly. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import a good from, or export a good to, the other Party.

ARTICLE 28

Import licensing procedures

1. Each Party shall ensure that all import licensing procedures applicable to trade in goods between the Parties are neutral in application, and are administered in a fair, equitable, non-discriminatory and transparent manner.

2. A Party shall only adopt or maintain licensing procedures as a condition for importation into its territory from the territory of the other Party, if other appropriate procedures to achieve an administrative purpose are not reasonably available.

3. A Party shall not adopt or maintain any non-automatic import licensing procedure, unless it is necessary to implement a measure that is consistent with this Agreement. A Party adopting such non-automatic import licensing procedure shall indicate clearly the measure being implemented through that procedure.

4. Each Party shall introduce and administer any import licensing procedure in accordance with Articles 1 to 3 of the WTO Agreement on Import Licensing Procedures (the "Import Licensing Agreement"). To that end, Articles 1 to 3 of the Import Licensing Agreement are incorporated into and made part of this Agreement *mutatis mutandis*.

5. Any Party introducing or modifying any import licensing procedure shall make all relevant information available online on an official website. That information shall be made available, whenever practicable, at least 21 days prior to the date of the application of the new or modified licensing procedure and in any event no later than the date of application. That information shall contain the data required under Article 5 of the Import Licensing Agreement.

6. At the request of the other Party, a Party shall promptly provide any relevant information regarding any import licensing procedures that it intends to adopt or that it maintains, including the information referred to in Articles 1 to 3 of the Import Licensing Agreement.

7. For greater certainty, nothing in this Article requires a Party to grant an import licence, or prevents a Party from implementing its obligations or commitments under United Nations Security Council Resolutions or under multilateral non-proliferation regimes and import control arrangements.

ARTICLE 29

Export licensing procedures

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, whenever practicable, 45 days before the procedure or modification takes effect, and in any case no later than the date such procedure or modification takes effect and, where appropriate, publication shall take place on any relevant government websites.

2. The publication of export licensing procedures shall include the following information:

(a) the texts of the Party's export licensing procedures, or of any modifications the Party makes to those procedures;

(b) the goods subject to each licensing procedure;

(c) for each procedure, a description of the process for applying for a licence and any criteria an applicant must meet to be eligible to apply for a licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application or other relevant documentation are to be submitted;

(f) a description of any measure or measures being implemented through the export licensing procedure;

(g) the period during which each export licensing procedure will be in effect, unless the procedure remains in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if applicable, the value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions that replace the requirement to obtain an export licence, how to request or use those exemptions or exceptions, and the criteria for granting them.

3. Within 45 days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. Each Party shall notify to the other Party any new export licensing procedures and any modifications to existing export licensing procedures within 60 days of publication. The notification shall include a reference to the sources where the information required pursuant to paragraph 2 is published and shall include, where appropriate, the address of the relevant government websites.

4. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from implementing its commitments under United Nations Security Council Resolutions as well as under multilateral non-proliferation regimes and export control arrangements including the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Australia Group, the Nuclear Suppliers Group, and the Missile Technology Control Regime, or from adopting, maintaining or implementing independent sanctions regimes.

ARTICLE 30

Customs valuation

Each Party shall determine the customs value of goods of the other Party imported into its territory in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement. To that end, Article VII of GATT 1994 including its Notes and Supplementary Provisions, and Articles 1 to 17 of the Customs Valuation Agreement including its Interpretative Notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 31

Preference utilisation

1. For the purpose of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a 10 year-long period starting one year after the entry into force of this Agreement. Unless the Trade Partnership Committee decides otherwise, this period shall be automatically extended for five years, and thereafter the Trade Partnership Committee may decide to extend it further.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and for those that receive non-preferential treatment.

ARTICLE 32

Trade remedies

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, the SCM Agreement, Article XIX of GATT 1994, the Safeguards Agreement, and Article 5 of the Agreement on Agriculture.

2. Chapter 2 of this Title does not apply to anti-dumping, countervailing and safeguard investigations and measures.

3. Each Party shall apply anti-dumping and countervailing measures in accordance with the requirements of the Anti-Dumping Agreement and the SCM Agreement, and pursuant to a fair and transparent process.

4. Provided it does not unnecessarily delay the conduct of the investigation, each interested party in an anti-dumping or countervailing investigation[1] shall be granted a full opportunity to defend its interests.

5. Each Party's investigating authority may, in accordance with the Party's law, consider whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or a lesser amount.

6. Each Party's investigating authority shall, in accordance with the Party's law, consider information provided as to whether imposing an anti-dumping or a countervailing duty would not be in the public interest.

7. A Party shall not apply or maintain, with respect to the same good, at the same time:

(a) a measure pursuant to Article 5 of the Agreement on Agriculture; and

(b) a measure pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

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[1] For the purpose of this Article, interested parties shall be defined as per Article 6.11 of the Anti-dumping Agreement and Article 12.9 of the SCM Agreement.

