

[illegible]

### ARTICLE X-3: CUSTOMS DUTY

[For the purposes of this Chapter, a "customs duty" includes any 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~~. A "customs duty" does not include any:

- (a) charge equivalent to an internal tax imposed consistently with [Article X-8 of this Agreement <sup>1</sup>/Article III of GATT];
- (b) any anti-dumping or countervailing duty or safeguard duty applied consistently with the provisions of GATT 1994, the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and the WTO Agreement on Subsidies and Countervailing Measures and WTO Agreement on Safeguards; and
- (c) fee or other charge imposed consistently with [Article X-~~11~~(10 – changed by EC 01.10.2007) of this Agreement / Article VIII of GATT] of this Agreement.

**Comment:**

*EU: This is a combination of both EU and Indian texts. In order to avoid confusion, this Article only focuses on charges on import. Charges on export are covered in Article X-11.*

*The EU would prefer to refer to the articles of this Agreement where provisions of GATT are referred to directly (therefore prefer keeping EU indents a) and c). There is no direct reference to GATT Article VI elsewhere in the text so far, and therefore we propose to take Indian indent (ii).*

**(01.10.2007 - India proposed to take this Article to definition. Secondly, the current formulation goes beyond GATT and, therefore, abjures its rights under the WTO.**

**EU explained that reference to the Articles of the Agreement (rather than GATT provisions) was legally necessary to ensure the application of the entirety of the provisions in the eventuality of bilateral dispute settlement.**

**Both sides agreed to discuss this provision later.)**

### ARTICLE X-4: CLASSIFICATION OF GOODS (OK) (AGREED BY BOTH SIDES 01.10.2007)

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonised Commodity Description and Coding System ("HS").

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<sup>1</sup> Provisions to ensure compliance and transparency as regards such charges to be further discussed.

## Section B: Elimination of Customs Duties

### ARTICLE X-5: ELIMINATION OF CUSTOMS DUTIES ON IMPORTS

1. Each Party shall eliminate and/or reduce customs duties on goods originating in the other Party in accordance with the Schedules set out in Annexes \_\_\_\_ and \_\_\_\_ (hereinafter referred to as "Schedules"). (OK)

2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be that specified in the Schedules. The reduced customs duty rates calculated in accordance with Annexes ( ) shall be applied rounded to the first decimal place.

(01.10.2007 - Both sides to examine whether a reference is made to the base rate in sub-paragraph 2 or specified in the Schedule)

[3. If at any moment a Party reduces its applied most favoured nation customs duty rates 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 calculated in accordance with that Party's Schedule.]

(01.10.2007 - India raised the point relating to the maintenance of its GSP concessions. The present formulation provides for application of MFN duty where MFN duty is lesser than the preferential rate of duty. (lesser duty rule). However, India enjoys GSP benefits which need to be taken into account while determining the lesser duty rule. India, therefore, proposed that the above sub-paragraph would need to be modified.

EU stated that while it appreciates the position explained by India, it would need to consult its GSP experts.

[4. Upon request by a Party, the parties shall consult each other to consider the possibility of accelerating the reduction and/or elimination of customs duties as set out in the Schedules including the goods that are excluded from tariff concessions in such Schedules. Such an agreement by the parties shall replace the terms established for those goods in the Schedules [India: in accordance with Articles (Amendments) and each party's applicable domestic legal procedures]].

(EU stated that the intention of the above sub-paragraph is to avoid going through a cumbersome process of amending the Bilateral Trade & Investment Treaty. The above provision would allow implementation of the agreement by the two sides through simple and less time consuming procedure. India stated that it needs to examine the legal implication of this proposal. India would revert back.)

[5. Within [X years – to be negotiated] from the entry into force of this Agreement,

the Parties shall enter into negotiations with the aim of broadening the scope of gradual elimination of customs duties on imports between the Parties. An agreement by the Parties to gradually eliminate a remaining custom duty on a good shall supersede any duty rate specified in the Schedules for that good.

**Comment:**

**EC:** *This is a combination of EU and Indian texts:*

- paragraph 1 is a combination of the two version;*
- paragraph 2, first sentence from EU text, second sentence from Indian text;*
- paragraph 3 from EU text – India seeks further clarifications;*
- paragraph 4 from Indian text – EU seeks further clarifications;*
- paragraph 5 from EU text.*

**ARTICLE X-6: STANDSTILL**

[Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on a good originating in the other Party. This shall not preclude that either Party may:

- (a) raise a customs duty to the level established in its Schedule following a unilateral reduction; or
- (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.]

