

No. 33269

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**ESTONIA
and
CANADA**

**Agreement on trade and commerce. Signed at Ottawa on
27 June 1994**

Authentic texts: Estonian, English and French.

Registered by Estonia on 17 October 1996.

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Accord de commerce. Signé à Ottawa le 27 juin 1994

Textes authentiques : estonien, anglais et français.

Enregistré par l'Estonie le 17 octobre 1996.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC
OF ESTONIA AND THE GOVERNMENT OF CANADA ON
TRADE AND COMMERCE

**THE GOVERNMENT OF THE REPUBLIC OF ESTONIA AND THE
GOVERNMENT OF CANADA** (hereinafter referred to collectively
as "Parties" and individually as "Party"),

CONVINCED that the development of bilateral trade in
goods and services will contribute to increased mutual
understanding and cooperation between the people of the
Republic of Estonia and of Canada;

CONSCIOUS that trade and commercial relations are
essential elements of the bilateral relationship between the
Republic of Estonia and Canada;

RECOGNIZING that the economic restructuring and
progress towards a market-based economy in the Republic of
Estonia is creating additional possibilities for expanded
bilateral trade;

NOTING Canada's status as a contracting party of the
General Agreement on Tariffs and Trade (GATT)² and
the Republic of Estonia's intention to accede to the GATT on
terms to be agreed between the Republic of Estonia and the
GATT CONTRACTING PARTIES;

REAFFIRMING their desire to further expand commercial
relations in accordance with the principles and conditions
of the Final Act signed in Helsinki on August 1, 1975, and
other documents of the Conference on Security and Co-
operation in Europe, notably the Document of the Bonn

¹ Came into force on 1 March 1995 by notification, in accordance with article XV.

² United Nations, *Treaty Series*, vol. 55, p. 187.

Conference on Economic Co-operation convened in accordance with the relevant provisions of the Concluding Document of the Vienna Meeting of the Conference on Security and Co-operation in Europe;¹

HAVE AGREED AS FOLLOWS:

ARTICLE I

OBJECTIVE

The objective of this Agreement, as elaborated more specifically in its provisions, is to establish a framework of balanced rights and obligations and agreed rules for the conduct of trade and commercial relations between the Republic of Estonia and Canada.

ARTICLE II

DEFINITIONS

For purposes of this Agreement, unless otherwise specified:

"Territory" means:

with respect to the Republic of Estonia, the territory to which its customs laws apply, including any areas beyond the territorial sea of the Republic of Estonia within which, in accordance with international law and its domestic laws, the Republic of Estonia may exercise rights with respect to the seabed and subsoil and their natural resources; and

¹ *International Legal Materials*, vol. XIV (1975), p. 1292; vol. XVII (1978), p. 414; vol. XXII (1983), p. 1395; vol. XXVIII (1989), p. 527; vol. XXIX, No. 4 (1990), p. 1054 (American Society of International Law); United Nations, *Official Records of the General Assembly, Forty-fifth Session*, document A/45/859, p. 3; and *International Legal Materials*, vol. XXXIV, No. 3 (1995), p. 764 (American Society of International Law).

with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources.

"Person" of a country means a citizen or permanent resident of the country or a body corporate constituted under the laws applicable in, or principally carrying on its business within, the territory of the country.

"Third country" means any country other than the Republic of Estonia or Canada.

"Transit" means the passage across the territory of a country, with or without trans-shipment, warehousing, breaking bulk, or change in the mode or means of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the country across whose territory the traffic passes.

"Textile products" means tops, yarns, piece-goods, made-up articles, garments and other textile manufactured products (being products which derive their chief characteristics from their textile components) of cotton, wool, man-made fibres, or blends thereof, in which any or all of those fibres in combination represent either the chief value of the fibres or fifty (50) percent or more by weight (or seventeen (17) percent or more by weight of wool) of the product; artificial and synthetic staple fibre, tow, waste, simple mono- and multi-filaments, as well as textiles made of vegetable fibres, blends of vegetable fibres with fibres specified above, and blends containing silk, which are directly competitive with textiles made of fibres specified

above and for which any or all of those fibres in combination represent either the chief value of the fibres or 50 (fifty) per cent or more by weight of the products.

