

AUSTRALIA-UNITED STATES FTA
TABLE OF CONTENTS

PREAMBLE

1. ESTABLISHMENT OF THE FREE TRADE AREA AND DEFINITIONS

Annex 1-A Certain Definitions

2. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Annex 2-A Application of Chapter Two

Section A : Measures of the United States

Section B : Measures of Australia

Annex 2-B Tariff elimination

Common Notes

General Notes of Australia

Schedule of Australia

General Notes of the United States

Schedule of the United States

Annex 2-C Pharmaceuticals

3. AGRICULTURE

Annex 3-A Agricultural Safeguard Measures

Section A : Price-Based Safeguard for Horticultural

Section B : Quantity-Based Safeguard for Beef

Section C : Price-Based Safeguard for Beef

4. TEXTILES AND APPAREL

Annex 4-A Textile or Apparel Specific Rules of Origin (Chapters 42, 50-63, 70 & 94)

5. RULES OF ORIGIN

Section A : Rules of Origin

Section B : Supporting Information and Verification

Section C : Consultation and Modifications

Section D : Application and Interpretation

Section E : Definitions

Annex 5-A Product Specific Rules of Origin

6. CUSTOMS ADMINISTRATION

7. SANITARY AND PHYTOSANITARY MEASURES

Annex 7-A Standing Technical Working Group on Animal and Plant Health Measures

Section A : Establishment of the Standing Technical Working Group on Animal and Plant Health Measures

Section B : Development of Specific Work Plans

8. TECHNICAL BARRIERS TO TRADE

Annex 8-A Chapter Coordinator

9. SAFEGUARDS

10. CROSS-BORDER TRADE IN SERVICES

Annex 10-A Professional Services

11. INVESTMENT

Annex 11-A Customary International Law

Annex 11-B Expropriation

12. TELECOMMUNICATIONS

Section A : Access to and Use of Public Telecommunications Services

Section B : Suppliers of Public Telecommunications Services

Section C : Conduct of Major Suppliers of Public Telecommunications Services

Section D : Other Measures

13. FINANCIAL SERVICES

Annex 13-A Cross-Border Trade

Annex 13-B Specific Commitments

Annex 13-C Authorities Responsible for Financial Services

14. COMPETITION-RELATED MATTERS

15. GOVERNMENT PROCUREMENT

Section 1 : Central Government Entities

Section 2 : Regional Government Entities

Section 3 : Government Enterprises

Section 4 : Goods

Section 5 : Services

Section 6 : Construction Services

Section 7 : General Notes

Section 8 : Threshold Adjustment Formula

16. ELECTRONIC COMMERCE

17. INTELLECTUAL PROPERTY RIGHTS

18. LABOUR

19. ENVIRONMENT

20. TRANSPARENCY

21. INSTITUTIONAL ARRANGEMENTS AND DISPUTE SETTLEMENT

Section A : Institutional Arrangements and Administration

Section B : Dispute Settlement Proceedings

Annex 21-A Inflation Adjustment Formula for Monetary Assessments

22. GENERAL PROVISIONS AND EXCEPTIONS

23. FINAL PROVISIONS

NON-CONFORMING MEASURES (Chapters 10, 11 & 13)

Annex I

Schedule of Australia

Schedule of United States

Annex II

Schedule of Australia

Schedule of United States

Annex III

Schedule of Australia

Schedule of United States

SIDELETTERS

Exchange of Letters on Air Services
Exchange of Letters on Aspects of IP
Exchange of Letters on BSE
Exchange of Letters on Blood Plasma
Exchange of Letters on Bourbon and Tennessee Whiskey
Exchange of Letters on Cooperation in Competition Policy
Exchange of Letters on Education Services
Exchange of Letters on Expedited Availability of Insurance Services
Exchange of Letters on Express Delivery Services
Exchange of Letters on FIRB
Exchange of Letters on FIRB Review
Exchange of Letters on Foreign Investment in Financial Services
Exchange of Letters on Gambling, Tobacco and Alcohol
Exchange of Letters on Higher Education in US States
Exchange of Letters on Immigration Measures
Exchange of Letters on Import without Bond
Exchange of Letters on ISP Liability
Exchange of Letters on National Treatment
Exchange of Letters on National Treatment - Phonograms
Exchange of Letters on Pharmaceuticals
Exchange of Letters on Procurement Matters
Exchange of Letters on Recognition
Exchange of Letters on Securities
Exchange of Letters on Telecommunications Consultative Mechanisms
Letter from Australia on Guarantees
Letter from Australia on the Privatisation of Telstra
Letter from United States on Waiver of Customs Duties

