

This **TEXTUAL PROPOSAL** is the European Union's proposal for legal text on "National treatment and market access for goods" in TTIP. It was tabled for discussion with the US and then made public on 21 March 2016. The actual text in the final agreement will be a result of negotiations between the EU and US.

## **NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS**

### ***Section A: Scope and coverage***

#### *Article*

#### **Scope**

This Chapter shall apply to trade in goods between the Parties.

#### *Article*

#### **Objective**

The Parties shall progressively and reciprocally liberalise trade in goods over a transitional period starting from the entry into force of this Agreement in accordance with the provisions of this Agreement and in conformity with Article XXIV of the GATT 1994.

#### *Article*

#### **National Treatment**

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

#### *Article*

#### **Classification of goods**

The classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonised Commodity Description and Coding System 2012 ("HS 2012") and its amendments.

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## ***Section B: Reduction and elimination of customs duties***

### *Article*

#### **Reduction and elimination of customs duties on imports**

1. Each Party shall reduce and eliminate its customs duties<sup>1</sup> on imported goods originating<sup>2</sup> in the other Party in accordance with the schedules set out in the Annexes [...] and [...] (hereinafter referred to as "the Schedules").
2. The base rate of customs duties on imports, to which the successive reductions are to be applied under paragraph 1, shall be that specified in the Schedules.
3. If at any moment a Party reduces its applied most favoured nation customs duty rates on imports after the date of entry into force of this Agreement, that duty rate shall apply if and for as long as it is lower than the customs duty rate on imports calculated in accordance with that Party's Schedule.
4. Three years after the entry into force of this Agreement, at the request of either Party, the Parties shall consult to consider accelerating and broadening the scope of the reduction and elimination of customs duties on imports. A decision by the Parties [*within the ...Committee*] on such acceleration or broadening shall supersede any duty rate or staging category determined pursuant to their Schedules for that good.

### *Article*

#### **Elimination of customs duties and taxes on exports**

Neither Party shall maintain or institute any customs duty or tax on or in connection with the exportation or sale for export of goods to the other Party, or any internal taxes on goods exported to the other Party that are in excess of those imposed on like goods destined for internal sale.

### *Article*

#### **Standstill**

Upon the entry into force of the Agreement, neither Party may increase any existing customs duty, or introduce any new customs duty on the importation of a good originating in the other Party. This shall not preclude either Party from raising a customs duty to the level established in its Schedule following a unilateral reduction.

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<sup>1</sup> See *Definitions*

<sup>2</sup> See *Definitions*

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### ***Section C: Special Régimes***

#### *Article*

#### **Goods re-entered after repair**

1. For the purposes of this Article, repair means any processing operation undertaken on goods to remedy operating defects or material damage and entailing the re-establishment of goods to their original function or to ensure their compliance with technical requirements for their use, without which the goods could no longer be used in the normal way for the purposes for which it was intended. Repair of goods include restoring and maintenance. It shall not include an operation or process that either:

- (a) destroys the essential characteristics of goods or creates new or commercially different goods,
- (b) transforms unfinished goods into finished goods, or
- (c) is used to improve the technical performance of goods/

2. Except as otherwise provided in Annex X.13, a Party shall not apply customs duty to goods, regardless of their origin, that re-enter its territory after those goods have been temporarily exported from its territory to the territory of the other Party for repair, regardless of whether such repair could be performed in the territory of the Party from which the goods were temporarily exported for repair.

3. Paragraph 2 does not apply to goods imported in bond, into free trade zones, or zones of similar status, that are exported for repair and are not re-imported in bond, into free trade zones, or zones of similar status.

4. A Party shall not apply customs duty to goods, regardless of their origin, imported temporarily from the territory of the other Party for repair.

