

CHAPTER 2
TRADE IN GOODS

Article 1: Objectives

The objectives of this Chapter are, with respect to measures affecting goods traded between the Parties, to avoid unnecessary barriers to trade, facilitate and liberalise trade and thereby promote integration between the economies of the Parties.

Article 2: Scope

This Chapter shall apply to all goods traded between the Parties.

Article 3: Commitments on Tariffs

1. Each Party shall not apply to originating goods:
 - (a) ordinary customs duties that are not specified, or are in excess of levels set forth, in Part I (Commitments on Ordinary Customs Duties) of its Schedule at Annex 2-A; or
 - (b) duties or charges on or in connection with their importation (other than ordinary customs duties applied in conformity with subparagraph (a) or internal taxes or other charges, anti-dumping or countervailing duties or fees or other charges for services rendered applied in conformity with Articles 6, 7 and 10 respectively) that are not specified in, or are not in conformity with, Part II (Commitments on Other Duties or Charges) of its Schedule at Annex 2-A.
2. With respect to the levels of all duties and charges referred to in paragraph 1, any advantage granted to any good of any country or territory, other than in respect of a preference in force under a regional trade agreement on the date referred to in Article 8.1 of Chapter 15 (Final Provisions), shall be accorded immediately and unconditionally to all like goods originating in the territories of all other Parties except where:
 - (a)
 - (i) the advantage granted is accorded pursuant to Decision 36 of Annex F of the WTO Hong Kong Ministerial Declaration of 2005 on Measures in Favour of Least-Developed Countries and related WTO Decisions on duty-free and quota-free access for products originating in Least-Developed Countries; and
 - (ii) the treatment of such goods pursuant to the Decisions referred to in subparagraph (a)(i) is in conformity with those Decisions;

- (b) the advantage granted is in respect of a preference in force pursuant to a regional trade agreement exclusively involving Pacific Island countries and territories;¹ or
- (c) the advantage granted is in respect of a preference in force pursuant to a regional trade agreement² exclusively involving developing countries to which at least one Party is a party and other parties are non-Parties, where:
 - (i) each such non-Party accounts for not more than 1 per cent of world merchandise exports; and
 - (ii) all non-Parties that are party to the regional trade agreement together account for not more than 4 per cent of world merchandise exports;

measured as of the date of entry into force of the regional trade agreement for each such Party and as of the date of accession of a new party to it.³

3. Paragraph 2 shall not require such advantage to be accorded in respect of a preference in force or implemented after the date referred to in Article 8.1 of Chapter 15 (Final Provisions) by the Federated States of Micronesia, the Republic of the Marshall Islands or Palau which is extended to the United States of America in respect of:

- (a) a regional trade agreement with another non-Party pursuant to the most-favoured-nation clause in such countries' respective Compacts of Free Association or successor agreements, where the regional trade agreement concerned fulfils the requirements of paragraph 2(b) or 2(c); or
- (b) a regional trade agreement established under such countries' respective Compacts of Free Association or successor agreements.

4. Nothing in this Agreement shall preclude the Parties from negotiating and entering into arrangements collectively for the acceleration or improvement of commitments in their Schedules. Such agreements shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final Provisions). Accelerated or improved commitments thereunder shall be implemented by those Parties and be extended to all Parties.

5. Two or more Parties may consult with a view to reaching an agreement on the acceleration or improvement of commitments in their Schedules. Such agreements shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final

¹ For the purposes of subparagraph (b): Pacific Island territories comprise American Samoa, French Polynesia, Guam, New Caledonia, Northern Mariana Islands, Pitcairn Islands, Tokelau, Wallis and Futuna, provided they are separate customs territories; and Pacific Island countries are Forum Island Countries and former Pacific Island territories.

² Where a party to a regional trade agreement under subparagraph (c) is a customs union, all parties to it shall be treated as separate countries or customs territories for the purposes of determining whether the criteria under subparagraph (c) are met.

³ Exemptions from the obligation under paragraph 2 in respect of participation in a regional trade agreement under subparagraph (c) shall be administered in accordance with Annex 2-B.

Provisions). Accelerated or improved commitments thereunder shall be implemented by those Parties and be extended to all Parties.

6. A Party may, at any time, unilaterally accelerate the implementation of commitments in its Schedule. A Party intending to do so shall inform the other Parties in accordance with Article 14.2(a). Such accelerated implementation of commitments shall be extended to all Parties.

