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** NORTH AMERICAN FREE TRADE AGREEMENT **

— Text prepared September 6, 1992 —

Note: This text is currently undergoing legal review in order to ensure the Agreement's overall consistency and clarity. The three countries will initial the Agreement when legal drafting is completed.

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

NAFTA PART ONE GENERAL PART

Chapter One

Objectives

Article 101: Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade, hereby establish a free trade area.

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency are to:

(a) eliminate barriers to trade in, and facilitate the cross border movement of, goods and services between the territories of the Parties;

(b) promote conditions of fair competition in the free trade area;

(c) increase substantially investment opportunities in their territories;

(d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

(e) create effective procedures for the implementation and application of this Agreement, and for its joint administration and the resolution of disputes; and

(f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Article 103: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party.

2. In the event of any inconsistency between the provisions of this Agreement and such other agreements, the provisions of this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 104: Relation to Environmental and Conservation Agreements

1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

(a) Convention on the International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973;

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as amended June 29, 1990;

(c) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989, upon its entry into force for Canada, Mexico and the United States; or

(d) the agreements set out in Annex 104.1,

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

2. The Parties may agree in writing to modify Annex 104.1 to include any amendment to the agreements listed in paragraph 1, and any other environmental or conservation agreement.

Article 105: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state and provincial governments.

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ANNEX 104

Bilateral and Other Environmental and Conservation Agreements

1. The Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, signed at Ottawa, October 28, 1986.

2. The Agreement between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, signed at La Paz, Baja California Sur, August 14, 1983.

NAFTA Chapter Two

General Definitions

Article 201: Definitions of General Application

1. For purposes of this Agreement, unless otherwise specified:

Commission means the Free Trade Commission established under Article 2001;

Customs Valuation Code means the Agreement on Implementation of Article VII of the General Agreement on

Tariffs and Trade, including its interpretative notes;

days means calendar days, including weekends and holidays;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately- owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

enterprise of a Party means an enterprise constituted or organized under the laws of, or principally carrying on its business in the territory of, a Party;

existing means in effect at the time of entry into force of this Agreement;

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;

Harmonized System means the Harmonized Commodity Description and Coding System, and its legal notes, as adopted and implemented by the Parties in their respective tariff laws;

measure includes any law, regulation, procedure, requirement or practice;

national means a natural person who is a citizen or permanent resident of a Party and any other natural person referred to in Annex 201.1;

originating means qualifying under the rules of origin set out in Chapter Four (Rules of Origin);

person means a natural person or an enterprise;

person of a Party means a national, or an enterprise of a Party;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party; and

territory means for a Party the territory of that Party as set out in Annex 201.1.

2. For purposes of this Agreement, unless otherwise specified, a reference to province or state includes local governments.

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ANNEX 201.1

Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

national also includes:

(a) for Mexico, a national or a citizen according to Articles 30 and 34, respectively, of the Mexican Constitution; and

(b) for the United States, "national of the United States" as defined in the existing provisions of the United States Immigration and Nationality Act;

territory means:

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

(b) with respect to Mexico,

(i) the states of the Federation and the Federal District,

(ii) the islands, including the reefs and keys, in adjacent seas,

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs,

(v) the waters of the territorial seas, in accordance with international law and its interior maritime waters,

(vi) the space located above the national territory, in accordance with international law,

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic laws, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources; and

(c) 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 laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

NAFTA PART TWO TRADE IN GOODS Chapter Three

National Treatment and Market Access for Goods

Subchapter A - National Treatment

Article 301: National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a province or state, treatment no less favorable than the most favorable treatment accorded by such province or state to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 301.3.

Subchapter B - Tariffs

Article 302: Tariff Elimination

1. Except as otherwise provided in this Agreement, no 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 set out in Annex 302.2 or as otherwise indicated in Annex 300-B.

3. At the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between any two or more Parties to accelerate the elimination of a customs duty on a good shall supersede any prior inconsistent duty rate or staging category in their Schedules for such good when approved by each such Party in accordance with Article 2202(2) (Amendments).

Article 303: Restriction on Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory that is:

(a) subsequently exported to the territory of another Party,

(b) used as a material in the production of another good that is subsequently exported to the territory of another Party, or

(c) 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,

in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory, or the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

2. No Party may, by reason of an exportation described in paragraph 1, refund, waive or reduce:

(a) an antidumping or countervailing duty that is applied pursuant to a Party's domestic law and that is not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

(b) a premium offered or collected on an imported good arising out of any tendering system in

respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) a fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture); or

(d) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is 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, the Party from whose territory the good is exported:

(a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption; and

(b) may waive or reduce such customs duties to the extent permitted under paragraph 1.

4. In determining the amount of customs duties that may be refunded, waived or reduced pursuant to paragraph 1 on a good imported into its territory, each Party shall require presentation of satisfactory evidence of the amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

5. Where satisfactory evidence of the customs duties paid to the Party to which a good is subsequently exported under a duty deferral program described in paragraph 3 is not presented within 60 days after the date of exportation, the Party from whose territory the good was exported:

(a) shall collect customs duties as if the exported good had been withdrawn for domestic consumption; and

(b) may refund such customs duties to the extent permitted under paragraph 1 upon the timely presentation of such evidence under the laws and regulations of the Party.

6. This Article shall not apply to:

(a) a good entered under bond for transportation and exportation to the territory of another Party;

(b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported (processes such as testing, cleaning, repacking or inspecting the good, or preserving it in its same condition, shall not be considered to change a good's condition). Where originating and non-originating fungible goods are commingled and exported in the same form, the origin of the good may be determined on the basis of the inventory methods provided for in the Uniform Regulations;

(c) a good imported into the territory of the Party that is deemed to be exported from the territory of a Party, or used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of another Party, by reason of

(i) delivery to a duty-free shop,

(ii) delivery for ship's stores or supplies for ships or aircraft, or

(iii) delivery for use in joint undertakings of two more of the Parties and that will subsequently become the property of the Party into whose territory the good was imported;

(d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of another Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee;

(e) a dutiable originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is 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; or

(f) a good set out in Annex 303.6.

7. This Article shall apply as of the date set out in each Party's section of Annex 303.7.

8. Notwithstanding any other provision of this Article and except as specifically provided in Annex 303.8, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a non-originating good provided for under tariff provision 8540.xx (cathode-ray color television picture tubes, including video monitor tubes, with a diagonal exceeding 14") that is imported into the Party's territory and subsequently

exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is 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.

Article 304: Waiver of Customs Duties

1. Except as set out in Annex 304.1, no Party may adopt any 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, upon the fulfillment of a performance requirement.

2. Except as set out in Annex 304.2, no Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

3. If a waiver or a combination of waivers of customs duties granted by a Party with respect to goods for commercial use by a designated person, and thus not generally available to all importers, can be shown by another Party to have an adverse impact on the commercial interests of a person of that Party, or of a person owned or controlled by a person of that Party that is located in the territory of the Party granting the waiver, or on the other Party's economy, the Party granting the waiver shall either cease to grant it or make it generally available to any importer.

4. This Article shall not apply to measures covered by Article 303 (Restriction on Drawback and Duty Deferral).

Article 305: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for:

(a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter 16 (Temporary Entry for Business Persons),

(b) equipment for the press or for sound or television broadcasting and cinematographic equipment,

(c) goods imported for sports purposes and goods intended for display and demonstration, and

(d) commercial samples and advertising films,

imported from the territory of another Party, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in subparagraph 1(a), (b), or (c), other than to require that such good:

(a) be imported by a national or resident of another Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;

(c) not be sold or leased while in its territory;

(d) be accompanied by a bond in an amount no greater than 110 percent of the charges that would otherwise be owed upon entry or final importation, or by another form of security, releasable upon exportation of the good, except that a bond for customs duties shall not be required for an originating good;

(e) be capable of identification when exported;

(f) be exported upon the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission; and

(g) be imported in no greater quantity than is reasonable for its intended use.

3. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in subparagraph 1(d), other than to require that such good:

(a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or non-Party;

(b) not be sold, leased, or put to any use other than exhibition or demonstration while in its territory;

(c) be capable of identification when exported;

(d) be exported within such period as is reasonably related to the purpose of the temporary admission; and

(e) be imported in no greater quantity than is reasonable for its intended use.

4. A Party may impose the customs duty and any other charge on a good temporarily admitted duty-free under paragraph 1 that would be owed upon entry or final importation of such good if any condition that the Party imposes under paragraph 2 or 3 has not been fulfilled.

5. Subject to Chapters Eleven (Investment) and Twelve (Cross- Border Trade in Services):

(a) each Party shall allow a locomotive, truck, truck tractor, or tractor trailer unit, railway car, other railroad equipment, trailer ("vehicle") or container, used in international traffic, that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) no 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 vehicle or container;

(c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

(d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.

Article 306: Duty-Free Entry of Certain Commercial Samples 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 another Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods of, or services provided from, the territory of another Party or 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.

Article 307: Goods Re-entered after Repair or Alteration

1. Except as set out in Annex 307.1, no Party may apply a customs duty on a good, regardless of its origin, that re-enters its territory after that good has been exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Notwithstanding Article 303 (Duty Drawback), no Party shall apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of another Party for repair or alteration.

3. Each Party shall act in accordance with Annex 307.3 respecting the repair and rebuilding of vessels.

Article 308: Most-Favored-Nation Rates of Duty on Certain Goods

1. Each Party shall act in accordance with Annex 308.1 respecting certain automatic data processing goods and their parts.

2. Each Party shall act in accordance with Annex 308.2 respecting certain color television tubes.

3. Each Party shall accord most-favored-nation duty-free treatment to Local Area Network (LAN) apparatus imported into its territory as set out in each Party's section of Annex 308.3.

Subchapter C - Non-Tariff Measures

Article 309: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT, including its interpretative notes, and to this end Article XI of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

2. The Parties understand that the GATT rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, 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 to prevent the Party from:

(a) limiting or prohibiting the importation from the territory of another 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 another Party, that the good not be re-exported to that non-Party, directly or indirectly, without having been increased in value and improved in condition [subject to review].

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, upon request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Paragraphs 1 through 4 shall:

(a) not apply to the measures set out in Annex 301.3;

(b) apply to automotive goods as modified in Annex 300-A (Trade and Investment in the Automotive Sector); and

(c) apply to trade in textile and apparel goods, as modified in Annex 300-B (Textile and Apparel Goods).