PREAMBLE

The Government of Australia and the Government of the United States of America (“the Parties”), resolved to:

REINFORCE the longstanding ties of friendship and cooperation between them;

STRENGTHEN their economic relations and further liberalize and expand bilateral trade and investment;

ESTABLISH clear and mutually advantageous rules governing their trade and reduce the barriers to trade that exist between them;

ENCOURAGE a closer economic partnership that will bring economic and social benefits, create new employment opportunities, and improve living standards for their people;

PROMOTE a predictable, transparent, and consistent business environment that will assist enterprises to plan effectively and use resources efficiently;

FOSTER creativity and innovation and promote stronger links between dynamic sectors of their economies;

IMPLEMENT this Agreement in a manner consistent with their commitment to high labour standards, sustainable development, and environmental protection; and

BUILD on their rights and obligations under the WTO Agreement and other agreements to which they are both parties;

HAVE AGREED as follows:

CHAPTER ONE
ESTABLISHMENT OF A FREE TRADE AREA AND DEFINITIONS

ARTICLE 1.1 : GENERAL

1. The Parties to this Agreement, consistent with Article XXIV of GATT 1994 and Article V of GATS, hereby establish a free trade area in accordance with the provisions of this Agreement.
2. The Parties affirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.
3. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles goods or services, or suppliers of goods or services, to treatment more favourable than that accorded by this Agreement.

ARTICLE 1.2 : GENERAL DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

1. **Agreement on Textiles and Clothing** means the *Agreement on Textiles and Clothing*, contained in Annex 1A to the WTO Agreement;
2. **central government** or **central level of government** means:
 - (a) for the United States, the federal government; and
 - (b) for Australia, the Commonwealth government;
3. **covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party, in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;
4. **customs duty** includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:
 - (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of the like domestic good or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
 - (b) antidumping or countervailing duty that is applied pursuant to a Party's law; or
 - (c) fee or other charge in connection with importation commensurate with the cost of services rendered.

5. **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;
6. **days** means calendar days;
7. **enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;
8. **enterprise of a Party** means an enterprise constituted or organized under a Party's law;
9. **existing** means in effect on the date of entry into force of this Agreement;
10. **GATS** means the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;
11. **GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;
12. **goods of a Party** means domestic products as these are understood in GATT 1994 or such goods as the Parties determine under the rules of origin applied in the normal course of trade, and includes originating goods of a Party;
13. **government procurement** means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;
14. **Harmonized System (HS)** means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;
15. **measure** includes any law, regulation, procedure, requirement, or practice;
16. **national** means a natural person referred to in Annex 1-A to this Agreement;
17. **originating** means qualifying under the rules of origin set out in Chapter Five (Rules of Origin);
18. **person** means a natural person or an enterprise;
19. **person of a Party** means a national or an enterprise of a Party;
20. **regional government** or **regional level of government** means,
 - (a) for the United States, a state of the United States, the District of Columbia, or Puerto Rico; and

- (b) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory;
21. **Safeguards Agreement** means the *Agreement on Safeguards*, contained in Annex 1A to the WTO Agreement;
22. **service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;
23. **SPS Agreement** means *the Agreement on Application of Sanitary and Phytosanitary Measures*, contained in Annex 1A to the WTO Agreement;
24. **state enterprise** means an enterprise that is owned, or controlled through ownership interests, by the central or a regional government of a Party;
25. **TBT Agreement** means the *Agreement on Technical Barriers to Trade*, contained in Annex 1A to the WTO Agreement;
26. **territory** means, with respect to a Party, the territory of that Party as set out in Annex 1-A to this Agreement;
27. **textile or apparel good** means a good listed in the Annex to the Agreement on Textiles and Clothing;
28. **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement;
29. **WTO** means the World Trade Organization; and
30. **WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on April 15, 1994.