ARTICLE III

MOST-FAVOURED-NATION TREATMENT

1. Each Party shall accord to the like product of the other Party immediately and unconditionally, and irrespective of the nationality of the carrier, any advantage, favour, privilege or immunity that has been or may hereafter be accorded by it to any product originating in or destined for the territory of any third country with respect to:

- (a) customs duties and charges of any kind imposed on or in connection with importation or exportation of products or imposed on the international transfer of payments for imports or exports;
- (b) the method of levying the duties and charges referred to in clause (a) of this paragraph;
- (c) the rules and formalities connected with their importation or exportation;
- (d) all internal taxes or internal charges of any kind imposed in connection with imported or exported products; and
- (e) all laws, regulations and requirements affecting sale, offering for sale, purchase,

transportation or distribution or use of imported products within the territory of the Party.

2. No prohibition or restriction, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by either Party on the importation of any product of the other Party or on the exportation or sale for export of any product destined for the territory of the other Party unless the importation of the like product of all third countries or the exportation of the like product to the territory of all third countries is similarly prohibited or restricted.
3. Each Party shall accord to the other Party and persons of the other Party treatment no less favourable than it accords to any third country or the persons of any third country in all matters relating to the allocation of foreign exchange for transactions involving the importation and exportation of products and in the administration of foreign exchange regulations in relation to such transactions.
4. The most-favoured-nation treatment provisions of this Agreement shall not apply to advantages now accorded, or which may hereafter be accorded, by either Party resulting from:
 - (a) membership in a customs union or free trade area to which either Party is now or may become a party;
 - (b) preferences or advantages granted to other countries and authorized under the General

Agreement on Tariffs and Trade (GATT) or under other international agreements consistent with the GATT;

- (c) advantages accorded by either Party to adjacent countries in order to facilitate frontier traffic;
- (d) advantages accorded by Canada to countries and their overseas dependencies that are entitled to benefits of the British Preferential Tariff (BPT); or
- (e) advantages that are accorded to third countries on a reciprocal basis in accordance with instruments negotiated within the Uruguay Round and subsequent arrangements concluded under the GATT.

ARTICLE IV

TRANSIT FACILITATION

1. In accordance with applicable laws and regulations, each Party shall facilitate the freedom of transit, via the established routes most convenient for international transit, of products of the other Party across its territory. Products in transit across the territory of a Party that are not released from customs control and have not entered into the commerce of such Party shall not be subject to any unnecessary delays or restrictions and shall be exempt from all duties, taxes and other charges, except charges for transportation, administrative expenses or services rendered in relation to transit.

2. With respect to all charges, regulations and formalities applicable to products in transit, each Party shall accord to products of the other Party in transit across its territory treatment no less favourable than the treatment accorded to products of any third country in transit across its territory.

3. Each Party shall accord to the products of the other Party, which have been in transit across the territory of any third country and have not been released from customs control or entered into the commerce of such third country, treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going across the territory of such third country.

ARTICLE V

STATE TRADING ENTERPRISES

1. Each Party undertakes that if it establishes or maintains a state enterprise wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases of imports or sales of exports, act in a manner consistent with the principles of non-discriminatory treatment provided for in the present Agreement. To this end, such enterprises shall make any purchases of imports or sales of exports solely in accordance with commercial considerations including price, quality, availability and other conditions, and shall afford to the enterprises of the other Party adequate opportunity in accordance with customary business practice to compete for participation in such transactions.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale.

ARTICLE VI

DISRUPTIVE TRADE PRACTICES

1. Nothing in this Agreement prejudices or qualifies the right of either Party to enact and administer laws and regulations:
 - (a) consistent with the requirements of Article VI of the GATT and the related codes or successor agreements concluded under the GATT; or
 - (b) applicable to products imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products.
2. As soon as possible after a request for initiation of an investigation is accepted by the authorities of one Party pursuant to a law or regulation referred to in paragraph 1 of this Article, and in any event upon the initiation of an investigation, the other Party shall be afforded an adequate opportunity for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution. Furthermore, throughout the period of investigation, the other Party shall be afforded an adequate opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.