6. For purposes of this Article, goods of another Party shall mean [under review].

Article 310: Non-Discriminatory Administration of Restrictions (GATT Article XIII)

[need for this Article is under review]

Article 311: Customs User Fees

1. No Party may adopt any customs user fee of the type referred to in Annex 311 for originating goods.

2. Each Party may maintain existing such fees only in accordance with Annex 311.2.

Article 312: Country of Origin Marking

Each Party shall comply with Annex 312 with respect to its measures relating to country of origin marking.

Article 313: Blending Requirements

No Party may adopt or maintain any measure requiring that distilled spirits imported from the territory of another Party for bottling be blended with any distilled spirits of the Party.

Article 314: Distinctive Products

Each Party shall comply with Annex 314 respecting standards and labelling of the distinctive products set out therein.

Article 315: Export Taxes

Except as set out in Annex 315 or Article 604 (Energy - Export Taxes), no Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless such duty, tax, or charge is adopted or maintained on:

(a) exports of any such good to the territory of all other Parties; and

(b) any such good when destined for domestic consumption.

Article 316: Other Export Measures

1. Except as set out in Annex 316, a Party may adopt or maintain a restriction otherwise justified under the provisions of Articles XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of a good of the Party to the territory of another Party, only if:

(a) the restriction does not reduce the proportion of the total export shipments of the specific good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

(b) the Party does not adopt any measure, such as a license, fee, tax or minimum price requirement, that has the effect of raising the price for exports of a good to that other Party above the price charged

for such good when consumed domestically, except that a measure taken pursuant to subparagraph (a) that only restricts the volume of exports shall not be considered to have such effect; and

(c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific goods or categories of goods supplied to that other Party.

2. The Parties shall cooperate in the maintenance and development of effective controls on the export of each other's goods to a non-Party in implementing this Article.

Subchapter D - Consultations

Article 317: 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 any Party or the Commission to consider any matter arising under this Chapter.

Article 318: Third-Country Dumping

1. The Parties affirm the importance of cooperation with respect to actions under Article 12 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

2. Where a Party presents an application to another Party requesting anti-dumping action on its behalf, those Parties shall consult within 30 days respecting the factual basis of the request, and the requested Party shall give full consideration to the request.

Subchapter E - Definitions

Article 319: Definitions

For purposes of this Chapter:

advertising films means recorded visual media, with or without sound-tracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of any Party, provided that the films 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 and that do not form part of a larger consignment;

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 the currency of another Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

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 the GATT, or any equivalent provision of a successor agreement to which all Parties are party, in respect of like, directly competitive or substitutable goods of the Party, 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 domestic law and not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

(c) fee or other charge in connection with importation commensurate with the cost of services rendered;

(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions or tariff rate quotas or tariff preference levels; and

(e) fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture);

distilled spirits include distilled spirits and distilled spirit- containing beverages;

duty deferral program includes measures such as those governing foreign-trade zones, temporary importations under bond, bonded warehouses, "maquiladoras", and inward processing programs;

duty-free means free of customs duty;

goods imported 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 imported;

goods intended for display or demonstration includes their component parts, ancillary apparatus and accessories;

item means a tariff classification item at the eight- or ten- digit level set out in a Party's tariff schedule;

material means "material" as defined in Chapter Four (Rules of Origin);

most-favored-nation rate of duty does not include any other concessionary rate of duty;

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties be substituted for imported goods or services;

(c) a person benefitting from a waiver of customs duties purchase other goods or services in the territory of the Party granting the waiver or accord a preference to domestically produced goods or services; or

(d) a person benefitting from a waiver of customs duties produce goods or provide services, in the territory of the Party granting the waiver, 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;

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, are essentially intended to advertise a good or service, and are supplied free of charge;

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good;

satisfactory evidence means:

(a) a receipt, or a copy of a receipt, evidencing payment of customs duties on a particular entry;

(b) a copy of the entry document with evidence that it was received by a customs administration;

(c) a copy of a final customs duty determination by a customs administration respecting the relevant entry; or

(d) any other evidence of payment of customs duties acceptable under the Uniform Regulations developed in accordance with Chapter Five (Customs Procedures);

total export shipments means all shipments from total supply to users located in the territory of another Party;

total supply means all shipments, whether intended for domestic or foreign users, from:

(a) domestic production;

(b) domestic inventory; and

(c) other imports as appropriate; and

waiver of customs duties means a measure that waives otherwise applicable customs duties on any good imported from any country, including the territory of another Party.

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ANNEX 301.3

Exceptions to Articles 301 and 309

[subject to review]

Section A - Canadian Measures

1. Articles 301 and 309 shall not apply to:

(a) controls by Canada on the export of logs of all species;

(b) controls by Canada on the export of unprocessed fish pursuant to the following existing statutes:

(i) New Brunswick Fish Processing Act, R.S.N.B. c. F- 18.01 (1982), as amended, and Fisheries Development Act, S.N.B. c. F-15.1 (1977), as amended;

(ii) Newfoundland Fish Inspection Act, R.S.N. 1970, c. 132, as amended;

(iii) Nova Scotia Fisheries Act, S.N.S. 1977, c. 9, as amended;

(iv) Prince Edward Island Fish Inspection Act, R.S.P.E.I. 1988, c. F-13, as amended; and

(v) Quebec Marine Products Processing Act, No. 38, S.Q. 1987, c. 51, as amended;

(c) measures by Canada respecting the importation of certain items on the Prohibited Goods List in Schedule VII of the Customs Tariff, R.S.C. 1985, c. 41 (3rd supp.), as amended, as of July 1, 1991;

(d) except as provided in Chapter Seven (Agriculture), measures by Canada respecting the importation of grains taken with respect to the United States, (Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended);

(e) measures by Canada respecting the exportation of liquor for delivery into any country into which the importation of liquor is prohibited by law under the existing provisions of Export Act, R.S.C. 1985, c. E- 18, as amended;

(f) measures by Canada respecting the importation and distribution of imported liquor by designated government agencies under the existing provisions of Importation of Intoxicating Liquors Act, R.S.C. 1985, c. I-3, as amended, to the extent that it creates an import monopoly consistent with Articles II:4 and XVII of the GATT and Article 31 of the Havana Charter;

(g) except as provided in Chapter Seven (Agriculture), measures by Canada respecting preferential freight rates for grain originating in certain Canadian provinces under the existing provisions of Western Grain Transportation Act, R.S.C. 1985, c. W-8, as amended;

(h) measures by Canada respecting preferential rates for goods originating in certain Canadian provinces under the existing provisions of Maritime Freight Rate Act, R.S.C. 1985, c. M-1, as amended;

(i) Canadian excise taxes on absolute alcohol used in manufacturing under the existing provisions of Excise Tax Act, R.S.C. 1985, c. E-15, as amended;

(j) except as provided for in Chapter Seven (Agriculture), import restrictions imposed under Section 5(1)(b) and (d) of the Export and Import Permits Act, R.S.C. 1985, c. E-19, as amended, as of January 1, 1994, that are in accordance with the provisions of Article XI:2(c)(i) of the GATT; and

(k) quantitative import restrictions on goods that originate in the territory of the United States, considering operations performed in, or materials obtained from, Mexico as if they were performed in, or obtained from, a non-Party, and that are indicated by asterisks in Chapter 89 in Annex 401.2 (Tariff Schedule of Canada) of the Canada - United States Free Trade Agreement for as long as the measures taken under the Merchant Marine Act of 1920, (46 U.S.C. App. 883) and the Merchant Marine Act of 1936, (46 U.S.C. App. 1171, 1176, 1241 and 1241o) apply with quantitative effect to comparable Canadian origin goods sold or offered for sale into the United States market.

2. Notwithstanding any provision of this Agreement, any measure related to the internal sale and distribution of wine and distilled spirits, other than those covered by Article 313 (Blending Requirements) or Article 314 (Distinctive Products) shall, as between Canada and the United States, be governed under this Agreement exclusively in accordance with the relevant provisions of the Canada - United States Free Trade Agreement which for this purpose are hereby incorporated into this Agreement.

3. In respect of any measure related to the internal sale and distribution of wine and distilled spirits, the provisions of Articles 301 and 309 shall not apply as between Canada and Mexico to:

(a) a non-conforming provision of any existing measure;

(b) the continuation or prompt renewal of a non-conforming provision of any existing measure;

(c) an amendment to a non-conforming provision of any existing measure to the extent the amendment does not decrease its conformity with the provisions of Article 301 or 309; or

(d) measures set out in paragraphs 4 and 5.

4. Further to paragraph 3(d):

(a) automatic listing measures in the province of British Columbia may be maintained provided they apply only to existing estate wineries producing less than 30,000 gallons of wine annually and meeting the existing content rule;

(b) Canada may

(i) adopt or maintain a measure limiting on-premise sales by a winery or distillery to those wines or distilled spirits produced on its premises, and

(ii) maintain a measure requiring existing private wine store outlets in the provinces of Ontario and British Columbia to discriminate in favor of wine of those provinces to a degree no greater than the discrimination required by such existing measure; and

(c) nothing in this Agreement shall prohibit the Province of Quebec from requiring that any wine sold in grocery stores in Quebec be bottled in Quebec, provided that alternative outlets are provided in Quebec for the sale of wine of the other Parties, whether or not such wine is bottled in Quebec.

5. As between Canada and Mexico:

(a) any measure related to listing of wine and distilled spirits of the other Party shall

(i) conform with Article 301,

(ii) be transparent, non-discriminatory and provide for prompt decision on any listing application, prompt written notification of such decision to the applicant, and in the case of a negative decision, provide for a statement of the reason for refusal,

(iii) establish administrative appeal procedures for listing decisions that provide for prompt, fair and objective rulings,

(iv) be based on normal commercial considerations,

(v) not create disguised barriers to trade, and

(vi) be published and made generally available to persons of Mexico;

(b) where the distributor is a public entity, the entity may charge the actual cost-of-service differential between wine and distilled spirits of the other Party and domestic wine and distilled spirits. Any such differential shall not exceed the actual amount by which the audited cost-of-service for the wine or distilled spirits of the exporting party exceeds the audited cost-of-service for the wine and distilled spirits of the importing party;

(c) notwithstanding Articles 301 and 309, Article I (Definitions), Article IV.3 (Wine), and Annexes A, B and C of the Agreement between Canada and the European Economic Community Concerning Trade and Commerce in Alcoholic Beverages dated February 28, 1989 shall apply with such modifications as may be necessary as between Canada and Mexico;

(d) all discriminatory mark-ups on distilled spirits shall be eliminated immediately upon the date of entry into force of this Agreement. Cost-of-service differential mark-ups as described in subparagraph (b) shall be permitted;

(e) any other discriminatory pricing measure shall be eliminated upon the date of entry into force of this Agreement;

(f) any measure related to distribution of wine or distilled spirits of the other Party shall conform with Article 301; and

(g) unless otherwise specifically provided in this Annex, the Parties retain their rights and obligations under the GATT and agreements negotiated under the GATT.