ANNEX 1-A
CERTAIN DEFINITIONS

For the purposes of this Agreement:

1. **national** means:
 - (a) with respect to Australia, an Australian citizen as defined in the *Australian Citizenship Act 1948*, or a permanent resident; and
 - (b) with respect to the United States, a national of the United States as defined in Title III of the *Immigration and Nationality Act* or a permanent resident; and

2. **territory** means:
 - (a) with respect to Australia, the territory of the Commonwealth of Australia:
 - (i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and
 - (ii) including Australia's territorial sea, contiguous zone, exclusive economic zone, and continental shelf; and
 - (b) with respect to the United States:
 - (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;
 - (ii) the foreign trade zones located in the United States and Puerto Rico; and
 - (iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

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;
- (d) provide applicants with detailed written information regarding the basis for recommendations or determinations regarding the listing of

^{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 15 (Government Procurement) and not the provisions of this Annex.

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.

CHAPTER THREE

AGRICULTURE

ARTICLE 3.1 : MULTILATERAL COOPERATION

1. The Parties shall work together to reach an agreement on agriculture in the WTO that substantially improves market access for agricultural goods, reduces, with a view to phasing out, all forms of agricultural export subsidies, develops disciplines that eliminate restrictions on a person's right to export, and substantially reduces trade-distorting domestic support.
2. The Parties shall consult on agricultural issues arising in the WTO and in other multilateral fora in which they both participate.

ARTICLE 3.2 : COMMITTEE ON AGRICULTURE

1. The Parties hereby establish a Committee on Agriculture, comprising representatives of each Party.
2. The Committee shall provide a forum for:
 - (a) promoting trade in agricultural goods between the Parties;
 - (b) addressing barriers to trade in agricultural goods;
 - (c) conducting consultations between the Parties on agricultural export competition issues; and
 - (d) considering any matters arising under this Chapter.
3. The Committee shall meet at least once a year unless the Parties otherwise agree.
4. The Committee shall report the results of each meeting to the Joint Committee.

ARTICLE 3.3 : EXPORT SUBSIDIES

1. Except as provided in paragraph 2, neither Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.
2. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-upon measures, the exporting Party shall refrain from applying any export subsidy to exports of such good to the territory of the importing Party.

ARTICLE 3.4 : AGRICULTURAL SAFEGUARD MEASURES

1. Notwithstanding Article 2.3 (Elimination of Duties), a Party may apply a measure in the form of an additional customs duty on an originating agricultural good listed in that Party's Schedule to Annex 3-A (Agricultural Safeguard Measures), provided that the conditions in paragraphs 2 through 5 are met. The sum of any such additional customs duty and any other customs duty on such good shall not exceed the lesser of:

- (a) the prevailing most-favoured-nation ("MFN") applied rate of duty; or
- (b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. The additional customs duty under paragraph 1 shall be set according to each Party's Schedule to Annex 3-A.

3. Neither Party may apply or maintain an agricultural safeguard measure and at the same time apply or maintain, with respect to the same good:

- (a) a safeguard measure under Chapter Nine (Safeguards); or
- (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

4. Neither Party may apply or maintain an agricultural safeguard measure on an originating agricultural good:

- (a) on or after the date that a good is subject to duty-free treatment under the Party's Schedule to Annex 2-B, except as provided in Section C of Annex 3-A; or
- (b) that increases the in-quota duty on a good subject to a tariff-rate quota.

5. A Party shall implement an agricultural safeguard measure in a transparent manner. Within 60 days after applying a measure, the Party applying the measure shall notify the Party whose good is subject to the measure, in writing, and shall provide it relevant data concerning the measure. On request, the Party applying the measure shall consult with the Party whose good is subject to the measure regarding the application of the measure.

