

CHAPTER TWO

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1 : SCOPE AND COVERAGE

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

Section A : National Treatment

ARTICLE 2.2 : 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. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, subject to Annex 2-A (Application of Chapter 2).

Section B : Tariffs

ARTICLE 2.3 : ELIMINATION OF CUSTOMS DUTIES

1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with Annex 2-B (Tariff Elimination).
2. Neither Party may increase an existing customs duty or introduce a new customs duty on imports of an originating good, other than as permitted by this Agreement, subject to Annex 2-A (Application of Chapter 2).

ARTICLE 2.4 : CUSTOMS VALUE

The Parties shall apply the provisions of the Customs Valuation Agreement for the purposes of determining the customs value of goods traded between the Parties.

ARTICLE 2.5 : TEMPORARY ADMISSION

1. Each Party shall grant duty-free temporary admission for the following goods, imported by or for the use of a resident of the other Party:
 - (a) professional equipment, including software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a 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, including commercial samples for the solicitation of orders, and advertising films and recordings; and

- (c) goods temporarily admitted for sports purposes,

regardless of their origin.

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

- (a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, or profession of that person;
- (b) not be sold, leased, or consumed 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 exported;
- (e) be exported on or before the departure of that person or within such other period as is reasonably related to the purpose of the temporary admission, not to exceed three years after the date of importation;
- (f) be imported in no greater quantity than is reasonable for its intended use; and
- (g) be otherwise admissible into the Party's territory under its laws.

3. If any condition that a Party imposes under paragraph 2 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on entry or final importation of the good.

4. Each Party, through its customs authorities, shall adopt procedures providing for the expeditious release of the goods described in paragraph 1. To the extent possible, when such goods accompany a national or resident of the other Party seeking temporary entry, and are imported by that person for use in the exercise of a business activity, trade, or profession of that person, the procedures shall allow for the goods to be released simultaneously with the entry of that person subject to the necessary documentation required by the customs authorities of the importing Party.

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

6. Each Party shall permit temporarily admitted goods to be exported through a customs port other than that through which they were imported.

7. Each Party shall relieve the importer of liability for failure to export a temporarily admitted good on presentation of satisfactory proof to the Party's customs authorities that the good has been destroyed within the original time limit for temporary admission or any lawful extension. Prior approval will have to be sought from the customs authorities of the importing Party before the good can be so destroyed.

8. Subject to Chapters Ten (Cross-Border Trade in Services) and Eleven (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 the container;
- (b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the container's port of entry and its port of departure;
- (c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a container 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 the container to the territory of the other Party.

ARTICLE 2.6 : 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 exported temporarily from its territory to the territory of the other Party for repair or alteration, regardless of whether the repair or alteration could be performed in its territory.

2. Neither Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

3. For the purposes of this Article:

- (a) the repairs or alterations shall not destroy the essential characteristics of the good, or change it into a different commercial item;
- (b) operations carried out to transform unfinished goods into finished goods shall not be considered repairs or alterations; and
- (c) parts or pieces of the goods may be subject to repairs or alterations.

ARTICLE 2.7 : DUTY-FREE ENTRY OF COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS

Each Party shall grant 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) the samples be imported solely for the solicitation of orders for goods of, or services provided from the territory of, the other Party or a non-Party; or
- (b) the advertising materials be imported in packets that each contain no more than one copy of each such material and that neither those materials nor packets form part of a larger consignment.

ARTICLE 2.8 : WAIVER OF CUSTOMS DUTIES

1. Neither Party may adopt a new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.
2. Neither Party may condition, explicitly or implicitly, the continuation of any existing waiver of customs duties on the fulfilment of a performance requirement.
3. This Article shall not apply to drawback or duty deferral programs.

Section C : Non-Tariff Measures

ARTICLE 2.9 : 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, including its interpretative notes, and to this end Article XI of GATT 1994, including its interpretative notes, is incorporated into and made a part of this Agreement.
2. The Parties understand that the rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, import licensing conditioned on the fulfilment of a performance requirement, export price requirements, and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.
3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed as preventing the Party from:
 - (a) limiting or prohibiting the importation from the territory of the other Party of such good of that non-Party; or

- (b) requiring as a condition of export of such good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.
- 4. Paragraphs 1 through 3 shall not apply to the measures set out in Annex 2-A.
- 5. Nothing in this Article shall be construed as affecting a Party's rights and obligations under the Agreement on Textiles and Clothing.