### ***Section D: Non-Tariff Measures***

#### *Article*

#### **Import and export restrictions**

1. Article XI of the GATT 1994, its Notes and Supplementary Provisions are incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. Before taking any measures provided for in Articles XI.2 (a) and (c) of the GATT 1994, the Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30

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days, the exporting Party may apply measures under this Article on the exportation of the product concerned, without prejudice to the dispute settlement provisions of this Agreement. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

#### *Article*

### **Fees and formalities connected with importation and exportation**

1. Each Party shall ensure, in accordance with Article VIII of the GATT 1994 that all fees and charges of whatever character other than customs duties imposed on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered, which shall not be calculated on an *ad valorem* basis, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes. To this end Article VIII of the GATT 1994 including its Notes and Supplementary Provisions is made part of this Agreement.
2. Each Party shall publish a list of the fees and charges it imposes in connection with importation or exportation.
3. No Party shall require consular transactions<sup>3</sup>, including related fees and charges, in connection with the importation of any good of another Party.

#### *Article*

### **Import and export licensing procedures**

1. The Parties affirm their existing rights and obligations under the WTO Agreement on Import Licensing Procedures.
2. The Parties shall ensure that all import and export licensing procedures are neutral in application, and administered in a fair, equitable, non-discriminatory and transparent manner.
3. The Parties shall only adopt or maintain licensing procedures as a condition for importation into their territory or exportation from their territory to the other Party when other appropriate procedures to achieve an administrative purpose are not reasonably available.
4. The Parties shall not adopt or maintain non-automatic import or export licensing procedures unless such procedures are necessary to implement a measure that is consistent with this Agreement. Any Party adopting a non-automatic licensing procedure shall indicate clearly the measure being implemented through such licensing procedure.

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<sup>3</sup> See *Definitions*

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5. The Parties shall introduce and administer any licensing procedures in accordance with Articles 1 to 3 of the WTO Agreement on Import Licensing Procedures. To this end, Articles 1 to 3 of the WTO Agreement on Import Licensing Procedures are incorporated into and made part of this Agreement. The Parties shall apply those provisions, *mutatis mutandis*, for any licensing procedures for exports to the other Party.

6. Any Party introducing licensing procedures or changes in these procedures shall proceed in accordance with Article 5 of the WTO Agreement on Import Licensing Procedures.

7. Upon request of the other Party, each Party shall promptly provide any relevant information regarding any licensing procedures which the Party to which the request is addressed intends to adopt or has adopted or maintained, including the information indicated in paragraph 5.

### ***Section E: Specific exceptions related to goods***

#### *Article*

#### **General Exceptions**

1. Nothing in this [...*scope to be considered...*] shall prevent the taking of measures in accordance with Article XX of the GATT 1994, its Notes and Supplementary Provisions, which are hereby incorporated into and made part of this Agreement.

2. Before taking any measures provided for in Articles XX(i) and XX(j) of the GATT 1994, the exporting Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days, the exporting Party may apply measures under this Article on the exportation of the product concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

### ***Section F: Institutional Provisions***

*[To be considered]*

### ***Section G: Definitions***

#### *Article*

#### **Definitions**

Unless otherwise specified in this Chapter, terms shall have the meanings attributed to them in the GATT and the WTO multilateral agreements on trade in goods.

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

*Consular transaction* 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, shippers' export declaration or any other customs documentation in connection with the importation of the good.

*Customs duty* A duty or charge of any kind imposed on or in connection with the importation or exportation of a good, including any form of surtax or surcharge imposed on or in connection with such importation or exportation. It does not include (a) a charge equivalent to an internal tax imposed consistently with Article [...] of this Chapter; (b) a duty imposed consistently with [*any bilateral duties authorised under the agreement, e.g. bilateral safeguards or DS sanctions, text to be defined*]; (c) a duty applied consistently with Article VI, Article XVI, Article XIX of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, the WTO Agreement on Safeguards, Article V of the WTO Agreement on Agriculture and the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes; or (d) a fee or other charge imposed consistently with Article [...] of this Chapter.

*Originating* Qualifying under the rules of origin set out in the [*Annex on Rules of Origin*].

[*add additional specific definitions as appropriate*]