8. Title I of Part Six does not apply to paragraphs 1 to 6 of this Article.

ARTICLE 33

Use of existing WTO tariff rate quotas

1. Products originating in one Party shall not be eligible to be imported into the other Party under existing WTO Tariff Rate Quotas ("TRQs") as defined in paragraph 2. This shall include those TRQs as being apportioned between the Parties pursuant to Article XXVIII GATT negotiations initiated by the European Union in WTO document G/SECRET/42/Add.2 and by the United Kingdom in WTO document G/SECRET/44 and as set out in each Party's respective internal legislation. For the purposes of this Article, the originating status of the products shall be determined on the basis of non-preferential rules of origin applicable in the importing Party.

2. For the purposes of paragraph 1, "existing WTO TRQs" means those tariff rate quotas which are WTO concessions of the European Union included in the draft EU28 schedule of concessions and commitments under GATT 1994 submitted to the WTO in document G/MA/TAR/RS/506 as amended by documents G/MA/TAR/RS/506/Add.1 and G/MA/TAR/RS/506/Add.2.

ARTICLE 34

Measures in case of breaches or circumventions of customs legislation

1. The Parties shall cooperate in preventing, detecting and combating breaches or circumventions of customs legislation, in accordance with their obligations under Chapter 2 of this Title and the Protocol on mutual administrative assistance in customs matters. Each Party shall take appropriate and comparable measures to protect its own and the other Party's financial interests regarding the levying of duties on goods entering the customs territories of the United Kingdom or the Union.

2. Subject to the possibility of exemption for compliant traders under paragraph 7, a Party may temporarily suspend the relevant preferential treatment of the product or products concerned in accordance with the procedure laid down in paragraphs 3 and 4 if:

(a) that Party has made a finding, based on objective, compelling and verifiable information, that systematic and large-scale breaches or circumventions of customs legislation have been committed, and;

(b) the other Party repeatedly and unjustifiably refuses or otherwise fails to comply with the obligations referred to in paragraph 1.

3. The Party which has made a finding as referred to in paragraph 2 shall notify the Trade Partnership Committee and shall enter into consultations with the other Party within the Trade Partnership Committee with a view to reaching a mutually acceptable solution.

4. If the Parties fail to agree on a mutually acceptable solution within three months after the date of notification, the Party which has made the finding may decide to suspend temporarily the relevant preferential treatment of the product or products concerned. In this case, the Party which made the finding shall notify the temporary suspension, including the period during which it intends the temporary suspension to apply, to the Trade Partnership Committee without delay.

5. The temporary suspension shall apply only for the period necessary to counteract the breaches or circumventions and to protect the financial interests of the Party concerned, and in any case not for longer than six months. The Party concerned shall keep the situation under review and, where it decides that the temporary suspension is no longer necessary, it shall bring it to an end before the end of the period notified to the Trade Partnership Committee. Where the conditions that gave rise to the suspension persist at the expiry of the period notified to the Trade Partnership Committee, the Party concerned may decide to renew the suspension. Any suspension shall be subject to periodic consultations within the Trade Partnership Committee.

6. Each Party shall publish, in accordance with its internal procedures, notices to importers about any decision concerning temporary suspensions referred to in paragraphs 4 and 5.

7. Notwithstanding paragraph 4, if an importer is able to satisfy the importing customs authority that such products are fully compliant with the importing Party's customs legislation, the requirements of this Agreement, and any other appropriate conditions related to the temporary suspension established by the importing Party in accordance with its laws and regulations, the importing Party shall allow the importer to apply for preferential treatment and recover any duties paid in excess of the applicable preferential tariff rates when the products were imported.

ARTICLE 35

Management of administrative errors

In case of systematic errors by the competent authorities or issues concerning the proper management of the preferential system at export, concerning notably the application of the provisions of Chapter 2 of this Title or the application of the Protocol on Mutual Administrative Assistance in Customs Matters, and if these errors or issues lead to consequences in terms of import duties, the Party facing such consequences may request the Trade Partnership Committee to examine the possibility of adopting decisions, as appropriate, to resolve the situation.

ARTICLE 36

Cultural property

1. The Parties shall cooperate in facilitating the return of cultural property illicitly removed from the territory of a Party, having regard to the principles enshrined in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 17 November 1970.

2. For the purposes of this Article, the following definitions apply:

(a) "cultural property" means property classified or defined as being among the national treasures possessing artistic, historic or archaeological value under the respective rules and procedures of each Party; and

(b) "illicitly removed from the territory of a Party" means:

(i) removed from the territory of a Party on or after 1 January 1993 in breach of that Party's rules on the protection of national treasures or in breach of its rules on the export of cultural property; or

(ii) not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal, on or after 1 January 1993.

3. The competent authorities of the Parties shall cooperate with each other in particular by:

(a) notifying the other Party where cultural property is found in their territory and there are reasonable grounds for believing that the cultural property has been illicitly removed from the territory of the other Party;

(b) addressing requests of the other Party for the return of cultural property which has been illicitly removed from the territory of that Party;

(c) preventing any actions to evade the return of such cultural property, by means of any necessary interim measures; and

(d) taking any necessary measures for the physical preservation of cultural property which has been illicitly removed from the territory of the other Party.

4. Each Party shall identify a contact point responsible for communicating with the contact point of the other Party with respect to any matters arising under this Article, including with respect to the notifications and requests referred to in points (a) and (b) of paragraph 3.

5. The envisaged cooperation between the Parties shall involve the customs authorities of the Parties responsible for managing export procedures for cultural property as appropriate and necessary.

6. Title I of Part Six does not apply to this Article.