Modification or Withdrawal of Concessions

7. If a developing country Party faces unforeseen difficulties in implementing its tariff commitments:⁴

- (a) That Party may, with the agreement of all other interested Parties, modify or withdraw a concession contained in its Schedule of Commitments on Tariffs in Annex 2-A.
- (b) In order to seek to reach such agreement, the relevant Party shall engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concessions shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other interested Parties than that provided for in this Agreement prior to such negotiations.
- (c) A negotiated outcome may include compensatory adjustments with respect to other goods or, where the available scope for compensatory adjustments on goods is insufficient, with respect to services or investment.
- (d) The mutually agreed outcome of the negotiations, including any compensatory adjustments, shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final Provisions).

8. If a mutually agreed outcome under paragraph 7 cannot be reached within 60 days of the request being made, the Party proposing to modify or withdraw the concession or any interested Party may refer the matter to the Joint Committee. The Joint Committee shall, within 30 days of the referral of the matter to it, determine the level of compensation to be provided to interested Parties and then authorise the developing country Party to modify or withdraw its tariff commitments. The provision of compensation and the modification of tariff preferences by the developing country Party shall be effected at the same time.

9. The compensatory adjustments shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 7 of Chapter 15 (Final Provisions).

⁴ For greater certainty, nothing in this Chapter shall be construed as preventing a Party from having recourse to paragraphs 7, 8 and 9 after the final reduction of a duty under its Schedule of Commitments on Tariffs.

Article 4: Goods Re-entered after Repair and Alteration

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily 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 own territory.
2. Notwithstanding paragraph 1, a Party may, in accordance with its relevant legislation, impose a customs duty on the cost of repair or alteration of the good. The duty imposed shall not exceed the customs duty which would be payable if the good was imported for the first time.
3. No Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.
4. For the purposes of this Article, repair and 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.
5. Nothing in paragraph 3 shall be construed to prevent a Party from specifying in its laws or regulations a limit on the duration of temporary entry beyond which the goods concerned become dutiable.

Article 5: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

1. With the exception of tobacco products, the Parties shall grant customs 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, or services provided from the territory, of another Party or a non-Party; or
 - (b) such advertising materials are imported in packets that each contain no more than one copy of each material and that neither such materials nor packets form part of a larger consignment.
2. Nothing in this Article shall be construed to prevent a Party from requiring under its laws and regulations that a bond be paid on the temporary import of commercial samples that are not of negligible value and that such bond be released upon re-exportation of the commercial samples within a time limit provided for under its legislation.

Article 6: Internal Taxation and Regulation

In respect of internal taxes, other internal charges and laws, regulations and requirements affecting matters within the scope of Article III of GATT 1994, each Party shall accord to the goods of other Parties most-favoured-nation treatment and national treatment in accordance with Articles I and III, including the Interpretative Notes to Article III, of GATT 1994. To these ends, Articles I and III, including the Interpretative Notes to Article III, of GATT 1994 are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 7: Trade Remedies

Anti-Dumping and Countervailing Measures

1. Nothing in this Agreement shall affect the rights and obligations of WTO Members under Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.
2. When applying anti-dumping or countervailing measures, non-WTO Members shall comply with the provisions of Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.
3. Special regard shall be given by developed country Parties to the special situation of developing country Parties when considering and before making a decision on the application of anti-dumping measures under this Article. A developed country Party considering the application of an anti-dumping duty to a product of a developing country Party shall explore possibilities of constructive remedies before applying such anti-dumping duty where it would affect the essential interests of the developing country Party concerned.
4. Upon entry into force of this Agreement, each Party with legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points:
 - (a) its laws, regulations and administrative procedures relating to anti-dumping or countervailing measures (including *inter alia* procedures governing the initiation and conduct of investigations by its competent authorities);
 - (b) which of its authorities are competent to initiate and conduct its anti-dumping and countervailing investigations; and
 - (c) its domestic procedures governing the initiation and conduct of such investigations.
5. Upon entry into force of this Agreement, each Party without legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points that it does not have anti-dumping or countervailing legislation. Thereafter, where any such Party adopts legislation containing provisions on anti-dumping or countervailing measures, upon the adoption of such legislation it shall notify to the other

Parties through Contact Points the information required to be notified in paragraphs 4(a), 4(b) and 4(c). This information shall be notified prior to such Party initiating an anti-dumping or countervailing investigation with respect to another Party or Parties.

6. Thereafter, each Party with legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points:

- (a) any changes in its anti-dumping and countervailing duty laws and regulations and in the administration of such laws and regulations; and
- (b) where anti-dumping or countervailing action concerning the products of any Party has been initiated:
 - (i) any preliminary or final anti-dumping or countervailing determinations;
 - (ii) any acceptance of undertakings;
 - (iii) any terminations of duties or investigations; and
 - (iv) the explanations, findings and conclusions reached in respect of any of the above actions taken.

