

Chapter 3

National Treatment and Market Access for Goods

Section A – Definitions

Article 3.1: Definitions

For the purposes of this Chapter:

- (a) **advertising films and recordings** means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film or recording and that do not form part of a larger consignment;
- (b) **Agriculture Agreement** means the *Agreement on Agriculture*, contained in Annex 1A of the WTO Agreement;
- (c) **agricultural goods** means those goods referred to in Article 2 of the Agriculture Agreement;
- (d) **commercial samples of negligible value** means commercial samples having a value, individually or in the aggregate as shipped:
 - (i) with respect to Chile, of not more than one U.S. dollar or the equivalent amount in Chilean currency; and
 - (ii) with respect to Australia, of not more than one Australian dollar; orcommercial examples so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples;
- (e) **consular transactions** means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the Consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;
- (f) **export subsidies** shall have the meaning assigned to that term in Article 1(e) of the Agriculture Agreement, including any amendment of that Article;

- (g) **goods intended for display or demonstration** includes their component parts, ancillary apparatus, and accessories;
- (h) **goods temporarily admitted for sports purposes** means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;
- (i) **import licensing** means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;
- (j) **performance requirement** means a requirement that:
 - (i) a given level or percentage of goods or services be exported;
 - (ii) goods or services of the Party granting an import licence be substituted for imported goods or services;
 - (iii) a person benefiting from an import licence purchase other goods or services in the territory of the Party granting the import licence, or accord a preference to domestically produced goods or services;
 - (iv) a person benefiting from an import licence produce goods or supply services, in the territory of the Party granting the import licence, with a given level or percentage of domestic content; or
 - (v) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;
- (k) **printed advertising materials** means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicise, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

Article 3.2: Scope and Coverage

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

Section B - National Treatment

Article 3.3: National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to

this end Article III of GATT 1994, and its interpretative notes, are incorporated into and made part of this Agreement *mutatis mutandis*.

Section C - Tariff Elimination

Article 3.4: Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule in Annex 3-B.
3. If a Party reduces its applied most-favoured-nation import duty rate after the entry into force of this Agreement and before the end of the tariff elimination period, the tariff elimination schedule of that Party shall apply to the reduced rate.
4. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules in Annex 3-B. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules in Annex 3-B for such good following discussion by the Committee on Trade in Goods and when approved by each Party in accordance with Article 20.1.3(e) (Joint FTA Committee – Institutional Arrangements Chapter).
5. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 3-B. A Party considering this shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

3.5: Customs Valuation

The Parties shall apply the provisions of Article VII of GATT 1994 and the WTO Agreement on the Implementation of Article VII of GATT 1994 for the purposes of determining the customs value of goods traded between the Parties.

Section D - Special Regimes

Article 3.6: Temporary Admission of Goods

1. Each Party shall grant customs duty-free temporary admission ³⁻¹ for the following goods, regardless of their origin, for the use solely by or under the personal supervision of a national or resident of the other Party:

- (a) professional equipment, including equipment for the press or television, software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to the laws of the importing Party;
- (b) goods intended for display or demonstration at exhibitions, fairs or similar events;
- (c) commercial samples and advertising films and recordings; and
- (d) goods admitted for sports purposes.

2. Each Party shall, at the request of the person concerned and for reasons deemed valid by its Customs Administration, extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the customs duty-free temporary admission of goods referred to in paragraph 1, other than to require that such goods:

- (a) be used by a person in the exercise of the business activity, trade, profession, or sport of that person;
- (b) not be sold or leased while in its territory;
- (c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
- (d) be capable of identification when taken out of the territory of the other Party³⁻²;
- (e) be taken out from the territory of the other Party on or before the departure of the person referenced in subparagraph (a), or within such other period, related to the purpose of the temporary admission, as the Party may establish;

³⁻¹ Temporary admission equates to importation under Australia's *Customs Act 1901*.

³⁻² Taken out from the territory of the other Party equates to exportation under Australia's *Customs Act 1901*.

- (f) be admitted in no greater quantity than is reasonable for their intended use; and
- (g) be otherwise admissible into the Party's territory under its laws.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its domestic law.

5. Each Party, through its Customs Administration, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident subject to necessary documentation required by the customs authorities of the admitting Party.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

7. Each Party, through its Customs Administration, consistent with domestic law, shall relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on presentation of satisfactory proof to customs authorities that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapter 9 (Cross-Border Trade in Services) and Chapter 10 (Investment):

- (a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container;
- (b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;
- (c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle into its territory on its exit through any particular port of departure; and
- (d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes such container to the territory of the other Party.

Article 3.7: Goods Re-entered after Repair or Alteration

1. Neither Party may 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 the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.
2. Neither Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.
3. For the purposes of this Article, repair or 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.

Article 3.8 Customs Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant customs duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other 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 the other Party or a non-Party; or
- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Section E - Non-Tariff Measures

Article 3.9: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.
2. The Parties understand that the rights and obligations in paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

- (a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping orders and undertakings;
 - (b) import licensing conditioned on the fulfilment of a performance requirement; or
 - (c) voluntary export restraints.
3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3-A.
4. Each Party shall ensure the transparency of any non-tariff measures permitted in paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

Article 3.10: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.
2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.
3. Each Party shall make available through the Internet or a comparable computer based telecommunications network a current list of the fees and charges it imposes in connection with importation or exportation.

Article 3.11: Export Taxes

Neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.