6. The operation of this Article may be the subject of discussion and review in the Committee on Agriculture. On request of either Party, the Committee on Agriculture shall review a trigger price set out in Annex 3-A.

ARTICLE 3.5 : ADMINISTRATION OF TARIFF-RATE QUOTAS

Where an importing Party considers that an exporting Party has increased its imports of an agricultural good of a non-Party and thereby increased its exports of a domestically-produced good subject to a tariff-rate quota administered by the

importing Party, the exporting Party shall, on the written request of the importing Party, immediately consult with the importing Party to develop appropriate actions to remedy the situation.

ARTICLE 3.6 : REVIEW OF DAIRY MARKET ACCESS COMMITMENTS

On request of either Party after year 20 of the Agreement, the Parties shall consult on and consider the possibility of modifying market access commitments for the dairy goods listed in each Party's Schedule to Annex 2-B. An agreement by the Parties to modify the market access commitment on a dairy good listed in Annex 2-B, when approved by both Parties in accordance with their applicable legal procedures, shall supersede the terms established for the good in each Party's Schedule to Annex 2-B.

ARTICLE 3.7 : DEFINITIONS

For the purposes of this Chapter:

1. **agricultural goods** means those agricultural products referred to in Article 2 of the WTO *Agreement on Agriculture*, contained in Annex 1A to the WTO Agreement;
2. **agricultural safeguard measure** means a measure described in Article 3.4.1; and
3. **export subsidy** shall have the meaning assigned to that term in Article 1(e) of the WTO *Agreement on Agriculture*, contained in Annex 1A to the WTO Agreement, including any amendment of that article.

ANNEX 3-A

AGRICULTURAL SAFEGUARD MEASURES

Schedule of the United States

Section A : Price-Based Safeguard for Horticulture

1. The United States may apply an agricultural safeguard measure, pursuant to Article 3.4, on an originating agricultural good listed in this Section if the good enters the customs territory of the United States at a unit import price below the trigger price for that good set out in this Section.
 - (a) The unit import price shall be determined on the basis of the F.O.B. import price of the good in U.S. dollars.
 - (b) The trigger prices shall reflect historic unit import values for the products concerned.

2. For the purposes of Article 3.4.2, any additional customs duty shall conform to the following schedule:
 - (a) if the difference between the unit import price of the good expressed in terms of domestic currency (“import price”) and the trigger price listed in this Section for the good is less than or equal to 10 percent of the trigger price, no additional duty shall be imposed;
 - (b) if the difference between the import price and the trigger price is greater than 10 percent but less than or equal to 40 percent of the trigger price, the additional duty shall equal 30 percent of the difference between the MFN rate of duty as described in Article 3.4.1 and the tariff rate applied to the good in the U.S. Schedule to Annex 2-B;
 - (c) if the difference between the import price and the trigger price is greater than 40 percent but less than or equal to 60 percent of the trigger price, the additional duty shall equal 50 percent of the difference between the MFN rate of duty as described in Article 3.4.1 and the tariff rate applied to the good in the U.S. Schedule to Annex 2-B;
 - (d) if the difference between the import price and the trigger price is greater than 60 percent but less than or equal to 75 percent of the trigger price, the additional duty shall equal 70 percent of the difference between the MFN rate of duty as described in Article 3.4.1 and the tariff rate applied to the good in the U.S. Schedule to Annex 2-B; and
 - (e) if the difference between the import price and the trigger price is greater than 75 percent of the trigger price, the additional duty shall equal 100 percent of the difference between the MFN rate of duty as described in Article 3.4.1 and the tariff rate applied to the good in the U.S. Schedule to Annex 2-B.