7. All information notifiable by a Party under paragraphs 5 and 6 shall be published in accordance with Article 13.

Global Safeguard Measures

8. Nothing in this Agreement shall affect the rights and obligations of WTO Members under Article XIX of GATT 1994 and the Agreement on Safeguards.

9. When applying a global safeguards measure, non-WTO Members shall comply with the provisions of Article XIX of GATT 1994 and the Agreement on Safeguards.

10. Upon entry into force of this Agreement, each Party with legislation containing provisions on global safeguards shall notify to the other Parties through Contact Points:

- (a) its laws, regulations and administrative procedures relating to safeguards measures (including *inter alia* procedures governing the initiation and conduct of investigations by its competent authorities); and
- (b) its competent authorities;

and shall thereafter notify to the other Parties through Contact Points any modifications made to information notified under subparagraphs (a) and (b).

11. Upon entry into force of this Agreement, each Party without legislation containing provisions on global safeguards shall notify to the other Parties through Contact Points that it does not have global safeguards legislation. Thereafter, when any such Party adopts or

subsequently modifies legislation containing provisions on global safeguards, upon adoption or modification of such legislation it shall promptly notify to the other Parties through Contact Points the information required to be notified under paragraph 10.

12. Thereafter, each Party with legislation containing provisions on global safeguards shall immediately notify the other Parties through Contact Points upon:

- (a) initiating any investigatory process relating to serious injury or threat thereof, and the reasons for it;
- (b) making a finding of serious injury or threat thereof caused by increased imports; and
- (c) taking a decision to apply or extend a safeguard measure.

13. If a decision has been taken to apply a provisional safeguard measure, a notification shall be made to the other Parties through Contact Points before that measure is applied.

14. Competent authorities shall publish promptly a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

15. All information notifiable by a Party under paragraphs 10 to 13 shall be published in accordance with Article 13.

16. To the extent possible, the developed country Parties shall consider exempting products from the developing country Parties from the application of a safeguard measure under this Article. A Party shall not apply a safeguard measure against a product originating in a developing country that is a WTO Member or a non-WTO Member as long as its share of imports of the product concerned in the importing Party does not exceed three per cent, provided that the developing countries that are a WTO Member or a non-WTO Member with less than three per cent import share collectively account for not more than nine per cent of total imports of the product concerned.

Article 8: Transitional Safeguard Measures

Definitions

1. For the purposes of this Article:

- (a) domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;
- (b) transitional safeguard measure means a measure described in paragraphs 2 to 4 (*Imposition of a Transitional Safeguard Measure*);

- (c) serious injury means a significant overall impairment in the position of a domestic industry;
- (d) threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and
- (e) transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

Imposition of a Transitional Safeguard Measure

2. A developing country Party may apply a transitional safeguard measure described in paragraph 3, during the transition period only, if as a result of the staged elimination of a customs duty pursuant to this Agreement:

- (a) an originating good of one other Party is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good; or
- (b) an originating good of two or more Parties, collectively, is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good, provided that the Party applying the transitional safeguard measure demonstrates, with respect to the imports from each such Party against which the transitional safeguard measure is applied, that imports of the originating good from each of those Parties have increased, in absolute terms or relative to domestic production, since the date of entry into force of this Agreement for those Parties.

3. If the conditions in paragraph 2 are met, the Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty provided for under this Agreement on the good; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) (A) in the case of a WTO Member, the most-favoured-nation applied rate of customs duty; or
 - (B) in the case of a Party that is not a WTO Member, the general non-preferential applied rate of customs duty;

at the time the measure is applied; and

- (ii) (A) in the case of a WTO Member, the most-favoured-nation applied rate of customs duty; or
- (B) in the case of a Party that is not a WTO Member, the general non-preferential applied rate of customs duty;

in effect on the day immediately preceding the date of entry into force of this Agreement for that Party.

4. No Party shall apply a tariff rate quota or a quantitative restriction as a form of transitional safeguard measure.

Standards for a Transitional Safeguard Measure

5. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

6. That period shall not exceed two years, except that the period may be extended by up to three years, if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in paragraphs 12 and 13, that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

7. No Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

8. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

9. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Schedule of Commitments on Tariffs at Annex 2-A as if that Party had never applied the transitional safeguard measure.

10. The maximum amount of time that transitional safeguard measures can apply cumulatively to the same good is five years.

11. No Party shall apply or maintain at the same time, with respect to the same good, a transitional safeguard measure under this Article and a safeguard measure under Article XIX of GATT 1994 and the Agreement on Safeguards.