3. The Party which initiates an investigation or is conducting such an investigation shall permit, upon request, access to non-confidential evidence and data being used for initiating or conducting the investigation.
4. Each Party shall ensure that its laws and regulations referred to in paragraph 1 of this Article are transparent and afford affected parties an opportunity to submit their views. Such laws and regulations shall not be applied in a manner that discriminates arbitrarily or unjustifiably between products of the other Party and products of any third country.
5. Notwithstanding paragraphs 1 and 2 of Article III or subparagraph 1 (b) of this Article, paragraphs 6 to 9 of this Article shall apply to trade in textile products.
6. The Parties agree to consult promptly at the request of either Party that considers that an actual or prospective increase in imports of a textile product of the other Party is causing or threatening to cause market disruption in its market.
7. The consultations provided for in paragraph 6 shall be concluded within sixty days from the date of request by the importing Party for such consultations, unless the Parties otherwise agree.
8. If, during such consultations, the Parties do not agree upon a means to prevent or to remedy the market disruption, the importing Party may restrain the imports of the product of the other Party, based on the date of import.

9. In critical circumstances, where delay would cause damage that would be difficult to repair, the importing Party may take action to restrain imports of a textile product on a provisional basis, provided that a request for consultations shall be effected by the importing Party within 30 days of taking action.

ARTICLE VII

TRANSPARENCY OF INFORMATION

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance, financial services, transport and labour.
2. Each Party shall provide interested persons of the other Party access to available non-confidential, non-proprietary data on the national economy, and specific industrial, agricultural, commodity or service sectors, including data on foreign trade and investment.
3. Each Party shall allow the other Party, when interested, the opportunity to consult on the formulation of laws and regulations which govern the conduct of business activities.

ARTICLE VIII

SERVICES

The Parties will enter into consultations with a view to broadening the scope of this Agreement to include trade

in services, consistent with multilateral principles established in the General Agreement on Trade in Services of the Final Act Embodying the Results of the Uruguay Round of the Multilateral Trade Negotiations.

ARTICLE IX

MERCHANT VESSELS AND WATERBORNE CARGOES

1. In international traffic, the merchant vessels of each Party, merchant vessels chartered by persons of each Party, and the cargoes of such vessels shall during arrival, stay at, and departure from the seaports of the other Party, enjoy treatment, including access to harbour services, accorded to the most-favoured nation. This provision shall not apply to pilotage.
2. In relation to products transported between the Republic of Estonia and Canada, neither Party shall create or maintain:
 - (a) discriminatory measures of any kind to marketing the services of, securing cargoes for, and transferring payments related to, the merchant vessels of the other Party or merchant vessels chartered by persons of the other Party; or
 - (b) discriminatory measures of any kind to the flow of waterborne cargoes through maritime cargo terminals or to the use of such terminals.
3. Each Party shall, on the basis of reciprocity with the other Party, permit the establishment and operation

of offices to act as shipping and port agents for the merchant vessels of the other Party and for merchant vessels chartered by persons of the other Party.

ARTICLE X

TERMS OF PAYMENTS

1. Subject to the laws and regulations in force in the Republic of Estonia and in Canada, all payments in respect of trade between the two countries shall be made on terms mutually agreed upon by the persons party to the commercial contracts governing that trade.
2. Neither Party shall require persons subject to their jurisdiction to engage in barter or countertrade transactions as a condition of bilateral trade between the Republic of Estonia and Canada.

ARTICLE XI

LAW APPLICABLE TO CONTRACTS AND SETTLEMENT OF COMMERCIAL DISPUTES

1. Neither Party shall interfere with the freedom of persons subject to its jurisdiction to agree with persons of the other Party on the choice of law to govern the conclusion and performance of contracts between them.
2. Persons of the Republic of Estonia, on the one hand, and persons of Canada, on the other hand, may agree to settle disputes arising out of commercial transactions by arbitration.

3. Such persons, involved in disputes arising out of individual commercial transactions may agree to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted in 1976.
4. Without prejudice to their ability to decide otherwise, the persons party to commercial transactions may agree on a place for conducting the arbitration in a country, other than the Republic of Estonia or Canada, that is a party to the UN Convention on the Recognition and Implementation of Foreign Arbitral Decisions, done in New York on June 10 1958.¹
5. Nothing in the present Agreement shall be interpreted in such a way as to hamper, nor shall either Party prevent, the parties to commercial transactions from agreeing on any other form of arbitration for the settling of commercial disputes, which they mutually prefer and which, in their opinion, best answers their commercial needs.
6. The persons of one Party shall enjoy access to the courts of the other Party on the same basis as persons of any third country.