**Comment:**

**India:** *We would need to understand the purpose and intention of this provision*

(01.10.2007 - EU: This provision is in all the FTAs that EU has signed. It provides for situations where no tariff concessions are offered on certain tariff lines in the bilateral agreement, and if the MFN duty is raised at a later date, EU would continue to be entitled to export at the MFN duty as on the date of implementation of the Agreement.

India expressed its difficulty in accepting the above formulation as it limits, its rights to raise its MFN duty up to the WTO bound levels. India explained that on some commodities it applies MFN duties which are much lower than the WTO bound level due to domestic considerations of availability, control of prices in the domestic market, inflation, etc. These duties are reviewed periodically and India cannot abjure its rights to raise the MFN duties on such commodities up to the bound level. At this stage, India cannot agree to a blanket commitment on standstill on raising MFN duties.)

**Section C: Special Regimes**

**ARTICLE X-7: TEMPORARY ADMISSION AND OTHER DUTY FREE TREATMENT OF  
GOODS**

[EU: Each Party shall afford treatment to the goods of the other Party in accordance with the Convention on Temporary Admission, including its Annexes, (*Istanbul Convention*) by the World Customs Organization, which are incorporated into and made part of this Agreement.]

[India:

1. *Each Party shall accept in lieu of its national Customs documents, and as due security for the sums referred to in Article 6 of the ATA Carnet Convention, ATA carnets valid for its territory and issued and used in accordance with the conditions laid down in the ATA Carnet Convention, for temporary admission of:*

- (a) *professional equipment necessary for representatives of the press or of broadcasting or television organizations for purposes of reporting or in order to transmit or record material for specified programs, cinematographic equipment<sup>2-7</sup> necessary in order to make a specified film or films or other professional equipment necessary for the exercise of the calling, trade or profession of a person to perform a specified task;*
- (b) *goods intended for display or demonstration at an event; and*
- (c) *goods intended for use in connection with the display of foreign products at an event, including:*
  - (i) *goods necessary for the purpose of demonstrating foreign machinery or apparatus to be displayed,*
  - (ii) *construction and decoration material, including electrical fittings, for the temporary stands of foreign exhibitors,*
  - (iii) *advertising and demonstration material which is demonstrably publicity material for the foreign goods displayed, for example, sound recordings, films and lantern slides, as well as apparatus for use therewith; and*
  - (iv) *equipment including interpretation apparatus, sound recording apparatus and films of an educational, scientific or*

*cultural character intended for use at international meetings, conferences or congresses.*

2. *The facilities referred to in paragraph 1 shall be granted provided that:*
- (a) the goods in all respects conform to the description, quantity, quality, value and other specifications given in the ATA Carnet duly certified by the customs authorities at the country of exportation;*
  - (b) the goods are capable of identification on re-exporting;*
  - (c) the number or quantity of identical articles is reasonable having regard to the purpose of importation; and*
  - (d) the goods shall be re-exported within three months from the date of importation or such other longer period in accordance with the domestic laws and practices of the Parties."*

**Comment:**

*EU: This article may need to be discussed in the sub-group on customs and trade facilitation, without prejudice of where the article is ultimately placed in the Agreement.*

**(01.10.2007 - India to confirm whether it is a signatory to the Istanbul Convention. Both sides agreed to remit the Article to the Sub-group of Customs and Trade Facilitation.)**

**Section D: Non-Tariff Measures**

**ARTICLE X-8: NATIONAL TREATMENT**

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

[2. The treatment accorded by a Party to the products of the other Party shall be considered less favourable notably if it results in less advantageous conditions of competition for imported than domestic goods.]

**(01.10.2007 - EU will provide the WTO jurisprudence of the above formulation)**



[3. EU: Prior to their implementation, eEach Party shall notify the other of any charges, duties or fees imposed on importation or in connection with importation as equivalent to an internal tax or charge, or of any internal tax or charge imposed only on imported products in excess of the customs duties shown in the Schedules that it may introduce prior to their implementation. This notification shall contain information demonstrating that such charges, duties or fees are equivalent to an internal tax imposed consistently with paragraphs 1 and 2 above.]

[4. If one of the Parties may requests information from the other Party on any charge imposed on importation or in connection with importation as equivalent to an internal tax or charge, or on any internal tax or charge imposed on imported products concerning applied internal taxes and other internal charges within the meaning of Article III and VIII of the GATT 1994 on imported or domestic products, or on any other charges in excess of the customs duties shown in the Schedules, the requested Party shall ensure maximum transparency and furnish provide the requesting Party with sufficientall information necessary to determine establish that such charges, duties or fees are equivalent to an internal tax imposed consistently with paragraphs 1 and 2 above this article and with Article III, paragraph 2 of the GATT 1994.]