Investigation Procedures and Transparency Requirements

12. A Party shall apply a transitional safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2(c) of the

Agreement on Safeguards. To this end, Article 3 and Article 4.2(c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

13. In the investigation described in paragraph 12, the Party shall comply with the requirements of Article 4.2(a) and Article 4.2(b) of the Agreement on Safeguards; to this end, Article 4.2(a) and Article 4.2(b) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

Provisional Measures

14. (a) In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional measure, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good from another Party or Parties have caused or are threatening to cause serious injury to a domestic industry.
- (b) The duration of such a provisional measure shall not exceed 200 days, during which time the relevant requirements of this Article (Definitions, Imposition of a Transitional Safeguard Measure, Standards for a Transitional Safeguard Measure, Investigation Procedures and Transparency Requirements, and Notification and Consultation) shall be met. The duration of any provisional measure shall be counted as part of the initial period and any extension as referred to under Imposition of a Transitional Safeguard Measure.
- (c) The customs duty imposed as a result of the provisional measure shall be refunded if the subsequent investigation referred to under Investigation Procedures and Transparency Requirements does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

Notification and Consultation

15. A Party shall promptly notify the other Parties through Contact Points, in writing, if it:
- (a) initiates a transitional safeguard investigation under this Article;
 - (b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, as set out in paragraph 2;
 - (c) takes a decision to apply or extend a transitional safeguard measure;
 - (d) takes a decision to modify a transitional safeguard measure previously undertaken.
16. A Party shall provide to the other Parties through Contact Points a copy of the public version of the report of its competent authorities that is required under paragraph 12.

17. When a Party makes a notification pursuant to paragraph 15(c) that it is applying or extending a transitional safeguard measure, that Party shall include in that notification:

- (a) evidence of serious injury, or threat of serious injury, caused by increased imports of an originating good of another Party or Parties as a result of the staged elimination of a customs duty pursuant to this Agreement;
- (b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the Harmonized System, on which the commitments in respect of the duty contained in its Schedule of Commitments on Tariffs at Annex 2-A are based;
- (c) a precise description of the transitional safeguard measure;
- (d) the date of the transitional safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and
- (e) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

18. On request of a Party whose good is subject to a transitional safeguard proceeding under this Chapter, the Party that conducts that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 15 or any public notice or report that the competent investigating authority has issued in connection with the proceeding.

Compensation

19. A Party applying a transitional safeguard measure shall, after consultations with each Party against whose good the transitional safeguard measure is applied, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

20. If the consultations under paragraph 19 do not result in an agreement on trade liberalising compensation within 30 days, any Party against whose good the transitional safeguard measure is applied may seek a determination on the level of compensation under the procedures of Articles 3.8 and 3.9, which shall apply *mutatis mutandis*.

21. The obligation to provide compensation under paragraph 19 or paragraph 20 terminates on the termination of the transitional safeguard measure.

Article 9: Industry Development

Recognising the limited number of industry development opportunities inherent in a regional grouping of countries characterised mostly by low populations, limited arable land

and other natural resources, small isolated economies and high vulnerability to natural disasters; and

Taking into account the high incidence of persistent gaps between Forum Island Countries' respective levels of per capita gross national income and those of the world's developed countries and larger or more advanced developing countries:

1. The Joint Committee may approve a measure known as an Industry Development Measure requested by a Forum Island Country for the purpose of enabling such requesting Party to support:

- (a) the establishment of a new industry or a new branch of production in an existing industry;
- (b) the substantial transformation of an existing industry;
- (c) the substantial expansion of an existing industry supplying a small proportion of the domestic demand; or
- (d) an industry destroyed or substantially damaged as a result of hostilities or natural disaster.

2. An Industry Development Measure:

- (a) shall consist of:
 - (i) a delay in the scheduled reductions in the requesting Party's rate of customs duty for one or more specified goods; or
 - (ii) an increase in its rate of customs duty for one or more specified goods to no more than:
 - (A) in the case of a WTO Member, the most-favoured-nation applied rate of customs duty; or
 - (B) in the case of a non-WTO Member, the general non-preferential applied rate of customs duty;effective at the time of the request;
- (b) can be applied:
 - (i) for an initial period of seven years, which may be extended for a further three years by the Joint Committee; and