United States Horticulture Safeguard List (US\$/Kg or US\$/Liter where noted)		
HS	Description	Trigger Price
0712202000	ONION POWDER OR FLOUR	0.77
0712204000	ONIONS, DRIED, EXCEPT POWDER OR FLOUR	1.26
0712904020	GARLIC POWDER OR FLOUR	0.53
0712904040	GARLIC, DRIED, EXCEPT POWDER OR FLOUR	0.48
2002100020	TOMATOES, PREPARED/PRESERVED, WHOLE OR IN PIECES, IN CONTAINERS HOLDING LESS THAN 1.4 KG	0.41
2002100080	TOMATOES PREPARED/PRESERVED IN CONTAINERS 1.4KG OR MORE, NESOI	0.43
2002908010	TOMATO PASTE IN CONTAINERS HOLDING LESS THAN 1.4 KG	0.64
2002908020	TOMATO PASTE, IN CONTAINERS HOLDING 1.4 KG OR MORE	0.56
2002908030	TOMATO PUREE IN CONTAINERS HOLDING LESS THAN 1.4 KG	0.46
2002908040	TOMATO PUREE, IN CONTAINERS HOLDING 1.4 KG OR MORE	0.31
2002908050	TOMATOES PREPARED/PRESERVED NESOI	0.69
2005600000	ASPARAGUS, PREPARED OR PRESERVED NESOI, NOT FROZEN	1.59
2008400020	PEARS, PREPARED/PRESERVED NESOI, IN CONTAINERS LESS THAN 1.4 KG	0.65
2008400040	PEARS, PREPARED/PRESERVED NESOI, IN CONTAINERS OF 1.4 KG OR MORE	0.58
2008504000	APRICOTS, PREPARED OR PRESERVED NESOI	0.90
2008702020	PEACHES, PREPARED/PRESERVED NESOI, IN CONTAINERS LESS THAN 1.4 KG EACH	0.32
2008702040	PEACHES, PREPARED/PRESERVED NESOI, IN CONTAINERS 1.4 KG OR MORE EACH	0.54
2008929030	FRUIT MIXTURES WITH PEACHES OR PEARS PACKED IN LIQUID MEDIUM IN AIRTIGHT CONTAINERS HOLDING LESS THAN 1.4 KG EACH	0.83
2008929035	FRUIT MIXTURES WITH PEACHES OR PEARS PACKED IN LIQUID MEDIUM IN AIR TIGHT CONTAINERS HOLDING GREATER THAN 1.4 KG	0.75
2008929040	FRUIT MIXTURES CONTAINING ORANGES OR GRAPEFRUIT PACKED IN LIQUID MEDIUM IN AIRTIGHT CONTAINERS	1.21
2008929050	FRUIT MIXTURES NESOI PACKED IN LIQUID MEDIUM IN AIRTIGHT CONTAINERS	0.80
2009110020	ORANGE JUICE UNFERMENTED FROZEN IN CONTAINERS UNDER .946 LITER (IN LITERS)	0.23
2009110040	ORANGE JUICE UNFERMENTED FROZEN IN CONTAINERS OF .946-3.785 LITER (IN LITERS)	0.23

2009110060	ORANGE JUICE UNFERMENTED FROZEN IN CONTAINERS OVER 3.785 LITER (IN LITERS)	0.20
2009124500	ORANGEJUICE,UNFERMENTED,NOT FROZEN, NESOI, <20 BRUX IN LITERS	0.49
2009190000	ORANGE JUICE, UNFERMENTED, NESOI IN LITERS	0.49
2009610020	GRAPE JUICE & MUST, UNFERMENTED, NOT CONCENTRATED IN LITERS	0.56
2009610040	GRAPE JUICE & MUST, <20 BRUX, CONCENTRATED FROZEN (IN LITERS)	0.34
2009610060	GRAPE JUICE & MUST, <20 BRUX, CONCENTRATED NOT FROZEN (IN LITERS)	0.27
2009690040	GRAPE JUICE & MUST, NESOI, FROZEN (IN LITERS)	0.32
2009690060	GRAPE JUICE & MUST, NESOI, NOT FROZEN (IN LITERS)	0.25
2103204020	TOMATO SAUCES NESOI IN CONTAINERS LESS THAN 1.4 KG	0.84
2103204040	TOMATO SAUCES NESOI IN CONTAINERS HOLDING 1.4 KG OR MORE	0.94