(The intention of paragraphs 3, 4, and 5 is to grant Mexico the same concessions granted to the U.S. under the Canada - United States Free Trade Agreement respecting wine and distilled spirits.)

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Section B - Mexican Measures

1. Articles 301 and 309 shall not apply to:

(a) controls by Mexico on the export of logs of all species;

(b) measures under the existing provisions of Articles 192 through 194 of the General Ways of Communication Act ("Ley de Vias Generales de Comunicaci¢n") reserving exclusively to Mexican vessels all services and operations not authorized for foreign vessels and empowering the Mexican Ministry of Communications and Transportation to deny foreign vessels the right to perform authorized services if their country of origin does not grant reciprocal rights to Mexican vessels;

(c) measures taken in accordance with Annex 300-A (Trade in Automotive Goods) and measures taken in accordance with existing provisions of Articles 1, 4 and 5 of the Mexican Foreign Trade Act ("Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior") with respect to automotive goods referred to in Annex 300-A (Trade in Automotive Goods);

(d) measures taken in accordance with Sections 3 (Import and Export Restrictions), 5 (Bilateral Emergency Actions-Quantitative Restrictions), 6 (Rules of Origin), and 8 (Trade in Worn Clothing) of Annex 300-B (Textile and Apparel Goods) and measures taken in accordance with existing provisions of Articles 1, 4 and 5 of the Mexican Foreign Trade Act ("Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior") with respect to textile and apparel goods referred to in Annex 300-B;

(e) measures taken in accordance with Articles 703 (Market Access) and Annex (permits for Dairy, Poultry and Eggs) of Chapter Seven (Agriculture) and measures taken in accordance with existing provisions of Articles 1, 4 and 5 of the Mexican Foreign Trade Act ("Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior") with respect to agricultural goods referred to in Chapter Seven;

(f) measures covered by Chapter Six (Energy) and measures taken in accordance with existing provisions of Articles 1, 4 and 5 of the Mexican Foreign Trade Act ("Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior") with respect to energy and basic petrochemical goods referred to in Chapter 6;

(g) export permit measures taken in accordance with existing provisions of Articles 1, 4 and 5 of the Mexican Foreign Trade Act ("Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior") with respect to goods subject to quantitative restrictions, tariff rate quotas or tariff preference levels adopted or maintained by another Party; and

(h) with respect to existing provisions, the continuation or prompt renewal of a non-conforming provision of any of the above provisions or an amendment to a non- conforming provision of any of the above provisions to the extent that the amendment does not decrease its conformity with the provisions of Articles 301 and 309.

2. Notwithstanding Article 309, and without prejudice to other rights and obligations under this Agreement concerning import and export restrictions, for the first 10 years after the date of entry into force of this Agreement, Mexico may require permits for the importation of used goods provided for in the following existing items in the Tariff Schedule of the General Import Duty Act ("Tarifa de la Ley del Impuesto General de Importaci¢n"). For purposes of reference, the goods covered by those items are broadly identified next to the corresponding item.

Item Description

8407.3499 Gasoline engines of more than 1,000 cm3, except for motorcycles.

8413.11.01 Pumps fitted with a measuring device even if it includes a totalizing mechanism.

8413.40.01 Concrete pumps for liquids, not fitted with a measuring device from 36 up to 60 m3/hr capacity.

8426.12.01 Mobile lifting frames on tires and straddle carriers.

8426.19.01 Other (overhead travelling cranes, transporter cranes, gantry cranes, bridge cranes, mobile lifting frames and straddle carriers.

8426.30.01 Portal or pedestal jib cranes.

8426.41.01 Derricks, cranes and other lifting machinery on tires, self-propelled with mechanical working and carrying capacity less than 55 tons.

8426.41.02 Derricks, cranes and other lifting machinery on tires, self-propelled with hydraulic working and carrying capacity more than 9.9 up to 30 tons.

8426.41.99 Other (Machinery, self propelled, on tires.)

8426.49.01 Derricks, cranes and other lifting machinery (other than on tires), self-propelled with mechanical working and carrying capacity less than 55 tons.

8426.49.02 Derricks, cranes sand other lifting machinery (other than on tires), self-propelled with hydraulic working and carrying capacity more than 9.9 up to 30 tons.

8426.91.01 Derricks, cranes and other lifting machinery except items 8426.91.02, 03 and 04.

8426.91.02 Derricks, cranes and other lifting machinery for mounting on road vehicles, with hydraulical working and carrying capacity up to 9.9 tons.

8426.91.03 Derricks, cranes and other lifting machinery (basket type) for mounting on road vehicles, with carrying capacity up to 1 ton and 15 meters lift.

8426.91.99 Other (machinery designed for mounting on road vehicles).

8426.99.01 Derricks, cranes and other lifting machinery except items 8426.91.02

8426.99.02 Swivel cranes.

8426.99.99 Other (derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane).

8427.10.01 Self-propelled work trucks powered by an electric motor, carrying capacity 3.5 tons.

8427.20.01 Other self-propelled trucks with combustion piston engines, carrying capacity up to 7 tons.

8428.40.99 Other (escalators and moving walkways).

8428.90.99 Other (continuous-action elevators and conveyors, for goods or materials).

8429.11.01 Self-propelled bulldozers and angledozers, for track laying.

8429.19.01 Other (bulldozers and angledozers).

8429.20.01 Self-propelled graders and levelers.

8429.30.01 Self-propelled scrapers.

8429.40.01 Self-propelled tamping machines and road rollers.

8429.51.02 Self-propelled front-end shovel loaders, wheel-type, less than 335 HP.

8429.51.03 Self-propelled front-end shovel loaders, wheel-type, other than item 8429.51.01.

8429.51.99 Other (mechanical shovels, excavators and shovel loaders).

8429.52.02 Self-propelled backhoes, shovels, clamshells and draglines, other than 8429.52.01.

8429.52.99 Other (machinery with a 360 revolving superstructure).

8429.59.01 Excavators.

8429.59.02 Track laying draglines, carrying capacity up to 4 tons.

8429.59.03 Track laying draglines, other than item 8429.59.04.

8429.59.99 Other (self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels,

excavators, shovel loaders, tamping machines and road rollers).

8430.31.01 Self-propelled tunneling machinery.

8430.31.99 Other (self-propelled coal or rock cutters and tunnelling machinery).

8430.39.01 Sinking or boring shields.

8430.39.99 Other (coal or rock cutters and tunnelling machinery).

8430.41.01 Self-propelled boring or sinking machinery, other than item 8430.41.02.

8430.41.99 Other (self-propelled boring or sinking machinery).

8430.49.99 Other (boring or sinking machinery).

8430.50.01 Self-propelled peat excavators, with frontal carriers and hydraulic mechanism less than 335 hp capacity.

8430.50.02 Scrapers.

8430.50.99 Other (machinery self-propelled).

8430.61.01 Tamping machinery, not self-propelled.

8430.61.02 Compacting machinery, not self-propelled.

8430.61.99 Other (machinery, not self-propelled).

8430.62.01 Scarificationer machine.

8430.69.01 Threshers or scrapers machine.

8430.69.02 Trencher machine, other than 8430.69.03.

8430.69.99 Other (moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery).

8452.10.01 Sewing machines of the household type.

8452.21.04 Industrial machines, other than 845221.02, 03 and 05.

8452.21.99 Other (automatic sewing machines).

8452.29.05 Pending

8452.29.06 Industrial machines, other than 84522901, 03 and 05.

8452.29.99 Other (sewing machines).

8452.90.99 Other (parts of sewing machines).

8471.10.01 Analog or hybrid automatic data processing machines.

8471.20.01 Digital automatic data processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined.

8471.91.01 Numerical or digital units entered with the rest of a system, which may contain in the housing one or two of the following types of units: storage units, input units, output unit.

8471.92.99 Other (input or output units whether or not entered with the rest of a system and whether or not containing storage units in the same housing).

8471.93.01 Storage units, including the rest of the system.

8471.99.01 Other (automatic data processing machines and units thereof).

8474.20.02 Crushing jawbone and grinding millstone.

8474.20.05 Drawer cone crushing, with diameter no more than 1200 millimeters.

8474.20.06 Grinding hammer percussion.

8701.30.01 Track-laying tractors with a net engine power more than 105 h.p. but less than 380 h.p. including pushing blade.

8701.90.02 Rail road tractors, on tires with mechanical

mechanism for pavement.

8474.20.01 Crushing and grinding with two or more cylinders.

8474.20.03 Blades crushing machines.

8474.20.04 Blades XXX

8474.20.99 Other (crushing or grinding machines).

8474.39.99 Other (mixing machines).

8474.80.99 Other (kneading machines).

8475.10.01 Machines for assembling electric or electronic lamps, tubes.

8477.10.01 Injection-molding machines for working rubber or plastics, up to 5 kg capacity for one molding model.

8711.10.01 Motorcycles, mopeds and cycles fitted with an auxiliary motor with reciprocating internal combustion piston engine not exceeding 50 cm.3.

8711.20.01 Motorcycles, mopeds and cycles fitted with an auxiliary motor with reciprocating internal combustion piston engine over 50 cm.3 but not over 250 cm.3.

8711.30.01 Motorcycles, mopeds and cycles fitted with an auxiliary motor with reciprocating internal combustion piston engine over 250 cm.3 but not over 500 cm.3.

8711.40.01 Motorcycles, mopeds and cycles fitted with an auxiliary motor with reciprocating internal combustion piston engine over 500 cm.3 but less than 550 cm.3.

8711.90.99 Other (motorcycles, mopeds and cycles fitted with an auxiliary motor without an internal combustion piston engine, and sidecars which are not to be used with motocycles and velocipedes of any kind).

8712.00.02 Bicycles, other than of the type for racing.

8712.00.99 Other (Cycles, not motorized, except bicycles, and tricycles for the transport of merchandise).

8716.10.01 Trailers and semi-trailers for housing and camping, not mechanically propelled.

8716.31.02 Tanker trailers and tanker semi-trailers for the transport of goods, not mechanically propelled, of the steel-tank type.