- (ii) only during the period of the requesting Party's scheduled reductions in a rate of customs duty on the affected product;⁵ and
- (c) shall be eligible for approval if the tariff lines subject to the requested Industry Development Measure(s) and all Industry Development Measures of a Party in force at the time of such request(s) together account for not more than eight per cent of the total exports of the affected Party to the requesting Party⁶ and account for not more than three per cent of tariff lines.
3. Upon conclusion of the relevant period under paragraph 2(b), the requesting Party's customs duties shall revert to levels not exceeding the scheduled rates that would have applied but for the Industry Development Measure.
4. The requesting Party shall compensate affected Parties on terms agreed among the interested Parties or otherwise determined under the procedures of Articles 3.8 to 3.9, which shall apply *mutatis mutandis*. Compensation shall be provided three years after the initial application of the Industry Development Measure. The obligation to provide compensation ceases upon the termination of the Industry Development Measure.
5. Except in the case of a new Industry Development Measure applied for the purposes of Article 9.1(d), if a new Industry Development Measure is applied to the same good:
- (a) the total duration of the periods for which the requesting Party was not liable to provide compensation under previous Industry Development Measures on that good shall be counted towards the two years for which the requesting Party is not liable to provide extend compensation under paragraph 4; and
- (b) not less than two years shall elapse from the date of termination of the previous Industry Development Measure to the date of initial application of the new Industry Development Measure.
6. A Party shall not simultaneously apply an Industry Development Measure and a Transitional Safeguard Measure under Article 8 to the same good. Nothing in this Article shall be construed to prevent a Party from having recourse to Articles 3.7 to 3.9 after the expiration of an Industry Development Measure.

⁵ Subparagraph 2(b)(ii) shall apply to all Forum Island Countries except Kiribati. Recognising the unique situation of Kiribati in having all base rates in its Schedule at Annex 2-A at a rate of zero per cent, Kiribati shall have recourse to an Industry Development Measure, subject to approval by the Joint Committee in response to a request from Kiribati, in the event of Kiribati adopting a general non-preferential applied rate of customs duty for the good(s) concerned in excess of the base rate. No such Industry Development Measure approved by the Joint Committee shall be applied later than 25 years from the date on which the Agreement entered into force for Kiribati under Article 8 of Chapter 15 (Final Provisions). The remaining provisions of this Article shall apply, *mutatis mutandis*.

⁶ The percentage shall be calculated as the average annual percentage share of the exporting Party's exports falling to those lines in the annual value of its total merchandise exports to the requesting Party in the three calendar years that immediately precede the year in which the Industry Development Measure is requested.

Article 10: Fees and Charges Connected with Importation and Exportation

1. Each Party shall ensure that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994 and anti-dumping and countervailing duties applied pursuant to Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures) on or in connection with importation or exportation:

- (a) are limited in amount to the approximate cost of services rendered;
- (b) do not represent an indirect protection to domestic products or a taxation on imports or exports for fiscal purposes; and
- (c) are otherwise in conformity with the WTO Agreement, including *inter alia* Articles I and VIII of GATT 1994.

2. In respect of such measures, Articles I and VIII of GATT 1994 are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 11: Import Licensing

1. In respect of import licensing procedures, the Parties, taking into account the particular trade, development and financial needs of developing country Parties:

- (a) recognise the usefulness of automatic import licensing for certain purposes, and shall ensure that such licensing is not used to restrict trade between them and is otherwise in accordance with Articles 1 and 2 of the Agreement on Import Licensing Procedures;
- (b) recognise that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of GATT 1994, and shall ensure that import licensing procedures employed for that purpose are not utilised in a manner contrary to the principles and obligations of GATT 1994 and are otherwise in accordance with Articles 1 and 3 of the Agreement on Import Licensing Procedures and other relevant WTO provisions; and
- (c) recognise that trade could be impeded by the inappropriate use of import licensing procedures and, with a view to avoiding their inappropriate use, shall ensure that:
 - (i) import licensing, particularly non-automatic import licensing, is implemented in a transparent and predictable manner;
 - (ii) non-automatic licensing procedures are no more administratively burdensome than absolutely necessary to administer the relevant measure; and

- (iii) administrative procedures and practices used in international trade are transparent, are as simple as possible and are applied and administered fairly and equitably.

2. To these ends, in respect of import licensing procedures, Articles 1 to 3 of the Agreement on Import Licensing Procedures are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. Information related to import licensing procedures under Article 1.4(a) of the Agreement on Import Licensing Procedures shall be published in such a manner as to enable governments and traders to become acquainted with it and be so published no later than the effective date of the requirement concerned. Each Party shall notify the Contact Points of other Parties where such information is found.

4. Information exchanged between the Parties on import licensing procedures shall be otherwise notified, published and kept up-to-date in accordance with Article 14 and be supplied in the format set out at Annex 2-C.

Article 12: Other Non-Tariff Measures

1. Each Party shall not:

- (a) adopt or maintain any measure within the purview of Article XI of GATT 1994, including its Interpretative Notes, except in accordance with the WTO Agreement and this Agreement; or
- (b) apply to traffic in transit any measure prohibited under, or any allowable measure inconsistently with, Article V of GATT 1994 or other relevant provisions of the WTO Agreement; or
- (c) apply any measure prohibited under Article 4.2 of the Agreement on Agriculture or Article 11.1(b) of the Agreement on Safeguards.