Section B: Quantity-Based Safeguard for Beef

1. The United States shall apply an agricultural safeguard measure in years nine through 18 of the Agreement on originating agricultural goods listed in paragraph 3 of Annex I of the U.S. Schedule to Annex 2-B if, in any calendar year, the aggregate volume of imports of goods exceeds 110 percent of the volume set out for the goods in that year in paragraph 3 of Annex I of the U.S. Schedule to Annex 2-B.
2. For the purposes of Article 3.4.2, the additional customs duty shall equal 75 percent of the difference between the MFN rate of duty as described in Article 3.4.1 and the applicable tariff rate in the U.S. Schedule to Annex 2-B on the agricultural goods.
3. The United States shall maintain an agricultural safeguard measure under this Section only until the end of the calendar year in which it applies the measure.
4. The United States shall have the discretion not to apply an agricultural safeguard measure under this Section.

Section C: Price-Based Safeguard for Beef

1. The United States shall apply an agricultural safeguard measure, pursuant to Article 3.4, on a good entered under subheadings 02011050, 02012080, 02013080, 02021050, 02022080, or 02023080 of the Harmonized Tariff Schedule of the United States starting in year 19 of the Agreement.
2. For the purposes of Article 3.4.2, the additional customs duty shall equal 65 percent of the MFN rate of duty for the good as described in Article 3.4.1.
3. The United States shall apply the measure as follows:
 - (a) if the monthly average index price falls below the 24-month trigger price in any two months during the previous quarter of any calendar year, the United States shall apply the measure during the current quarter of the calendar year; or
 - (b) if the monthly average index price falls below the 24-month trigger price in any month of the fourth quarter of any calendar year, or in the month immediately preceding the fourth quarter, the United States shall apply the measure during the remainder of the fourth quarter of the calendar year.
4. The measure shall apply to goods that enter the United States in any calendar year in aggregate quantities greater than the sum of:
 - (a) the quantity of goods eligible to be entered under Additional Note 3 to Chapter 2 of the Harmonized Tariff Schedule of the United States, identified by certificates issued by the Government of Australia; and
 - (b) 70,000 metric tons, which quantity shall grow at a compound annual rate of 0.6 percent starting in year 19 of the Agreement, identified by certificates issued by the Government of Australia.
5. The United States shall have the discretion not to apply an agricultural safeguard measure under this Section.
6. The Parties shall review the operation of this Section every five years after the date of entry into force of this Agreement.
7. For the purposes of this Section:
 - (a) **monthly average index price** means the monthly average index price for Wholesale Boxed Beef Cut-Out Value Select 1-3 Central U.S. 600-750 lbs., or its equivalent, as reported by the United States Department of Agriculture's Agricultural Marketing Service; and
 - (b) **24-month trigger price** means the price that is 6.5 percent less than the average of the previous 24 monthly average index prices.

CHAPTER FOUR

TEXTILES AND APPAREL

ARTICLE 4.1: BILATERAL EMERGENCY ACTIONS

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, a textile or apparel good benefiting from preferential treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action, consisting of an increase in the rate of customs duty on the good to a level not to exceed the lesser of:
 - (a) the most-favoured-nation (MFN) applied rate of duty in effect at the time the action is taken; and
 - (b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.
2. In determining serious damage, or actual threat thereof, the importing Party:
 - (a) shall examine the effect of increased imports from the exporting Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and
 - (b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.
3. The importing Party may take an emergency action under this Article only following an investigation by its competent authorities.
4. In the event that the importing Party decides to take an emergency action under this Article, the importing Party shall deliver to the exporting Party, without delay, written notice of its decision, and, on the request of the exporting Party, shall consult with that Party.
5. In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take emergency action under this Article on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports from the exporting Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports are causing serious damage, or actual threat thereof, to a domestic industry producing a like or

directly competitive good. The duration of such a provisional measure shall not exceed 200 days, during which time an investigation by its competent authorities shall be undertaken. Any additional customs duty paid as a result of a provisional measure shall be promptly refunded if the investigation does not result in a finding of serious damage or actual threat thereof consistent with paragraph 1. The duration of any provisional measure shall be counted as part of the period described in paragraph 6(a).