**Comments:**

*India seeks clarification on paragraph 1, second sentence and paragraph 2.*

*EU: Paragraph 4 is an EU proposal intended to ensure a maximum of transparency as regards additional duties and charges. As indicated in the footnote to Article X-3(a) of the text, this is an issue of particular concern. During the negotiations, we would wish therefore to be able to assess comprehensively which are the charges and duties levied on imported goods in addition to the basic customs duties, and in particular, their non-discriminatory character and their impact on EU.*

(01.10.2007 - India: Sub-paragraphs 3-4 go beyond Article III of GATT and would be difficult to accept. The obligation at sub-paragraph 3 to inform EU prior to taking any action for the sake of transparency is not possible for India. These duties are levied by Ministry of Finance, in some cases with the approval of Parliament. There are issues of confidentiality of taxation provisions and of Parliamentary privileges involved. Further, State Governments can levy certain taxes which are within their powers conferred upon them as per the Constitution of India and they are under no obligation to consult the Central Government in exercise of such powers.

EU explained that sub-paragraphs 3 and 4 have been proposed for bringing about transparency regarding equivalence between internal levies and federal additional duty or special additional duty on import imposed by the Central Government. The intention is only to cover duties which are levied on imported products.)

**ARTICLE X-9: IMPORT AND EXPORT RESTRICTIONS (OK)**  
**(AGREED ON 01.10.2007)**

Neither Party may adopt or maintain any prohibition nor 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 as otherwise provided in this Agreement or in accordance with Article XI of the GATT 1994 including its Notes and Supplementary Provisions. To this end Article XI of the GATT 1994 and including its Notes and Supplementary provisions are incorporated into and made a part of this Agreement.

**ARTICLE X-10: FEES AND OTHER CHARGES ON IMPORTS**

{Except as otherwise provided in this Agreement, each Party shall ensure that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article X-8 of this Agreement, and antidumping and countervailing duties applied pursuant to a Party's domestic law and consistently with Chapter \_\_ of this Agreement) imposed on or in connection with importation [~~or exportation~~ are based on specific rate] and reflect the ~~real value~~approximate cost of the services rendered.}

**Comment:**

*India: Requests to discuss this further.*

*EU: Import and export fees and charges are now divided on two separate articles, namely 10 and 11. Changes are either underlined or strikethrough*

(01.10.2007 - EU explained that the last part of the sentence "specific rate and reflect the real value of the services rendered" is not in Article VIII of GATT. However, they stated that the mention of "specific rate" is on the basis of GATT legal jurisprudence (dispute between EC and USA). EU stated that it would provide a background note so that India can examine the above formulation.

**ARTICLE X-11: DUTIES, TAXES OR OTHER FEES AND CHARGES~~CUSTOMS DUTIES ON~~  
EXPORTS**

[EU: Except as otherwise provided in this Agreement, neither Party may maintain or institute any duties, taxes fees or other charges imposed on or in connection with the exportation of goods to the other Party, or any internal taxes, fees or other charges on goods exported to the other Party that are in excess of those imposed on like products destined for internal sale.]

**Comment:**

*India: India can not take this obligation in the bilateral FTA. We are not agreeable to this Article, hence propose for deletion*



*EU: Reformulation of the EU proposal. Import and export fees and charges are now divided on two separate articles, namely 10 and 11. Changes are either underlined or strikethrough.*

(01.10.2007 - EU stated that the above provision is included in all their FTAs. India stated that it can't forgo its rights under Article XI (1) of GATT.)

#### ARTICLE X-12: CUSTOMS VALUATION

[The WTO Agreement on Implementation of Article VII of the GATT 1994, without the reserves and options provided for in Article 20 and paragraphs 2, 3 and 4 of Annex III of that Agreement, shall be incorporated into and made part of this Agreement.]

(01.10.2007 - India stated that it would check the factual position relating to its reserves and options under Article VII of GATT (paragraph 2, 3 and 4 of Article 20 of Annex III)).

#### ARTICLE X-13: TRADE RELATED INVESTMENT MEASURE

[Neither Party shall apply any Trade Related Investment Measure that is inconsistent with the provisions of Article III or Article XI of GATT. To this end The Agreement on Trade-Related Investment Measures is incorporated into and made a part of this Agreement.]

*Comment:*

*India: Would like to understand its relevance in FTA*

(01.10.2007 - The placement of this Article, whether to keep it in TIG or in Investment Chapter will be decided later. Both sides would revisit after checking it with their lawyers.)