ARTICLE XII

NATIONAL SECURITY

Nothing in this Agreement shall be construed:

- (a) to require either Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

¹United Nations, *Treaty Series*, vol. 330, p. 3.

- (b) to prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:
- (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods, materials and services undertaken directly or indirectly for the purpose of supplying a military establishment;
 - (iii) relating to the non-proliferation of biological and chemical weapons, nuclear weapons, or other nuclear explosive devices;
 - (iv) taken in time of war or other emergency in international relations; or
- (c) to prevent either Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE XIII

OTHER EXCEPTIONS

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised

restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by either Party of:

- (a) measures necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement; or
- (b) any other measure referred to in Article XX of the GATT.

ARTICLE XIV

CONSULTATIONS

1. The Parties shall consult with each other when necessary regarding the operation of this Agreement or of any provision thereof.
2. The terms of reference for consultations held pursuant to paragraph (1) of this Article shall be:
 - (a) to keep under review the possibility of broadening this Agreement;
 - (b) to consider matters affecting trade and commerce between the Republic of Estonia and Canada;
 - (c) to exchange information and views on matters that might adversely affect either Party's existing levels or future development of trade;
 - (d) to review multilateral trade matters of common interest; and

- (e) to review progress towards expanding bilateral trade, and to examine, where appropriate, proposals designed to encourage further growth in trade or to overcome hindrances to such growth.
3. Consultations pursuant to this Article may be initiated at the request of either Party on reasonable notice to the other Party.
4. The location of meetings held pursuant to the present Article shall alternate between the Republic of Estonia and Canada unless the Parties agree otherwise. A representative of each Party shall lead that Party's delegation to such meetings. Each meeting shall be chaired by a representative of the host Party.

ARTICLE XV

ENTRY INTO FORCE, TERM AND TERMINATION

1. For the purpose of the entry into force of this Agreement, the Parties will inform each other by an exchange of notes that their respective legal requirements have been completed. This Agreement shall enter into force on the date of the exchange of notes or, in the event that the exchange of notes does not take place on the same day, on the date of the last note.
2. On the entry into force of this Agreement, the Treaty of Commerce and Navigation between the United Kingdom and Estonia signed at Tallinn on January 18, 1926, certain provisions of which were extended to trade relations between the Republic of Estonia and

Canada on September 1, 1928, shall cease to have effect between the Republic of Estonia and Canada.

3. This Agreement shall remain in force unless terminated by either Party upon six months' notice to the other Party. Should this Agreement be terminated, both Parties will to the extent possible, seek to minimize possible disruption to their trade relations.
4. The rights and obligations arising out of contracts entered into between persons of the Parties shall be the responsibility of such persons only. Termination of this Agreement shall not affect the fulfilment of obligations or undertakings arising from contracts entered into during the period the Agreement was in force.
5. Except as expressly provided herein, nothing in this Agreement overrides or modifies agreements already in force between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized, thereto have signed this Agreement.

[For the testimonium and signatures, see p. 285 of this volume.]

KOOSTATUD kahes eksemplaris Ottawas,
27. juunil, 1994, eesti, inglise ja prantsuse keeles,
 kusjuures kõik kolm teksti on võrdselt autentsed.

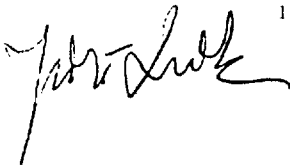
DONE in duplicate at Ottawa this 27th day of
June, 1994, in the Estonian, English and French
 languages, each text being equally authentic.

FAIT en deux exemplaires à Ottawa, ce 27^{ième}
 jour de juin 1994, en langues estonienne, anglaise
 et française, chaque texte faisant également foi.

Eesti Vabariigi Valitsuse
 Poolt:

For the Government
 of the Republic of Estonia:

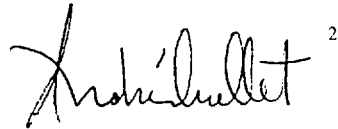
Pour le Gouvernement
 de la République de l'Estonie :



Kanada Valitsuse
 Poolt:

For the Government
 of Canada:

Pour le Gouvernement
 du Canada :



¹ Jüri Luik.
² A. Ouellet.