Article 3.12: Treatment of Certain Spirits

1. Australia confirms that the Australia New Zealand Food Standards Code (“the Code”) allows recognition of Chilean Pisco as a product exclusively manufactured in Chile and that no variation to the Code is necessary for such recognition.

2. To the extent contemplated in the Code, Australia shall not permit the sale of any product as Chilean Pisco unless it has been manufactured in Chile according to the laws of Chile governing the manufacture of Chilean Pisco and complies with all applicable Chilean regulations for the consumption, sale, or export as Chilean Pisco.

Section F – Agriculture

Article 3.13: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.
2. Neither Party shall introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

Section G – Other Measures

Article 3.14: Administration of Trade Regulations

In accordance with Article X of GATT 1994, each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings pertaining to:

- (a) the classification or the valuation of products for customs purposes;
- (b) rates of duty, taxes or other charges;
- (c) requirements, restrictions or prohibitions on imports or exports;
- (d) the transfer of payments; and
- (e) issues affecting sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use of products for customs purposes.

Section H - Institutional Provisions

Article 3.15: Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet at the request of either Party or the Joint FTA Committee to consider any matter arising under this Chapter, Chapter 4 (Rules of Origin) or Chapter 5 (Customs Administration).
3. The Committee shall meet at such venues and times as may be agreed by the Parties. Meetings may be held via teleconference, videoconference or through any other means as mutually determined by the Parties.
4. The Committee's functions shall include:
 - (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate; and
 - (b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Joint FTA Committee for its consideration.

Annex 3-A

Exceptions to Elimination of Import and Export Restrictions

Paragraphs 1 and 2 of Article 3.9 shall not apply to:

- (a) with respect to Australia:
 - (i) control by Australia on the exports of woodchips and unprocessed forest products (e.g., whole logs) sourced from native forests outside Regional Forest Agreement regions, or plantation forests within States where Codes of Practice have not been approved by the Australian Government, and Sandalwood (*Santalum spicatum*) sourced from any State, the Australian Capital Territory, or the Northern Territory; and
 - (ii) the provisions of and measures under the *Livestock Export (Merino) Orders*, made under the *Export Control Act of 1982*, as amended.
- (b) with respect to Chile, measures concerning the importation of used vehicles as provided in Law No 18.483 or its successor.

Annex 3-B Elimination of Customs Duties

Section 1: Schedule of Australia

Customs Duties on Goods Originating in Chile

Introductory notes

- I. Australia's tariff schedule in this Annex contains the following five columns:
- (a) **Code:** the code used in the nomenclature of the Harmonized System 2007;
 - (b) **Description:** the description of the product falling under the heading;
 - (c) **Base Rate:** the basic customs duty from which the tariff elimination program starts; and
 - (d) **Category:** the category under which the product concerned falls for the purposes of tariff elimination.
- II. The categories which are applicable to imports into Australia from Chile are the following:
- 1) **Year 0:** customs duties shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.

	Entry into force
Margin of preference	100%

- 2) **Year 6:** customs duties shall be removed in seven equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	14.3%	28.6%	42.9%	57.2%	71.5%	85.8%	100%

- 3) **Year 6 TX:** customs duties shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	0%	0%	0%	0%	0%	0%	100%

Note: Under existing law, Australia's most-favoured-nation rates for some textiles, clothing and footwear products are scheduled to be reduced on 1 January 2010.

Section 2: Schedule of Chile

Customs Duties on Goods Originating in Australia

Introductory notes

- I. Chile's tariff schedule in this Annex contains the following five columns:
- (a) **Code:** the code used in the nomenclature of the Harmonized System 2007;
 - (b) **Description:** the description of the product falling under the heading;
 - (c) **Base Rate:** the basic customs duty from which the tariff elimination program starts;
 - (d) **Category:** the category under which the product concerned falls for the purposes of tariff elimination; and
 - (e) **Observation:** additional information if it corresponds.
- II. The categories which are applicable to imports into Chile from Australia are the following:

- 1) **Year 0:** customs duties shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.

	Entry into force
Margin of preference	100%

- 2) **Year 6:** customs duties shall be removed in seven equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	14,3%	28,6%	42,9%	57,2%	71,5%	85,8%	100%

- 3) **Year 6 TX:** customs duties shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	0%	0%	0%	0%	0%	0%	100%

- 4) **Category W:** duties on goods provided for in the items in staging category W shall be reduced by 16,7 per cent of the base rate on 1 January of entry into force, and by an additional 8,3 per cent of the base rate each year thereafter through year three. Beginning 1 January of year four, duties on these goods shall be reduced by an additional 16,7 per cent of the base rate annually through year eight and shall be duty-free effective 1 January 2015; and

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	16,7%	25%	33,3%	50%	66,7%	83,3%	100%

- 5) **Sugar Category:** the *ad-valorem* duty (6 per cent) will be charged in accordance with the following schedule:

Date	<i>Ad-valorem</i> duty to be charged
01/01/2009	3,00 %
01/01/2010	1,98 %
01/01/2011	1,02 %
01/01/2012	0,00 %

For greater certainty it is understood that this phase out schedule is only applicable to the *ad-valorem* duty (6 per cent) imposed by Chile to other countries for the following tariff lines (1701.11.00, 1701.12.00, 1701.91.00, 1707.99.10, 1701.99.20, and 1701.99.90)

The specific tariff will continue to apply for the products considered under Law No. 18.525 or its successor.