8716.31.99 Other (Tanker trailers and tanker semi-trailers for the transport of goods, not mechanically propelled, except of the steel-tank type, and of the thermal type for the transportation of milk).

8716.39.01 Trailers and semi-trailers for the transport of goods, not mechanically propelled, of the platform type (more detailed description pending).

8716.39.02 Trailers and semi-trailers for the transport of vehicles, not mechanically propelled.

8716.39.04 Trailers and semi-trailers for the transport of goods, not mechanically propelled, of the modular-platform type (more detailed description pending).

8716.39.05 Semi-trailers for the transport of goods, not mechanically propelled, of the low-bed type (more detailed description pending).

8716.39.06 Trailers and semi-trailers for the transport of goods, not mechanically propelled, of the closed-box type, including those for refrigeration.

8716.39.07 Trailers and semi-trailers for the transport of goods, not mechanically propelled, of the steel-tank type.

8716.39.99 Other. (Trailers and semi-trailers for the transport of goods, not mechanically propelled, except those referred to in items 87163901, 02, 04, 05, 06 and 07, those with two levels which are recognizable as intended for use exclusively in the transportation of cattle, and carriages with solid rubber wheels).

8716.40.01 Other trailers and semi-trailers, not mechanically propelled. (Other than for the transport of goods).

8716.80.99 Other. (Vehicles not mechanically propelled, except trailers and semi-trailers, hand-wagons, and hand-wagons of hydraulic operation.

3. Notwithstanding Article 309, and without prejudice to other rights and obligations under this Agreement

concerning import and export restrictions:

(a) for the first five years after the date of entry into force of this Agreement, Mexico may require permits for the importation of new automotive goods provided for in the following existing items in the Tariff Schedule of the General Import Duty Act ("Tarifa de la Ley del Impuesto General de Importaci¢n"). For purposes of reference, the goods covered by those items are broadly identified next to the corresponding item;

Item Description

8701.20.01 Road Tractors for semi-trailers

8702.10.01 Public-transport type passenger vehicles, with diesel or semi-diesel engine, with body mounted on a chassis.

8702.10.02 Public-transport type passenger vehicles, with diesel or semi-diesel engine, with an integral body.

8702.90.03 Public-transport type passenger vehicles, with gasoline engine, with an integral body.

8703.10.99 Other special vehicles.

8704.22.99 Motor vehicles for the transport of goods with diesel engine and capacity of cargo of more than 5 tons but less than 20 tons.

8704.23.99 Motor vehicles for the transport of goods with diesel engine and capacity of cargo of more than 20 tons.

8704.32.99 Motor vehicles for the transport of goods with gasoline engine and with capacity of cargo of more than 5 tons.

8705.20.01 Mobile drilling derricks.

8705.40.01 Concrete mixers.

8706.00.01 Chassis fitted with gasoline engine.

8706.00.99 Other chassis fitted with gasoline engine.

(b) for the first 10 years after the date of entry into force of this Agreement, Mexico may require permits for the importation of new automotive goods provided for in the following existing items in the Tariff Schedule of the General Import Duty Act ("Tarifa de la Ley del Impuesto General de Importaci¢n"). For purposes of reference, the goods covered by those items are broadly identified next to the corresponding item;

Item Description

8407.34.99 Gasoline engines of more than 1,000 cm3, except for motorcycles.

8702.90.02 Public-transport type passenger vehicles, with gasoline engine, with body mounted on a chassis.

8703.21.01 Passenger motor vehicles with gasoline engine of less than or equal to 1,000 cm3.

8703.22.01 Passenger motor vehicles with gasoline engine of more than 1,000 cm3 but less than 1,500 cm3.

8703.23.01 Passenger motor vehicles with gasoline engine of more than 1,500 cm3 but less than or equal to 3,000 cm3.

8703.24.01 Passenger motor vehicles with gasoline engine of more than 3,000 cm3.

8703.31.01 Passenger motor vehicles with diesel engine of less than or equal to 1,500 cm3.

8703.32.01 Passenger motor vehicles with diesel engine of more than 1,500 cm3 but less than or equal to 2,500 cm3.

8703.33.01 Passenger motor vehicles with diesel engine of more than 2,500 cm3.

8703.90.99 Other passenger vehicles.

8704.21.99 Motor vehicles for the transport of goods with diesel engine and with capacity of cargo of less than or equal to 5 tons.

8704.31.99 Motor vehicles for the transport of goods with gasoline engine and with capacity of cargo of less than or equal to 5 tons.

(c) for the first 25 years after the date of entry into force of this Agreement, Mexico may require permits for the importation of used automotive goods provided for in the following existing items in the Tariff Schedule of the General Import Duty Act ("Tarifa de la Ley del Impuesto General de Importaci¢n"). As of the 26th year after the date of entry into force of this Agreement, Mexico may require permits for the importation of non-originating automotive goods provided for under such items. For purposes of reference, the goods covered by those items are broadly identified next to the corresponding item.

Item Description

8701.20.01 Road Tractors for semi-trailers

8702.10.01 Public-transport type passenger vehicles, with diesel or semi-diesel engine, with body mounted on a chassis.

8702.10.02 Public-transport type passenger vehicles, with diesel or semi-diesel engine, with an integral body.

8702.90.01 Trolleys.

8702.90.02 Public-transport type passenger vehicles, with gasoline engine, with body mounted on a chassis.

8702.90.03 Public-transport type passenger vehicles, with gasoline engine, with an integral body.

8703.10.01 Special vehicles with electric engine (snowmobiles, golf cart).

8703.10.99 Other special vehicles.

8703.21.01 Passenger motor vehicles with gasoline engine of less than or equal to 1,000 cm3.

8703.22.01 Passenger motor vehicles with gasoline engine of more than 1,000 cm3 but less than 1,500 cm3.

8703.23.01 Passenger motor vehicles with gasoline engine of more than 1,500 cm3 but less than or equal to 3,000 cm3.

8703.24.01 Passenger motor vehicles with gasoline engine of more than 3,000 cm3.

8703.31.01 Passenger motor vehicles with diesel engine of less than or equal to 1,500 cm3.

8703.32.01 Passenger motor vehicles with diesel engine of more than 1,500 cm3 but less than or equal to 2,500 cm3.

8703.33.01 Passenger motor vehicles with diesel engine of more than 2,500 cm3.

8703.90.01 Electrical motor cars.

8703.90.99 Other passenger vehicles.

8704.21.99 Motor vehicles for the transport of goods with diesel engine and with capacity of cargo of less than or equal to 5 tons.

8704.22.99 Motor vehicles for the transport of goods with diesel engine and capacity of cargo of more than 5 tons but less than 20 tons.

8704.23.99 Motor vehicles for the transport of goods with diesel engine and capacity of cargo of more than

20 tons.

8704.31.99 Motor vehicles for the transport of goods with gasoline engine and with capacity of cargo of less than or equal to 5 tons.

8704.32.99 Motor vehicles for the transport of goods with gasoline engine and with capacity of cargo of more than 5 tons.

8705.10.01 Mobile crane vehicles.

8705.20.01 Mobile drilling derricks.

8705.20.99 Other drilling derricks.

8705.40.01 Concrete mixers.

8705.90.01 Spraying vehicles.

8705.90.99 Other special purpose vehicles.

8706.00.01 Chassis fitted with gasoline engine.

8706.00.99 Other chassis fitted with gasoline engine.

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Section C - United States Measures

Articles 301 and 309 shall not apply to:

(a) controls by the United States on the export of logs of all species;

(b) taxes on imported perfume containing distilled spirits under existing provisions of Section 5001(a)(3) and 5007(b)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 5001(a)(3), 5007(b)(2));

(c) measures under existing provisions of section 27 of the Merchant Marine Act (46 U.S.C. App. 883), the Passenger Vessel Act of 1920 (46 U.S.C. App. 289), the Merchant Ship Sales Act of 1946 (46 U.S.C. App. 292, 316, and 46 U.S.C. 12108); and

(d) import restrictions with respect to Canada imposed under existing provisions of section 22 of the Agricultural Adjustment Act of 1933 (7 U.S.C. 624).

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ANNEX 302.2

Tariff Elimination

1. Except as otherwise provided in a Party's Schedule attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 302(2):

(a) duties on goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely and such goods shall be duty-free, effective January 1, 1994;

(b) duties on goods provided for in the items in staging category B in a Party's Schedule shall be removed in 5 equal annual stages commencing on January 1, 1994, and such goods shall be duty-free, effective January 1, 1998;

(c) duties on goods provided for in the items in staging category C in a Party's Schedule shall be removed in 10 equal annual stages commencing on January 1, 1994, and such goods shall be duty-free, effective January 1, 2003;

(d) duties on goods provided for in the items in staging category C+ in a Party's Schedule shall be removed in 15 equal annual stages commencing on January 1, 1994, and such goods shall be duty-free, effective January 1, 2008; and

(e) goods provided for in the items in staging category D in a Party's Schedule shall continue to receive duty-free treatment.

(other staging categories will be displayed in the tariff schedules of each Party and may be incorporated here.)

2. The base rate of duty and staging category for determining the interim rate of duty at each stage of reduction for an item are indicated for the item in each Party's Schedule attached to this Annex. These rates generally reflect the rate of duty in effect on July 1, 1991, including rates under the U.S. Generalized System of Preferences and the General Preferential Tariff of Canada.

3. For the purpose of the elimination of customs duties in accordance with Article 302, interim staged rates shall be rounded down, except as set out in each Party's Schedule attached to this Annex, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest .001 of the official monetary unit of the Party.

4. Canada shall apply the rate applicable under the staging category set out for an item in Annex 401.2, as amended, of the Canada - United States Free Trade Agreement which Annex is hereby incorporated into and made part of this Agreement, to an originating good provided that:

(a) notwithstanding any provision in Chapter Four of this Agreement, in determining whether such good is an originating good, operations performed in or materials obtained from Mexico are considered as if they were performed in or obtained from a non-Party; and

(b) any processing that occurs in Mexico after the good would qualify as an originating good in accordance with subparagraph (a) does not increase the transaction value of the good by greater than seven percent.

5. Canada shall apply the rate applicable under the staging category set out for an item contained in column I of section A of this Annex to an originating good provided that:

(a) notwithstanding any provision to the contrary in Chapter Four, in determining whether such good is an originating good, operations performed in or materials obtained from the United States are considered as if they were performed in or obtained from a non-Party; and

(b) any processing that occurs in the United States after the good would qualify as an originating good in accordance with subparagraph (a) does not increase the transaction value of the good by greater than seven percent.