6. The following conditions and limitations shall apply to any emergency action taken under this Article:

- (a) no emergency action against a good may be maintained for a period exceeding two years, except that the period may be extended by up to two years if the competent authorities of the importing Party determine, in conformity with the procedures set out in this Article, that:
 - (i) the emergency action continues to be necessary to prevent or remedy serious damage and to facilitate adjustment by the domestic industry, and
 - (ii) there is evidence that the industry is adjusting;
- (b) no emergency action against a good may be taken or maintained beyond the period ending ten years after customs duties on that good have been eliminated pursuant to this Agreement;
- (c) no emergency action may be taken by an importing Party against any particular good of the exporting Party more than once; and
- (d) on termination of the emergency action, the rate of customs duty shall be the rate that would have been in effect but for the emergency action.

7. The importing Party shall provide to the exporting Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the emergency action. Such concessions shall be limited to textile or apparel goods, unless the Parties otherwise agree. If the Parties are unable to agree on compensation, the exporting Party may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. The exporting Party may take such tariff action against any goods of the importing Party. The exporting Party shall apply the tariff action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

8. (a) Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement, and the Agreement on Textiles and Clothing.
- (b) Neither Party may apply, with respect to the same good at the same time, an emergency action under this Article and:
 - (i) a safeguard measure under Chapter Nine (Safeguards); or
 - (ii) a measure under Article XIX of GATT 1994 and the Safeguards Agreement, or the Agreement on Textiles and Clothing.

ARTICLE 4.2: RULES OF ORIGIN AND RELATED MATTERS

Rules of Origin

1. This Chapter, including its Annexes, and Chapter Five (Rules of Origin) shall apply with respect to determining whether a textile or apparel good is an originating good.
2. For greater clarity, the rules of origin set forth in this Agreement shall not apply in determining the country of origin of a textile or apparel good for non-preferential purposes.

Consultations

3. On the request of either Party, the Parties shall consult to consider whether the rule of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibres, yarns, or fabrics in the territories of the Parties.
4. In the consultations referred to in paragraph 3, each Party shall consider all data presented by the other Party showing substantial production in its territory of the particular good. The Parties shall consider that substantial production has been shown if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner.
5. The Parties shall endeavour to conclude consultations within 60 days of a request. An agreement between the Parties resulting from the consultations on revising a rule of origin for a good shall supersede any prior rule of origin for such good when approved by the Parties in accordance with Article 23.3 (Amendments).

De Minimis

6. A textile or apparel good that is not an originating good because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A, shall nonetheless be considered to be an

originating good if the total weight of all such fibres or yarns in that component is not more than seven percent of the total weight of that component.⁴⁻¹

7. Notwithstanding paragraph 6, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

Treatment of Sets

8. Notwithstanding the textile or apparel specific rules of origin set out in Annex 4-A, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the customs value of the set.

ARTICLE 4.3: CUSTOMS COOPERATION

1. The Parties shall cooperate for the purposes of:
 - (a) enforcing or assisting in the enforcement of their measures affecting trade in textile or apparel goods;
 - (b) ensuring the accuracy of claims of origin;
 - (c) enforcing or assisting in the enforcement of measures implementing international agreements affecting trade in textile or apparel goods; and
 - (d) preventing circumvention of international agreements affecting trade in textile or apparel goods.
2. On the request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the importing Party to determine that a claim of origin for a textile or apparel good is accurate. The exporting Party shall conduct such a verification, regardless of whether an importer claims preferential treatment for the good. The exporting Party may also conduct such a verification on its own initiative.
3. Where the importing Party has a reasonable suspicion that an exporter or producer of the exporting Party is engaging in unlawful activity relating to trade in textile or apparel goods, the exporting Party shall, on the request of the importing Party, conduct a verification for purposes of enabling the importing Party to determine that the exporter or producer is complying with applicable customs measures affecting trade in textile or apparel goods, including measures that the exporting Party adopts and maintains pursuant to this Agreement and measures of

⁴⁻¹ For greater certainty, when the good is a fibre, yarn, or fabric, the “component of the good that determines the tariff classification of the good” is all of the fibres in the yarn, fabric, or group of fibres