2. To these ends, in respect of the aforementioned measures, GATT 1994 (including relevant Interpretative Notes of GATT 1994), the Agreement on Import Licensing Procedures, Articles 4.2 and 12 of the Agreement on Agriculture and Article 11.1(b) of the Agreement on Safeguards are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. Each Party shall not require consular transactions, including related fees, charges, formalities and requirements, in connection with the importation of a good from another Party.

Article 13: Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any Party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.
2. Agreements affecting international trade policy which are in force between the government or a governmental agency of any Party and the government or governmental agency of any other country shall also be published.
3. Paragraphs 1 and 2 shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
4. No measure of general application taken by any Party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments for those purposes, shall be enforced before such measure has been officially published.
5. Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1.
6. To these ends, Article X of GATT 1994 and other provisions of the WTO Agreement relating to the publication and administration of trade regulations are incorporated into and shall form part of this Agreement, *mutatis mutandis*.
7. In accordance with its domestic laws and regulations, each Party shall, to the extent of its capacity, make available online laws, regulations, decisions and rulings in relation to matters within the purview of paragraphs 1, 2 and 4.
8. Each Party shall thereafter, to the extent of its capacity, ensure that all items of information that are publically available pursuant to paragraphs 1, 2, 4 and 7 are kept up-to-date in accordance with those paragraphs.

Article 14: Information Exchange in Relation to, and Publication of, Specified Measures

1. Upon entry into force of this Agreement, each Party shall provide to the other Parties through Contact Points:
 - (a) the existing schedules of non-preferential and preferential applied rates of customs duty that it maintains;

- (b) a list of all existing fees and charges that it imposes on or in connection with importation or exportation; and
 - (c) information on its new or modified import licensing procedures in the form of a completed response to the questionnaire at Annex 2-C.
2. Thereafter, each Party shall ensure that all items of information provided under paragraph 1 are kept up-to-date by transmitting to the other Parties through Contact Points any modifications or additions to them:
- (a) in the case of items under paragraphs 1(a) and 1(b), no later than the date on which they take effect;
 - (b) in the case of information on modified or new import licensing procedures provided through completed responses to the questionnaire at Annex 2-C, to the extent possible 60 days before the modified or new procedure takes effect, but in any case no later than within 60 days of publication.
3. A WTO Member shall be deemed to be in compliance with paragraphs 1(c) and 2(b) upon fulfilment of its obligations under paragraphs 5.1 to 5.3 of the Agreement on Import Licensing Procedures and upon transmitting to the other Parties through Contact Points the relevant notifications made to the WTO.
4. Each Party shall to the extent of its capacity publish the information that it provides to other Parties under paragraphs 1, 2 and 3 online with a view to public availability and ensure that the information available online is kept up-to-date.
5. A Party may fulfil its obligations under paragraphs 1, 2 and 3 by providing to the other Parties through Contact Points the details of such websites where the requisite information is posted and readily accessible to any person.
6. This Article shall not apply to measures covered by the SPS Agreement or the TBT Agreement or to import licensing regimes governing the administration of tariff rate quotas with respect to tariff rate quotas established in the WTO Schedules of Concessions and Commitments on Goods of WTO Members.

Article 15: Contact Points and Technical Discussions

1. Each Party shall provide each other Party with a Contact Point to facilitate the distribution of requests and notifications made in accordance with this Chapter.
2. Each Party shall ensure the information provided under paragraph 1 is kept up-to-date.
3. When a Party considers that any proposed or actual measure of another Party or Parties may materially affect trade in goods between the Parties, that Party may, through Contact Points, request detailed information relating to that measure and, if necessary, request technical discussions with a view to resolving any concerns about the measure. The other

Party or Parties shall respond promptly to such requests for information and technical discussions.

4. Technical discussions held under this Article do not constitute an intention to seek formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement, or any other agreement to which both Parties are party.

Article 16: Meetings on Trade in Goods Matters

1. The Parties shall, through the Joint Committee or a relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.

2. The Parties, through the Joint Committee or a relevant subsidiary body, shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of entry into force of this Agreement.

3. The Parties, through the Joint Committee or a relevant subsidiary body, shall review the operation of Articles 3.2(c) and 3.3 and Annex 2-B two years from the date of initial application of Annex 2-B, and thereafter at ten-year intervals unless otherwise agreed by the Parties, and shall submit a report to the Joint Committee, including any recommendations, within six months of the date of commencement of each review.