6. Canada shall apply to an originating good to which neither paragraph 4 nor paragraph 5 applies, the applicable rate indicated for an item contained in column II, reduced in accordance with the staging category of column I of section A of this Annex except as otherwise indicated, or where there is a letter "X" (to be replaced with descriptive language) in column II, the applicable rate of duty for the item shall be the higher of:

(a) the General Preferential Tariff rate of duty for that item applied on July 1, 1991, reduced in accordance with the applicable staging category set out for that item in column I of its Schedule; or

(b) the applicable rate under the staging category for that item set out in Annex 401.2, as amended, of the Canada - United States Free Trade Agreement.

7. Paragraphs 4, 5 and 6 shall not apply to goods provided for under Chapters 50 through 63 of the Harmonized System and to other goods identified in Appendix 1.1 of Annex 300-B (Textiles and Apparel Goods).

8. Mexico shall apply the rate applicable under the staging category set out for an item in column II of section B of this Annex to an originating good when the good qualifies to be marked as a good of Canada, pursuant to Annex 312, without regard to whether the good is marked.

9. Mexico shall apply the rate applicable under the staging category set out for an item in column I of section B of this Annex to an originating good when the good qualifies to be marked as a good of the United States, pursuant to Annex 312, without regard to whether the good is marked.

10. The United States shall apply the rate applicable under the staging category set out for an item in Annex 401.2, as amended, of the Canada - United States Free Trade Agreement to an originating good when the good qualifies to be marked as a good of Canada pursuant to Annex 312, without regard to whether the good is marked.

11. The United States shall apply the rate applicable under the staging category set out for an item in section C of this Annex to an originating good when the good qualifies to be marked as a good of Mexico pursuant to Annex 312, whether or not the good is marked.

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SECTION A - SCHEDULE OF CANADA

(TARIFF SCHEDULE TO BE ATTACHED)

SECTION B - SCHEDULE OF MEXICO

(TARIFF SCHEDULE TO BE ATTACHED)

SECTION C - SCHEDULE OF THE UNITED STATES

(TARIFF SCHEDULE TO BE ATTACHED)

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ANNEX 303.6

Goods Not Subject to Article 303

1. For exports from the territory of the United States to the territory of Canada or Mexico, a good, provided for in U.S. tariff item 1701.11.02, that is imported into the territory of the United States and used as a material in the production of, or substituted by an identical or similar good used as a material in the production of, a good provided for in Canadian tariff item 1701.99.00 or Mexican tariff items 1701.99.01 and 1701.99.99 (refined sugar).

2. For trade between Canada and the United States:

(a) imported citrus products;

(b) an imported good used as a material in the production of, or substituted by an identical or similar good used as a material in the production of, a good provided for in U.S. tariff items 5811.00.20 (quilted cotton piece goods), 5811.00.30 (quilted man-made piece goods) or 6307.90.99 (furniture moving pads) that are subject to the most-favored-nation rate of duty when exported to the territory of the other Party; (Canadian tariff items to be added) and

(c) an imported good used as a material in the production of, or substituted by an identical or similar good used as a material in the production of, apparel that is subject to the most-favored-nation rate of duty when exported to the territory of the other Party.

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ANNEX 303.7

Effective Dates for the Application of Article 303

Section A - Canada

For Canada, Article 303 shall apply to a good imported into the territory of Canada that is:

(a) subsequently exported to the territory of the United States on or after January 1, 1996, or subsequently exported to the territory of Mexico on or after January 1, 2001;

(b) used as a material in the production of another good that is subsequently exported to the territory of the United States on or after January 1, 1996, or used as a material in the production of another good that is subsequently exported to the territory of Mexico on or after January 1, 2001;

(c) 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 the United States on or after January 1, 1996, or 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 Mexico on or after January 1, 2001; or

(d) substituted by an identical or similar good that is subsequently exported to the territory of the United States on or after January 1, 1996, or substituted by an identical or similar good that is subsequently exported to the territory of Mexico on or after January 1, 2001.

Section B - Mexico

For Mexico, Article 303 shall apply to a good imported into the territory of Mexico that is:

(a) subsequently exported to the territory of another Party on or after January 1, 2001;

(b) used as a material in the production of another good that is subsequently exported to the territory of another Party on or after January 1, 2001;

(c) 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 on or after January 1, 2001; or

(d) substituted by an identical or similar good that is subsequently exported to the territory of another Party on or after January 1, 2001.

Section C - United States

For the United States, Article 303 shall apply to a good imported into the territory of the United States that is:

(a) subsequently exported to the territory of Canada on or after January 1, 1996, or subsequently exported to the territory of Mexico on or after January 1, 2001;

(b) used as a material in the production of another good that is subsequently exported to the territory of Canada on or after January 1, 1996, or used as a material in the production of another good that is subsequently exported to the territory of Mexico on or after January 1, 2001;

(c) substituted by an identical or similar good used as a material in the production of another good subsequently exported to the territory of Canada on or after January 1, 1996, or substituted by an identical or similar good used as a material in the production of another good subsequently exported to the territory of Mexico on or after January 1, 2001; or

(d) substituted by an identical or similar good that is subsequently exported to the territory of Canada on or after January 1, 1996, or substituted by an identical or similar good that is subsequently exported to the territory of Mexico on or after January 1, 2001.

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ANNEX 303.8

Exception to Article 303(8)
For Certain Cathode-Ray Picture Tubes

Mexico

Mexico may refund customs duties paid, or waive or reduce the amount of customs duties owed, on goods provided for in subheading 8540.xx for a person who, during the period July 1, 1991 through June 30, 1992, imported into its territory no fewer than 20,000 units of such goods that would not have been considered to be originating goods had this Agreement been in force during that period, where the goods are:

(a) subsequently exported from the territory of Mexico to the territory of the United States, or are used as materials in the production of other goods that are subsequently exported from the territory of Mexico to the territory of the United States, or are substituted by identical or similar goods used as materials in the production of other goods that are subsequently exported to the territory of the United States, in an amount, for all such persons combined, no greater than

(i) 1,200,000 units in 1994,

(ii) 1,000,000 units in 1995,

(iii) 800,000 units in 1996,

(iv) 600,000 units in 1997,

(v) 400,000 units in 1998,

(vi) 200,000 units in 1999, and

(vii) zero units in 2000 and thereafter,

provided that the number of goods on which such customs duties may be refunded, waived or reduced in any year shall be reduced, with respect to that year, by the number of such goods qualifying as originating goods during the year immediately preceding that year, considering operations performed in, or materials obtained from, the territories of Canada and the United States as if they were performed in, or obtained from, a non-Party; or

(b) subsequently exported from the territory of Mexico to the territory of Canada, or used as materials in the production of other goods that are subsequently exported from the territory of Mexico to the territory of Canada, or are substituted by identical or similar goods used as materials in the production of other goods that are subsequently exported to the territory of Canada, in an amount no greater than

(i) 75,000 units in 1994,

(ii) 50,000 units in 1995, and

(iii) zero units in 1996 and thereafter.

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ANNEX 304.1

Exceptions for Existing Waiver Measures

Article 304(1) shall not apply in respect of existing Mexican waivers of customs duties, except that:

(a) Mexico shall not increase the ratio of customs duties waived to customs duties owed relative to the performance required under any such waiver; or

(b) Mexico shall not add any type of good to those qualifying on July 1, 1991, in respect of any waiver of customs duties in effect on that date.

ANNEX 304.2

Continuation of Existing Waiver Measures

For purposes of Article 304(2):

(a) Canada may condition on the fulfillment of a performance requirement the waiver of customs duties under any measure in effect on or before September 28, 1988, on any goods entered or withdrawn from warehouse for consumption before January 1, 1998;

(b) Mexico may condition on the fulfillment of a performance requirement the waiver of customs duties under any measure in effect on July 1, 1991, on any goods entered or withdrawn from warehouse for consumption before January 1, 2001;

(c) as between the United States and Canada, Article 405 of the Canada - United States Free Trade Agreement is incorporated and made part of this Annex solely with respect to measures adopted by Canada or the United States prior to the date of entry into force of this Agreement; and

(d) Canada may grant duty waivers as set out in Annex 300-A.

ANNEX 307.1

Goods Re-Entered after Repair or Alteration

Section A - Canada

Canada may impose customs duties on goods, regardless of their origin, that re-enter its territory after such goods have been exported from its territory to the territory of another Party for repair or alteration as follows:

(a) for goods set out in section D that re-enter its territory from the territory of Mexico, Canada shall apply to the value of the repair or alteration of such goods the rate of duty for such goods applicable under its Schedule attached to Annex 302.2;

(b) for goods other than those set out in section D that re-enter its territory from the territory of the United States or Mexico, other than goods repaired or altered pursuant to a warranty, Canada shall apply to the value of the repair or alteration of such goods the rate of duty for such goods applicable under the Tariff Schedule of Canada attached to Annex 401.2 of the Canada - United States Free Trade Agreement.

(c) for goods set out in section D that re-enter its territory from the territory of the United States, Canada shall apply to the value of the repair or alteration of such goods the rate of duty for such goods applicable under its Schedule attached to Annex 401.2 of the Canada - United States Free Trade Agreement.

Section B - Mexico

Mexico may impose customs duties on goods set out in section D, regardless of their origin, that re-enter its territory after such goods have been exported from its territory to the territory of another Party for repair or alteration, by applying to the value of the repair or alteration of those goods the rate of duty for such goods that would apply if such goods were included in staging category B in the Schedule of Mexico attached to Annex 302.2.

Section C - United States

1. The United States may impose customs duties on:

(a) goods set out in section D, or

(b) goods that are not set out in section D and that are not repaired or altered pursuant to a warranty,

regardless of their origin, that re-enter its territory after such goods have been exported from its territory to the territory of Canada for repair or alteration, by applying to the value of the repair or alteration of such goods the rate of duty applicable under the Canada-U.S. Free Trade Agreement.

2. The United States may impose customs duties on goods set out in section D, regardless of their origin, that re-enter its territory after such goods have been exported from its territory to the territory of Mexico for repair or alteration, by applying to the value of the repair or alteration of such goods a rate of duty of 50 percent reduced in five equal annual stages commencing on January 1, 1994, and the value of such repair or alteration shall be duty-free on January 1, 1998.