ARTICLE 2.10 : ADMINISTRATIVE FEES AND FORMALITIES

- 1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, 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 III:2 of GATT 1994, and antidumping and countervailing duties applied pursuant to a Party's law), imposed on or in connection with importation or exportation, are limited in amount to the approximate cost of services rendered and do not represent indirect protection of domestic products 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 on the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

ARTICLE 2.11 : 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 consumption in its territory.

Section D : Other Measures

ARTICLE 2.12 : MERCHANDISE PROCESSING FEE

Neither Party may adopt or maintain a merchandise processing fee on originating goods.

Section E : Institutional Provisions

ARTICLE 2.13 : 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 on the request of either Party or the Joint Committee established in Chapter 21 (Institutional Arrangements and Dispute Settlement) to consider any

matter arising under this Chapter, Chapter Five (Rules of Origin), or Chapter Six (Customs Administration).

3. The Committee's functions shall include:
 - (a) promoting trade in goods between the Parties; 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 Committee for its consideration.

Section F : Definitions

ARTICLE 2.13 : DEFINITIONS

For the purposes of this Chapter:

1. **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;
2. **commercial samples of negligible value** means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in Australian currency, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples;
3. **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;
4. **consumed** means:
 - (a) actually consumed; or
 - (b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good, or in the production of another good;
5. **drawback** means measures in which a Party refunds the amount of customs duties paid on a good imported into its territory, on condition that the good is:
 - (a) subsequently exported to the territory of the other Party;

- (b) substituted by an identical or similar good exported to the territory of the other Party;
 - (c) used as a material in the production of another good that is subsequently exported to the territory of another Party;
 - (d) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party;
6. **duty-free** means free of customs duty;
7. **duty deferral program** includes measures such as those governing foreign-trade zones, temporary importations under bond, bonded warehouses, and inward processing programs;
8. **goods intended for display or demonstration** includes their component parts, ancillary apparatus, and accessories;
9. **goods temporarily admitted for sports purposes** means:
- (a) sports requisites for use in sports contests, demonstrations, or training;
and
 - (b) for such events as deemed valid by competent authorities,

in the territory of the Party into whose territory such goods are admitted;
10. **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;
11. **performance requirement** means a requirement that:
- (a) a given level or percentage of goods or services be exported;
 - (b) goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods or services;
 - (c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods or services;
 - (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or

- (e) 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; and

12. **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, publicize, or advertise a good or service, or are essentially intended to advertise a good or service, and are supplied free of charge.

ANNEX 2-A
APPLICATION OF CHAPTER TWO

Section A-Measures of the United States

Articles 2.2, 2.3, and 2.9 shall not apply to:

- (a) controls by the United States on the export of logs of all species;
- (b)
 - (i) measures under existing provisions of the Merchant Marine Act of 1920, 46 App. U.S.C. § 883; the Passenger Vessel Act, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the *General Agreement on Tariffs and Trade 1947* (“GATT 1947”) and have not been amended so as to decrease their conformity with Part II of GATT 1947;
 - (ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and
 - (iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.2 and 2.9; and
- (c) actions by the United States authorized by the Dispute Settlement Body of the WTO.

Section B – Measures of Australia

Articles 2.2, 2.3, and 2.9 shall not apply to:

- (a) controls 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;
- (b) controls on importation of second hand motor vehicles under Section 17A of the *Motor Vehicles Standards Act of 1989* and the *Motor Vehicles Standards Regulations of 1989*;
- (c) wheat marketing arrangements under the *Wheat Marketing Act 1989* and the Customs (Prohibited Exports) Regulations 1958, as amended;
- (d) grain marketing arrangements under the New South Wales *Grain Marketing Act 1991* and Marketing of Primary Products Act 1983, the South Australian *Barley Marketing Act 1993*, the Western Australian *Grain Marketing Act 2002* and Grain Marketing Regulations 2002, and the Queensland Grain Industry (Restructuring) Act 1991, as amended;
- (e) sugar marketing arrangements under the Queensland *Sugar Industry Amendment Act 2000*, as amended;
- (f) rice marketing arrangements under the New South Wales *Marketing of Primary Products Act 1983*, as amended;
- (g) horticulture export efficiency licensing arrangements under the *Horticulture Marketing and Research and Development Services Act 2000* and *Horticulture Marketing and Research and Development (Export Efficiency) Regulations 2002*, as amended;
- (h) the provisions of and measures under the *Livestock Export (Merino) Orders*, made under the *Export Control Act of 1982*, as amended; and
- (i) actions by Australia authorized by the Dispute Settlement Body of the WTO.