Article 17: Amendments to the Harmonized System

1. When a periodic amendment to the Harmonized System is published, the Parties shall prepare technical revisions to Annex 2-A to implement that version of the Harmonized System, and shall do so in accordance with this Article and the relevant procedures for technical revisions to Annex 2-A as adopted by the Joint Committee under Chapter 12 (Institutional Provisions).

2. The Parties shall mutually decide whether any other technical revisions to Annex 2-A are necessary.

3. The Parties shall ensure that technical revisions to Annex 2-A are carried out on a neutral basis and that market access conditions are not impaired by the process or the outcomes of technical revision to the Annex.

4. The Parties, through the Joint Committee or a relevant subsidiary body established by it, shall endorse and promptly publish the technical revisions that are prepared pursuant to paragraphs 1 and 2.

Article 18: Non-Application of Articles 15 and 16 to Matters within the Scope of Other Chapters

Articles 15 and 16 shall not apply to matters within the scope of Chapter 3 (Rules of Origin and Verification Procedures), Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) or Chapter 6 (Technical Regulations, Standards and Conformity Assessment Procedures).

ANNEX 2-A

SCHEDULES OF COMMITMENTS ON TARIFFS

This Annex contains Schedules of Commitments on Tariffs pursuant to Article 3.1.

I. Commitments on Ordinary Customs Duties

1. Part I of each initial or revised Schedule annexed hereto shall be established or be replaced in modified form as the Parties agree and as foreseen under, and pursuant to, this Agreement.

General Notes

2. For the purposes of this Annex:

- (a) “**Tariff Code**” and “**Description**” refer to each actual or proxy national tariff line of a Party and the corresponding description the Parties agree had existed, in fact or in effect, on a mutually agreed date prior to entry into force of the Agreement for that Party.
- (b) “**Base Rate**” refers to the rate of ordinary customs duty of a Party based on the most-favoured-nation applied rate (in the case of a WTO Member) or the general non-preferential applied rate (in the case of a non-WTO Member) the Parties agree had existed in relation to the tariff code, in fact or in effect, on the mutually agreed date prior to entry into force of the Agreement for that Party under subparagraph (a).
- (c) “**U**” refers to no commitment being shown in relation to the base rate for the relevant tariff code and to the duty being “**unbound**” for the year concerned.

3. In the Schedules of all Parties, commitments shown shall:

- (a) be for calendar years, except for the periods that non-calendar year references are permitted under paragraph 4;
- (b) be effective from 1 January of the year concerned, except where:
 - (i) the year concerned is the year of entry into force for the Party concerned; or
 - (ii) another date is specified pursuant to this Agreement; and
- (c) remain effective after the years for which they are first shown, unless another commitment is shown for a subsequent year.

4. For a Party that is a Signatory:

- (a) Once the date of entry into force of the Agreement pursuant to Article 8.1 of Chapter 15 (Final Provisions) is known:
 - (i) ‘year 1’ shall become the calendar year of the date of entry into force of the Agreement pursuant to Article 8.1 of Chapter 15 (Final Provisions), regardless of whether the date pursuant to Article 8.2 of Chapter 15 falls in the same year or in a later year¹; and
 - (ii) non-calendar years (other than those under subparagraph (b)) shall be replaced by specific calendar years.
- (b) Once the date of graduation of a Least Developed Country (LDC) from LDC status is known:
 - (i) ‘year 1 LDC’ shall become the calendar year following that of the date of its graduation from LDC status or the 11th calendar year from the date of entry into force pursuant to Article 8.1 of Chapter 15 (Final Provisions), whichever is later; and
 - (ii) non-calendar years of the form ‘year 1 LDC’ up to ‘year 25 LDC’ in its schedule shall be replaced by specific calendar years.

Australia: Schedule of Commitments on Tariffs – Part I

Pursuant to Article 3.1(a) of Chapter 2 (Trade in Goods), Australia shall eliminate ordinary customs duties on originating goods from the date of entry into force of this Agreement.

New Zealand: Schedule of Commitments on Tariffs – Part I

Pursuant to Article 3.1(a) of Chapter 2 (Trade in Goods), New Zealand shall eliminate ordinary customs duties on originating goods from the date of entry into force of this Agreement.

¹ For the avoidance of doubt, where this Agreement enters into force for a Signatory at a date later than the date of entry into force of this Agreement, that Party shall implement the scheduled tariff reduction that it would have implemented had the Agreement entered into force for that Party on the same date as the date of entry into force of this Agreement pursuant to Article 8.1 of Chapter 15 (Final Provisions).

II. Commitments on Other Duties or Charges

General Note

1. Part II of the Schedules shall be established as the Parties agree and as foreseen under, and pursuant to, this Agreement.