Section D - List of Goods [description under review]

Any vessel, including the following goods, documented by a Party under its law to engage in foreign or coastwise trade, or a vessel intended to be employed in such trade:

1. Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods, including:

(a) tankers;

(b) refrigerated vessels, other than tankers; and

(c) other vessels for the transport of goods and other vessels for the transport of both persons and goods, including open vessels.

2. Fishing vessels, including factory ships and other vessels for processing or preserving fishery products of a registered length not exceeding 30.5m.

3. Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function, floating docks, floating or submersible drilling or production platforms, including drilling ships, drilling barges and floating drilling rigs.

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ANNEX 307.3

Repair and Rebuilding of Vessels

United States

For the purpose of increasing transparency regarding the types of repairs that may be performed in shipyards outside the territory of the United States that do not result in any loss of privileges for such vessel to:

(a) remain eligible to engage in coastwise trade or to access U.S. fisheries,

(b) transport U.S. government cargo, or

(c) participate in U.S. assistance programs, including the "operating difference subsidy",

the United States shall, no later than the date of entry into force of this Agreement:

(d) provide written clarification to the other Parties of current U.S. Customs and Coast Guard practices that constitute, and differentiate between, the repair and the rebuilding of vessels, including, where possible, clarifications on "jumboizing", vessel conversions, and emergency repairs, and

(e) commence a process to define the terms "repairs", "emergency repairs", and "rebuilding" under U.S. maritime legislation, including the Merchant Marine Act of 1920 (codified at 46 U.S.C. App. 883) and the Merchant Marine Act of 1936 (codified at 46 U.S.C. App. 1171, 1176, 1241 and 1241(o)).

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ANNEX 308.1

Most-Favored-Nation Rates of Duty on
Certain Automatic Data Processing Goods and Their Parts

Section A - General Provisions

1. Each Party shall reduce its most-favored-nation rate of duty applicable to the goods provided for under the tariff provisions set out in Tables 308.1.1 and 308.1.2 in section B of this Annex to the rate set out therein, or to such reduced rate as the Parties may agree, in accordance with the Schedule set out in section B of this Annex, or with such accelerated schedule as the Parties may agree.

2. Notwithstanding Chapter 3, when the most-favored-nation rate of duty applicable to a good provided for under the tariff provisions set out in Table 308.1.1 in section B of this Annex has been reduced in accordance with paragraph 1, each Party shall consider the good, when imported into its territory from the territory of another Party, to be an originating good.

3. A Party may reduce in advance of the schedule set out in Table 308.1.1 or Table 308.1.2 in section B of this Annex, or of such accelerated schedule as the Parties may agree, its most- favored-nation rate of duty applicable to any good provided for under the tariff provisions set out therein, to the rate set out therein or to such reduced rate as the Parties may agree.

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Section B - Rates of Duty and Schedule for Reduction

Table 308.1.1

Tariff Rate Schedule

Automatic Data Processing Machines (ADP):

8471.10 3.9% S

8471.20 3.9% S

Digital Processing Units:

8471.91 3.9% S

Input or Output Units:

Combined Input/Output Units:

Canada:

8471.92.90.11 3.7% S 8471.92.90.12 3.7% S 8471.92.90.19 3.7% S

Mexico:

8471.92.h1 3.7% S

United States:

8471.92.10 3.7% S

Display Units:

Canada:

8471.92.90.32 3.7% S
8471.92.90.39.a1 3.7% S
8471.92.90.39.a2 Free S

Mexico:

8471.92.h2 3.7% S 8471.92.h3 Free S

United States:

8471.92.30 Free S
8471.92.40.75 3.7% S

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Other Input or Output Units:

Canada:

8471.92.10.20 Free S 8471.92.10.90 Free S 8471.92.90.20 Free S 8471.92.90.40 Free S
8471.92.90.50 3.7% S 8471.92.90.91 Free S 8471.92.90.99 Free S

Mexico:

8471.92.h4 3.7% S 8471.92.h5 Free S

United States:

8471.92.20 Free S 8471.92.80 Free S 8471.92.90.20 Free S 8471.92.90.40 3.7% S
8471.92.90.60 Free S 8471.92.90.80 Free S

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Storage Units

8471.93 Free S

Other Units of Automatic Data Processing Machines

8471.99 Free S

Parts of Computers

8473.30 Free R

Computer Power Supplies

8504.40.a3 Free S

8504.90.a4 Free S

Table 308.1.2

Metal Oxide Varistors:

8533.40.a4 Free R

Diodes, Transistors and Similar Semiconductor Devices; Photosensitive Semiconductor Devices; Light Emitting Diodes; Mounted Piezo-electric Crystals

8541.10 Free R 8541.21 Free R 8541.29 Free R 8541.30 Free R 8541.50 Free R 8541.60 Free R 8541.90 Free R

Canada:

8541.20 Free R

Mexico:

8541.20 Free R

United States:

8541.40.20 Free S 8541.40.60 Free R 8541.40.70 Free R 8541.40.80 Free R 8541.40.95 Free R

Electronic Integrated Circuits and Microassemblies

8542 Free R

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ANNEX 308.2

Most-Favored-Nation Rates of Duty on Certain Color Television Picture Tubes

1. Any Party considering the reduction of its most-favored- nation rate of customs duty for goods provided for in tariff provision 8540.11.a2 (cathode-ray color television picture tubes, including video monitor cathode-ray tubes, with a diagonal exceeding 14 inches) during the first 10 years after the date of entry into force of this Agreement shall consult with the other Parties in advance of such reduction.

2. If any other Party objects in writing to such reduction, and the Party proceeds with the reduction, any objecting Party may raise its applicable rate of duty on originating goods provided for in the corresponding tariff provision set out in its Schedule attached to Annex 302.2, up to the applicable rate of duty as if such good had been placed in staging category C for purpose of tariff elimination.

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ANNEX 308.3

Most-Favored-Nation Duty-Free Treatment of Local Area Network Apparatus

Section A - Canada

Canada shall accord most-favored-nation duty-free treatment to goods provided for in item(s) [to be provided] of its tariff schedule.

Section B - Mexico

Mexico shall accord most-favored-nation duty-free treatment to goods provided for in item(s) [to be provided] of its tariff schedule.

Section C - United States

The United States shall accord most-favored-nation duty-free treatment to goods provided for in item(s) [to be provided] of its tariff schedule.

For purposes of this Annex:

local area network apparatus means a good dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units, including in-line repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof suitable for use solely or principally with a private network, and providing for the transmission, receipt, error- checking, control, signal conversion or correction functions for non-voice data to move through a local area network.

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ANNEX 311.2

Existing Customs User Fees

Section A - Mexico

Mexico shall not increase its customs processing fee ("derechos de tr mite aduanero") on originating goods, and shall by June 30, 1999, eliminate such fee on originating goods.

Mexico B - United States

1. The United States shall not increase its merchandise processing fee and shall eliminate such fee according to the schedule set out in Article 403 of the Canada - United States Free Trade Agreement on originating goods where those goods qualify to be marked as goods of Canada pursuant to Annex 312, without regard to whether the goods are marked.

2. The United States shall not increase its merchandise processing fee and shall by June 30, 1999, eliminate such fee, on originating goods where those goods qualify to be marked as goods of Mexico pursuant to Annex 312, without regard to whether the goods are marked.

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ANNEX 312

Country of Origin Marking

1. The Parties shall establish by January 1, 1994, rules for determining whether a good is a good of a Party ("Marking Rules") for the purposes of this Annex, Annex 300-B and Annex 302.2, and for such other purposes as may be agreed.

2. Each Party may require that a good of another Party, as determined in accordance with the Marking Rules, imported into its territory bear a country of origin marking that indicates to the ultimate purchaser of that good the name of its country of origin.

3. Each Party shall permit the country of origin marking of a good of another Party to be indicated in English, French or Spanish, except that a Party may, as part of its general consumer information measures, require that an imported good be marked with its country of origin in the same manner as prescribed for goods of that Party.

4. Each Party shall, in adopting, maintaining and administering any measure relating to country of origin marking, minimize the difficulties, costs and inconveniences that such measure may cause to the commerce and industry of the other Parties.

5. Each Party shall:

(a) accept any reasonable method of marking, including the use of stickers, labels, tags or paint, that ensures that the marking is conspicuous, legible and sufficiently permanent;

(b) exempt from a country of origin marking requirement a good of another Party which

(i) is incapable of being marked,

(ii) cannot be marked prior to exportation to the territory of another Party without causing injury to the goods,

(iii) cannot be marked except at an expense which would materially discourage its exportation to the territory of another Party,

(iv) cannot be marked without materially impairing its function or substantially detracting from its appearance,

(v) is in a container that is marked in a manner that will reasonably indicate the good's origin to the

ultimate purchaser,

(vi) is a crude substance,

(vii) is imported for use by the importer and is not intended for sale in the form in which it was imported,

(viii) is to be processed in the importing Party by the importer, or on its behalf, in a manner that results in a change of origin for marking purposes, under the Marking Rules,

(ix) by reason of its character, or the circumstances of its importation, the ultimate purchaser would reasonably know its country of origin even though it is not marked,

(x) was produced more than 20 years prior to its importation,

(xi) was imported without the required marking and cannot be marked after its importation except at an expense that would materially discourage its importation, provided that the failure to mark the good before importation was not for the purpose of avoiding compliance with such requirement,

(xii) for the purposes of temporary duty-free admission, is in transit or in bond or otherwise under customs administration control,

(xiii) is an original work of art, or

(xiv) is provided for in headings 8541 or 8542, and 6904.10.

6. Except for a good described in subparagraphs 5(b)(vi),(vii), (viii), (ix), (x), (xii), (xiii) and (xiv), a Party may provide that, wherever a good is exempted under subparagraph 5(b), its outermost container that ordinarily reaches the ultimate purchaser shall be marked so as to indicate the country of origin of the good it contains.

7. Each Party shall provide that:

(a) a usual container imported empty, whether or not disposable, shall not be required to be marked with its own country of origin, but the container in which it is imported may be required to be marked with the country of origin of its contents; and

(b) a usual container imported filled, whether or not disposable,

(i) shall not be required to be marked with its own country of origin, but

(ii) may be required to be marked with the country of origin of its contents, unless the contents are marked with their country of origin and the container can be readily opened for inspection of the contents, or the marking of the contents is clearly visible through the container.

8. Each Party shall, whenever administratively practicable, permit an importer to mark a good subsequent to importation but prior to release of the good from customs control or custody, unless there have been repeated violations of the country of origin marking requirements of that Party by the same importer and that importer has been previously notified in writing that such good is required to be marked prior to importation.