#### ARTICLE X-14: IMPORT LICENSING PROCEDURES

1. The WTO Agreement on Import Licensing Procedures shall be incorporated into and made a part of this Agreement. (OK)-

[2. Each Party shall apply the provisions contained in the Agreement on Import Licensing Procedures, mutatis mutandi, for any licensing procedures for exports to the other Party.]

(01.10.2007 - To be discussed further.)

#### ARTICLE X-15: NON-NEW GOODS

[EU:

1. Except as otherwise explicitly provided in this Agreement, neither Party shall differentiate in their requirements or other measures, or the enforcement thereof, between non-new goods and new goods. Non-new goods shall be understood to include notably used and remanufactured products.

2. This Article shall be without prejudice to the Parties' requirements or other measures with regard to waste.]

***Comment:***

*India: The above formulation is not acceptable.*

(01.10.2007 - India highlighted that the matter is being discussed in the multi-lateral framework. There are strong concerns from domestic industry on the adverse impact of import of non-new goods / manufactured goods. There have been instances of import of old and outdated equipment / machinery imported into India which have lead to public policy outcry. Issues of enforcement of Health, Safety, Environment, Standards are of concern – also because of ability to implement the standards. Import of waste is another matter of serious concern.

EU stated that the general concerns raised by Indian industry on competition with non-new goods is an issue that would be difficult to address but on issues of public policy, health, safety and environment EC would propose formulations that can address India's concern.)

**ARTICLE X-16: STATE TRADING ENTERPRISES**

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of the GATT 1994, its Notes and Supplementary Provisions and the WTO Understanding on the Interpretation of Article XVII, which are hereby incorporated into and made part of this Agreement. (OK)

[2. In so far one of the Parties requests information of the other Party on individual cases of state trading enterprises, the manner of their operation and the effect of their operations on bilateral trade, the requested Party shall ensure maximum transparency possible without prejudice to GATT Article XVII.4(d) on confidential information.]

***Comment:***

*EU: Paragraph 1 combines the Indian and EU texts.*

(01.10.2007 - Both would check if Paragraph 2 is over and above the GATT obligation. To be discussed later)

**ARTICLE X-17: ELIMINATION OF SECTORAL NON-TARIFF MEASURES**

- [1. The Parties shall implement their commitments on sector-specific non-tariff measures on goods in accordance with the commitments set out in Annexes \_\_\_\_ and \_\_\_\_ (hereinafter referred to as "Sectoral Annexes").]
- [2. Except as otherwise provided in this Agreement, on the request of either Party or within five years from the entry into force of this Agreement, whichever is earlier, the Parties shall enter into negotiations with the aim to broadening the scope of their commitments on sector-specific non-tariff measures on goods.]

**Comment:**

*India: Agrees in principles to this concept, but would need to discuss it further.*

(01.10.2007 - Both sides agreed to discuss the above formulation later.)

**Section E: Specific Exceptions related to Goods**

**ARTICLE X-18: GENERAL EXCEPTIONS**

1. The Parties affirm their existing rights and obligations under Article XX of the GATT 1994 [*India: and XXI*] and its Notes and Supplementary Provisions, which are hereby incorporated into and made part of this Agreement.

(01.10.2007 - EU will reconsider if Article XXI can be placed here.)

2. [*EU:* The Parties understand that before taking any measures provided for in Article XX(i) and Article 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.]

3. [*India:* Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to the other Party, or the goods of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party, or goods of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such goods.]

**Comments:**

*EU: Paragraph 1 is a combination of both texts. The EU does not agree to include GATT Article XX at this point since this has wider application and will be taken up in a general security clause within a horizontal chapter of the Agreement, rather than in the*

*trade in goods chapter only.*

*The EU would appreciate explanations on paragraph 3 as proposed by India, in particular how it complements a horizontal security clause mentioned above.*

(01.10.2007 - Both sides agreed to discuss sub-paragraph 2 and 3 later).

#### ARTICLE X-19: RULES OF ORIGIN

Goods covered by the provisions of this Agreement shall be eligible for preferential tariff treatment provided that they satisfy the rules of origin as set out in Chapter (Rules of Origin).

(EU stated that it can in principle agree to this formulation, but would confirm after checking with its lawyers.)

#### Article X-20: RESTRICTIONS TO SAFEGUARD BALANCE OF PAYMENT

Article XII of the GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994 shall be incorporated into and made a part of the Agreement, for measures taken for balance of payments purposes for trade in goods.

(EU stated that it can in principle agree to this formulation, but would confirm after checking with its lawyers.)

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