ANNEX 2-B
TARIFF ELIMINATION

1. Base Rates of Customs Duty. Except as otherwise indicated, the base rates of customs duty set forth in this schedule reflect the HTSUS Column 1 General rates of duty in effect January 1, 2004, for the United States and the general rates of duty in Schedule 3 to the Australian Customs Tariff Act 1995, in effect January 1, 2004, for Australia.

2. Staging. Except as otherwise provided in a Party's Schedule attached to this Annex, the following staging categories apply to the elimination of duties by each Party pursuant to Article 2.3:

- (a) duties on goods provided for in the items in staging category A shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force;
- (b) duties on goods provided for in the items in staging category B shall be removed in equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year four;
- (c) duties on goods provided for in the items in staging category C shall be removed in equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year eight;
- (d) duties on goods provided for in the items in staging category D shall be removed in equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year ten; and
- (e) goods provided for in staging category E shall continue to receive duty-free treatment.

ANNEX 2-C

PHARMACEUTICALS

1. AGREED PRINCIPLES

The Parties are committed to facilitating high quality health care and continued improvements in public health for their nationals. In pursuing these objectives, the Parties are committed to the following principles:

- (a) the important role played by innovative pharmaceutical products in delivering high quality health care;
- (b) the importance of research and development in the pharmaceutical industry and of appropriate government support, including through intellectual property protection and other policies;
- (c) the need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious, and accountable procedures, without impeding a Party's ability to apply appropriate standards of quality, safety, and efficacy; and
- (d) the need to recognize the value of innovative pharmaceuticals through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical.

2. TRANSPARENCY^{2C-1}

To the extent that a Party's federal healthcare authorities operate or maintain procedures for listing new pharmaceuticals or indications for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its federal healthcare programs, it shall:

- (a) ensure that consideration of all formal proposals for listing are completed within a specified time;
- (b) disclose procedural rules, methodologies, principles, and guidelines used to assess a proposal;
- (c) afford applicants timely opportunities to provide comments at relevant points in the process;

^{2C-1} Pharmaceutical formulary development and management shall be considered to be an aspect of government procurement of pharmaceutical products for federal healthcare agencies that engage in government procurement. Government procurement of pharmaceutical products shall be governed by Chapter Fifteen (Government Procurement) and not the provisions of this Annex.

- (d) provide applicants with detailed written information regarding the basis for recommendations or determinations regarding the listing of new pharmaceuticals or for setting the amount of reimbursement by federal healthcare authorities;
- (e) provide written information to the public regarding its recommendations or determinations, while protecting information considered to be confidential under the Party's law; and
- (f) make available an independent review process that may be invoked at the request of an applicant directly affected by a recommendation or determination.

3. MEDICINES WORKING GROUP

- (a) The Parties hereby establish a Medicines Working Group.
- (b) The objective of the Working Group shall be to promote discussion and mutual understanding of issues relating to this Annex (except those issues covered in paragraph 4), including the importance of pharmaceutical research and development to continued improvement of healthcare outcomes.^{2C-2}
- (c) The Working Group shall comprise officials of federal government agencies responsible for federal healthcare programs and other appropriate federal government officials.

4. REGULATORY COOPERATION

The Parties shall seek to advance the existing dialogue between the Australian Therapeutic Goods Administration and the U.S. Food and Drug Administration with a view to making innovative medical products more quickly available to their nationals.

5. DISSEMINATION OF INFORMATION

Each Party shall permit a pharmaceutical manufacturer to disseminate to health professionals and consumers through the manufacturer's Internet site registered in the territory of the Party, and on other Internet sites registered in the territory of the Party linked to that site, truthful and not misleading information regarding its pharmaceuticals that are approved for sale in the Party's territory as is permitted to be disseminated under the Party's laws, regulations, and procedures, provided that the information includes a balance of risks and benefits and encompasses all indications for which the Party's competent regulatory authorities have approved the marketing of the pharmaceuticals.

^{2C-2} Nothing in this paragraph shall be construed as requiring a Party to review or change decisions regarding specific applications.

6. DEFINITIONS

For the purposes of this Annex:

federal healthcare program means a health care program in which the Party's federal health authorities make the decisions regarding matters to which this Annex applies.