9. Each Party shall provide that, except with respect to importers that have been notified under paragraph 8, no special duty or penalty shall be imposed for failure to comply with country of origin marking requirements, unless a good is removed from customs custody or control without being properly marked, or a deceptive marking has been used.

10. The Parties shall cooperate and consult on matters related to this Annex, including additional exemptions from a country of origin marking requirement, in accordance with Chapter Five (Customs Procedures).

11. For purposes of this Annex:

conspicuous means capable of being easily seen with normal handling of the good or container;

legible means capable of being easily read;

materially discourage means add a cost to the good that is substantial in relation to its customs value;

sufficiently permanent means capable of remaining in place until the good reaches the ultimate purchaser, unless deliberately removed;

the form in which it was imported means the condition of the good before it has undergone one of the changes in tariff classification described in the Marking Rules;

ultimate purchaser means the last person in the territory of the Party into which the good is imported that purchases the good in the form in which it was imported; such purchaser need not be the last person that will use the good; and

usual container means the container in which a good will ordinarily reach its ultimate purchaser.

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ANNEX 314

Distinctive Products

1. Mexico and Canada shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Mexico and Canada shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. The United States and Mexico shall recognize Canadian Whiskey as a distinctive product of Canada. Accordingly, the United States and Mexico shall not permit the sale of any product as Canadian Whiskey, unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian Whiskey for consumption in Canada.

3. The United States and Canada shall recognize Tequila and Mezcal as distinctive products of Mexico. Accordingly, the United States and Canada shall not permit the sale of any product as Tequila or Mezcal, unless it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing the manufacture of Tequila and Mezcal. This provision shall apply to Mezcal, either on the date of entry into force of this Agreement, or 90 days after the date when the official standard for this product is made obligatory by the Government of Mexico, whichever is later.

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ANNEX 315

Export Taxes

Mexico

1. Mexico may adopt or maintain a duty, tax, or other charge on the export of those basic foodstuffs set out in paragraph 4, on their ingredients, or on the goods from which such foodstuffs are derived, if such duty, tax, or other charge is adopted or maintained on the export of such goods to the territory of all other Parties, and is used:

(a) to limit to domestic consumers the benefits of a domestic food assistance program with respect to such foodstuff; or

(b) to ensure the availability of sufficient quantities of such foodstuff to domestic consumers or of sufficient quantities of its ingredients, or of the goods from which such foodstuffs are derived, to a domestic processing industry, when the domestic price of such foodstuff is held below the world price as part of a governmental stabilization plan, provided that such duty, tax, or other charge

(i) does not operate to increase the protection afforded to such domestic industry, and

(ii) is maintained only for such period of time as is necessary to maintain the integrity of the stabilization plan.

2. Notwithstanding paragraph 1, Mexico may adopt or maintain a duty, tax, or other charge on the export of any foodstuff to the territory of another Party if such duty, tax, or other charge is temporarily applied to relieve critical shortages of that foodstuff. For purposes of this paragraph, "temporarily" means up to one year, or such longer period as the Parties may agree.

3. Mexico may maintain its existing tax on the export of goods provided for under tariff item 4001.30.02 of the Tariff Schedule of the General Export Duty Act ("Tarifa de la Ley del Impuesto General de Exportaci¢n") for up to 10 years after the date of entry into force of this Agreement.

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4. For purposes of paragraph 1, "basic foodstuffs" means:

Beans
Beef steak or pulp
Beef liver
Beef remnants and bones ("retazo con hueso")
Beer
Bread
Brown sugar
Canned sardines
Canned tuna
Canned peppers
Chicken broth
Condensed milk
Cooked ham
Corn tortillas
Corn flour

Corn dough
Crackers
Eggs
Evaporated milk
French rolls ("pan blanco")
Gelatine
Ground beef
Instant coffee
Low-priced cookies ("galletas dulces populares)
Margarine
Oat flakes
Pasteurized milk
Powdered chocolate
Powdered milk for children
Powdered milk
Rice
Roasted coffee
Salt
Soft drinks
Soup paste
Tomato puree
Vegetable oil
Vegetable fat
Wheat flour
White sugar

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ANNEX 316

Other Export Measures

Article 316 shall not apply as between Mexico and the other Parties.

NAFTA Chapter Four Rules of Origin

Article 401: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party provided that:

(a) the good is wholly obtained or produced in the territory of one or more of the Parties as defined in Article 415;

(b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification described in Annex 401.1 as a result of production occurring entirely in the territory of one or more of the Parties, and the good satisfies all other applicable requirements of this Chapter;

(c) the good is produced entirely in the territory of one or more of the Parties exclusively from originating materials; or

(d) with the exception of a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or more of the Parties but one or more of the non-originating parts used in the production of the good does not undergo a change in tariff classification because

(i) the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

(ii) the tariff heading for the good provides for both the good itself and its parts and is not further subdivided into subheadings, or the tariff subheading for the good provides for both the good itself and its parts,

provided that the good is the good specifically described by the nomenclature of the heading or subheading and that the regional value content of the good, determined in accordance with Article 402, is not less than 60 percent where the transaction value method is used, or 50 percent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter.

Article 402: Regional Value Content

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method described in paragraph 2 or the net cost method described in paragraph 3.

2. The regional value content of a good, where calculated on the basis of the transaction value method, shall be determined as follows:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where:

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good.

3. The regional value content of a good, where calculated on the basis of the net cost method, shall be determined as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where:

RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good.

4. For purposes of paragraphs 2 and 3, and except as provided in Articles 403(1) and 403(2)(a)(i), the value of non-originating materials used by the producer in the production of the good shall not include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

5. The regional value content of a good shall be calculated solely on the basis of the net cost method described in paragraph 3, where:

(a) there is no transaction value for the good;

(b) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;

(c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons, during the six-month period immediately preceding the month in which the good is sold, exceeds 85 percent of the producer's total sales with respect to such goods;

(d) the good is

(i) identified in Article 403(1) or 403(2),

(ii) provided for in headings 64.01 through 64.05, or

(iii) provided for in tariff item 8469.10.a1 (word processing machines);

(e) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article 404; or

(f) the good has been designated as an intermediate material under paragraph 10 and is subject to a regional value-content requirement.

6. If an exporter or producer calculates the regional value content of a good using the transaction value method described in paragraph 2 and a Party subsequently notifies the exporter or producer during the course of a verification pursuant to Chapter Five (Customs Procedures) that the transaction value of the good, or the value of any material used in the production of the good, or both, is required to be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer of the good may then calculate the regional value content of the good using the net cost method described in paragraph 3.

7. Nothing in paragraph 6 shall be construed to preclude a review and appeal, pursuant to Chapter Five (Customs Procedures), of an adjustment or rejection of a transaction value for a good or the value of any material used in the

production of the good, or both.

8. For purposes of calculating the net cost of a good pursuant to paragraph 3, the producer of the good may use any one of the following methods:

(a) calculate the total cost incurred with respect to all goods produced by that producer minus any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non- allowable interest costs that are included in the total cost of all goods and then reasonably allocate the resulting net cost of those goods to the good;

(b) reasonably allocate the total cost incurred with respect to all goods produced by that producer to the good minus any sales promotion, marketing and after- sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or

(c) reasonably allocate the individual costs that are part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non- allowable interest costs,

provided that the allocation of all such costs are consistent with the provisions regarding the reasonable allocation of costs set out in the Uniform Regulations.

9. With the exception of an intermediate material described in paragraph 10 and except as provided in Article 403(1) and (2)(a)(i), the value of a material used in the production of a good shall be:

(a) the price actually paid or payable by the producer for the material, provided that the price is acceptable under Article 1 of the Customs Valuation Code; or

(b) if the price actually paid or payable is unacceptable under Article 1 of the Customs Valuation Code, the value shall be determined in accordance with the other Articles of the Customs Valuation Code; and

(c) when not included under subparagraph (a) or (b)

(i) freight, insurance, packing and all other costs incurred in transporting such materials to the location of the producer,

(ii) duties, taxes and customs brokerage fees on such materials paid in the territory of one or more of the Parties,

(iii) the cost of waste and spoilage resulting from the use or consumption, or both, of such materials, less the value of renewable scrap or by-product, and

(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Customs Valuation Code.

10. Except as provided in Article 403, the producer of a good may designate any self-produced material used in the production of the good as an intermediate material, provided that, when the intermediate material is subject to a regional value-content requirement, no other intermediate material subject to a regional value-content requirement is used in the production of that intermediate material.

11. For purposes of determining the value of an intermediate material, the producer of the intermediate material may use either of the following methods:

(a) calculate the total cost incurred with respect to all goods produced by that producer and then reasonably allocate the resulting cost to the intermediate material; or

(b) reasonably allocate to the intermediate material the individual costs that are part of the total cost incurred with respect to that intermediate material.

Article 403: Automotive Goods

1. Where applying the net cost method under Article 402(3) for purposes of calculating the regional value content of any one of the following goods:

(a) a motor vehicle provided for in subheadings 8702.xx (vehicles for the transport of 15 or fewer persons), 8703.21 through 8703.90, 8704.21 or 8704.31; or

(b) a good provided for in the tariff provisions listed in Annex 403.1 where the good is subject to a regional value-content requirement and is for use as original equipment in the production of a good provided for in subheadings 8703.21 through 8703.90, 8704.21 or 8704.31,

the value of non-originating materials used by the producer in the production of the good shall be the sum of the

customs values of non-originating materials imported from outside the territories of the Parties under the tariff provisions listed in Annex 403.1.

2. (a) Where applying the net cost method under Article 402(3) with respect to a good identified in subparagraph (b), the producer of the good shall include in the value of non-originating materials used by the producer in the production of the good the sum of

(i) for each material used by the producer that is listed in Annex 403.2, at the choice of the producer, either

(A) the value of such material that is non- originating, or

(B) the value of non-originating materials used in the production of such material, and

(ii) the value of any non-originating material used by the producer that is not in listed in Annex 403.2.

(b) Subparagraph (a) shall apply to the following goods

(i) a motor vehicle provided for in heading 8701 or subheading 8702.yy (vehicles for the transport of 16 or more persons),

(ii) a motor vehicle provided for in subheadings 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90,

(iii) a motor vehicle provided for in headings 8705 or 8706, and

(iv) any of the components identified in Annex 403.2 for use in such motor vehicles.