Kiribati: Schedule of Commitments on Tariffs – Part II

2. Kiribati may maintain an import levy imposed on imports under the *Import Levy (Special Fund) Act of 1977* or any successor legislation at a rate not exceeding A\$30 per 875 kilogram or per cubic metre of the goods subject to the payment of the levy, whichever rate yields the greater amount.

Tuvalu: Schedule of Commitments on Tariffs – Part II

3. Tuvalu may maintain an import levy imposed on imports under the Import Levy (Imposition of Levy) Order of 2008 or any successor legislation at a rate not exceeding A\$10 per metric ton or per cubic metre of the goods subject to the payment of the levy, whichever rate yields the greater amount.

ANNEX 2-B

ADMINISTRATION OF EXEMPTIONS FROM THE OBLIGATION UNDER ARTICLE 3.2 IN RESPECT OF REGIONAL TRADE AGREEMENTS UNDER ARTICLE 3.2(C)

1. A Party shall request an exemption from the Joint Committee pursuant to Article 3.2(c) from the obligation under Article 3.2 by notifying the Joint Committee through Contact Points either:

- (a) it has entered into, or expects in the current calendar year to enter into, a regional trade agreement it considers might qualify for the exemption; or
- (b) a non-Party has acceded to a regional trade agreement to which it is a party for which the Joint Committee has approved an existing exemption.

2. When such notification is provided, the Parties acting jointly shall prepare calculations of shares of world merchandise exports for the consideration of the Joint Committee. Such calculations shall:

- (a) be averages of annual shares in the three consecutive calendar years ending in the calendar year two years before the current calendar year;¹
- (b) be prepared without undue delay and be provided to the Joint Committee within 90 days, unless sufficient data in relation to all three years are not yet published, in case of which the date of commencement of preparation of the calculations may be delayed until 1 July of the current year;
- (c) use estimates of merchandise exports of each constituent party and the world denominated in current US dollar values for the same time period;
- (d) if annual data for a country or territory are not available, use the most recent annual data as proxy data for the year concerned, adjusted in proportion to the movement between each of those years in the year-average rate of exchange between the US dollar and the local currency of the country or territory;
- (e) in respect of the estimate of a customs union's contribution to world merchandise exports, be net of the intra-customs union exports subject to availability of suitable data;
- (f) be calculated using statistics published in the WTO International Trade Statistics publication or successor publication for as long as such statistics are published there in a form that is suitable for the purposes of this Annex, and notwithstanding subparagraph (e):

¹ The current calendar year for the purposes of paragraph 2(a) and paragraph 4 shall be the actual or expected year of entry into force or the year of accession.

- (i) merchandise exports of a country or territory that is a constituent party shall be the published estimate if available, or an estimate published in another data source agreed by the Parties; and
- (ii) world merchandise exports shall be the published estimate net of intra-European Union exports and, only if used to derive that estimate, also be net of intra-customs union exports for any other customs union;

but if the WTO International Trade Statistics publication or successor publication no longer publishes statistics in a form that is suitable for the purposes of this Annex, the data sources to be used shall be agreed by the Parties.

3. The Joint Committee may approve the exemption if the Parties are satisfied:
- (a) the calculations show that no maximum limit for exemption under Article 3.2(c) is exceeded;
 - (b) the regional trade agreement otherwise qualifies for the exemption; and
 - (c) the Party has observed its publication and notification obligations under Articles 13 and 14 in relation to the regional trade agreement.

4. An approved exemption shall be null and void if the regional trade agreement has not entered into force for the requesting Party five years after the date of approval. A subsequent approval may be sought if that Party has entered into, or expects in the current calendar year to enter into, the same agreement and considers the agreement might qualify for the exemption.

ANNEX 2-C

NOTIFICATION OF MODIFIED OR NEW IMPORT LICENSING PROCEDURES PURSUANT TO ARTICLES 14.1(C) AND 14.2(B)	
A. Notifying Party:	
B. Date of notification:	
C. Date of the notification replaced by this notification (if relevant):	
D. Product or products subject to licensing procedures:	
E. Contact point for information on eligibility:	
F. Administrative body (bodies) for submission of applications:	
G. Date and name of publication where licensing procedures are published:	
H. Indication of whether the licensing procedure is automatic or non- automatic according to definitions contained in Articles 2 and 3 of the Agreement on Import Licensing Procedures:	
I. In the case of automatic licensing procedures, their administrative purpose:	
J. In the case of non-automatic licensing procedures, indication of the measure being implemented through the licensing procedure:	
K. Expected duration of the licensing procedure, if this can be estimated with some probability, and if not, reason why this information cannot be provided:	