3. A producer may designate a self-produced material used in the production of any material listed in Annex 403.2 as an intermediate material, provided that, when the intermediate material is subject to a regional value-content requirement, no other intermediate material subject to a regional value-content requirement is used in the production of that intermediate material.

4. In calculating the regional value content of a motor vehicle described in paragraphs 1 and 2, the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other Parties:

(a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party;

(c) the same model line of motor vehicles produced in the territory of a Party; or

(d) the basis described in Annex 403.4.

5. In calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex 403.1 produced in the same plant, the producer of the good may:

(a) average its calculation

(i) over the fiscal year of the motor vehicle producer to whom the good is sold, or over any quarter or month, or

(ii) over its fiscal year, if the good is sold as an after-market part;

(b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; and

(c) with respect to any calculation under this paragraph, calculate separately those goods that are exported to the territory of one or more of the Parties.

6. Notwithstanding Annex 401.1,

(a) the regional value-content requirement shall be, for a producer's fiscal year beginning nearest to January 1, 1998 and thereafter, 56 percent under the net cost method, and for a producers's fiscal year beginning nearest to January 1, 2002 and thereafter, 62.5 percent under the net cost method, for the following

(i) a motor vehicle provided for in subheading 8702.xx (vehicles for the transport of 15 or fewer persons), 8703.21 through 8703.90, 8704.21 or

8704.31, and

(ii) a good provided for in heading 8407 or 8408 or subheading 8708.40 which is for use as original equipment in the production of a motor vehicle identified in subparagraph (a)(i); and

(b) the regional value-content requirement shall be, for a producer's fiscal year beginning nearest to January 1, 1998 and thereafter, 55 percent under the net cost method, and for a motor vehicle producers's fiscal year beginning nearest to January 1, 2002 and thereafter, 60 percent under the net cost method, for the following

(i) a motor vehicle provided for in heading 8701, subheadings 8702.yy (vehicles for the transport of 16 or more persons), 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90, and heading 8705 or 8706,

(ii) a good provided for in heading 8407 or 8408 or subheading 8708.40 which is for use as original equipment in the production of a motor vehicle identified in subparagraph (b)(i), and

(iii) except for a good identified in subparagraph (a)(ii) or provided for in subheadings 8482.10 through 8482.80 or subheadings 8483.10 through 8483.40, a good identified in Annex 403.1 which is for use as original equipment in the production of a motor vehicle identified in subparagraphs (a)(i) or (b)(i).

7. Notwithstanding paragraph 6,

(a) the regional value content of a motor vehicle referred to in Article 403(1) or 403(2) shall not be less than 50 percent for a period of five years from the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, provided that

(i) it is a motor vehicle of a class, or marque, or, for a motor vehicle identified in Article 403(1)(a), size and underbody, not previously produced by the motor vehicle assembler in the territory of any of the Parties,

(ii) the plant consists of a new building in which the motor vehicle is assembled, and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle;

(b) the regional value content of a motor vehicle referred to in Article 403(1) or 403(2) shall not be less than 50 percent for a period of two years from the date on which the first motor vehicle prototype is produced at a plant following a refit, provided that it is a different motor vehicle of a class, or marque, or, for a motor vehicle identified in Article 403(1)(a), size and underbody, than was assembled by the motor vehicle assembler in the plant before the refit; and

(c) for the purposes of subparagraphs (a) and (b) sizes means in the case of a motor vehicle identified in Article 403(1)(a)

(i) minicompacts — less than 85 cubic feet of passenger and luggage volume,

(ii) subcompacts — between 85 and 100 cubic feet of passenger and luggage volume,

(iii) compacts — between 100 and 110 cubic feet of passenger and luggage volume,

(iv) midsize — between 110 and 120 cubic feet of passenger and luggage volume, and

(v) large — between 120 or more cubic feet of passenger and luggage volume.

Article 404: Accumulation

For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the Parties by one or more producers shall, at the choice of the exporter or producer of the good, be considered to have been performed in the territory of a Party by that exporter or producer, provided that:

(a) the applicable tariff classification change has occurred, or the regional value-content requirement has been satisfied, or both, entirely in the territory of one or more of the Parties;

(b) the good satisfies all other applicable requirements of this Chapter; and

(c) the production of the producer that chooses to accumulate its production with that of other

producers is deemed to be the production of a single producer for purposes of Article 402(10).

Article 405: De Minimis

1. Notwithstanding Article 401(b), a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification is not more than seven percent of the transaction value of the good or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, seven percent of the total cost of the good, provided that:

(a) if the good is subject to a regional value-content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good; and

(b) the good satisfies all other applicable requirements of this Chapter.

2. A good that is subject to a regional value-content requirement shall not be required to satisfy such requirement if the value of all non-originating materials used in the production of the good is not more than seven percent of the transaction value of the good or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all non-originating materials is not more than seven percent of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

3. Paragraphs 1 and 2 shall not apply to:

(a) a material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.a1 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(b) a material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.a1 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in heading 21.05, subheading 2202.90, or tariff items 1901.10.a1 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.a1 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.a1 (dairy preparations containing over 10 percent by weight of milk solids), 2106.90.a4 (preparations containing over 10 percent by weight of milk solids) or 2309.90.a1 (animal feeds containing over 10 percent by weight of milk solids and less than 6 percent by weight of grain or grain products);

(c) a material provided for in heading 17.01 that is used in the production of a good provided for in headings 17.01 through 17.03;

(d) a material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 15.01 through 15.08, 15.12, 15.14 or 15.15;

(e) a material provided for in heading 08.05 and subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 or tariff item 2106.90.a2 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) or 2202.90.a1 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins); and

(f) a material provided for in headings 22.03 through 22.08 that is used in the production of a good provided for in headings 22.07 through 22.08.

4. Paragraph 1 shall not apply for purposes of calculating the volume or weight of:

(a) a non-originating material of Chapter 17 of the Harmonized System or heading 18.05 that are used in the production of a good provided for in subheading 1806.10;

(b) a non-originating material of Chapter 9 of the Harmonized System that is used in the production of a good provided for in tariff item 2101.10.a1 (instant coffee, not flavored); and

(c) a non-originating material of heading 20.09 that is used in the production of a good provided for in subheading 2009.90, or 2106.90.a3 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) 2202.90.a2 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins).

5. A good of Chapters 50 through 63 of the Harmonized System that does not originate because certain fibers or yarns used in the production of the component of the good that gives the good its essential character do not undergo the applicable change in tariff classification described in Annex 401.1 for the good, shall nonetheless be considered to originate if the weight of all such fibers or yarns in the good is not more than seven percent of the weight of that component.

6. Paragraphs 1 and 2 shall not apply to a good of Chapters 1 through 44 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

Article 406: Fungible Goods and Materials

For purposes of determining whether a good is an originating good:

(a) where originating and non-originating fungible materials are used in the production of a good, the origin of the materials need not be determined through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods provided for in the Uniform Regulations; and

(b) where originating and non-originating fungible goods are commingled and exported in the same form, the origin of the good may be determined on the basis of any of the inventory management methods provided for in the Uniform Regulations.

Article 407: Accessories, Spare Parts, or Tools

For purposes of determining whether a good, is an originating good, accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools, shall be considered as one with the good and shall be disregarded in determining whether all the non- originating materials used in the production of the good undergo the applicable change in tariff classification described in Annex 401.1, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good;

(b) the quantities and value of the accessories, spare parts or tools are customary for the good; and

(c) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts or tools shall be taken into account as either originating or non-originating materials in calculating the regional value content of the good.

Article 408: Indirect Materials

An indirect material shall be considered to be an originating material without regard to where it is produced.

Article 409: Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified as one with the good, be disregarded in determining whether all the non- originating materials used in the production of the good undergo the applicable change in tariff classification described in Annex 401.1, and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account in calculating the regional value content of the good.

Article 410: Packing Materials and Containers for Shipment

For the purpose of determining whether a good is an originating good, packing materials and containers in which the good is packed for shipment shall be disregarded in determining whether:

(a) the non-originating materials used in the production of the good undergo the applicable change in tariff classification described in Annex 401.1; and

(b) the good satisfies a regional value-content requirement.

Article 411: Transshipment

A good shall not be considered to be an originating good by virtue of having undergone production that satisfies the requirements of Article 401 if, subsequent to that production, the good undergoes further production, or any other operation, outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party.

Article 412: Non-Qualifying Operations

A good shall not be considered to be an originating good merely by virtue of having undergone:

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any process, work or pricing practice, or any combination thereof, in respect of which it is demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent the provisions of this Chapter.

Article 413: Interpretation

For purposes of this Chapter, the following rules of

interpretation shall apply:

(a) the basis for tariff classification in Article 401 is the Harmonized System;

(b) a more specific rule in Annex 401.1 shall take precedence over a general requirement under Article 401;

(c) for purposes of applying Article 401(d), when determining whether a tariff heading or subheading provides for both a good and its parts, reference shall be made both to the nomenclature of the heading or subheading and to any legal note provided in the Harmonized System;

(d) the principles of the Customs Valuation Code shall apply to domestic transactions as well as international transactions;

(e) in the event of any inconsistency between the provisions of this Chapter and the Customs Valuation Code, the provisions of this Chapter shall prevail to the extent of the inconsistency;

(f) in applying Customs Valuation Code under this Chapter, the definitions in Article 415 shall take precedence over the definitions of the Customs Valuation Code to the extent of any difference; and

(g) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles in the territory of the Party in which the good is produced.

Article 414: Consultation and Revision

1. The Parties shall consult regularly to ensure that the provisions of this Chapter are administered effectively, uniformly and consistently with the spirit and intent of this Agreement, and shall cooperate in the administration of the provisions of this Chapter in accordance with the provisions of Chapter Five (Customs Procedures).

2. If any Party concludes that the provisions of this Chapter require revision to take into account developments in production processes or other matters, the proposed revision along with supporting rationale and any studies shall be submitted to the other Parties for consideration and any appropriate action pursuant to Chapter Five (Customs Procedures).

Article 415: Definitions

For purposes of this Chapter:

class of motor vehicles means any one of the following categories of motor vehicles:

(a) motor vehicles provided for in subheadings 8701.20 and 8702.yy (vehicles for the transport of 16 or more persons), subheadings 8704.22, 8704.23, 8704.32 and 8704.90, and headings 87.05 and 87.06;

(b) motor vehicles provided for in subheadings 8701.10 and 8701.30 through 8701.90;

(c) motor vehicles provided for in subheadings 8702.xx (vehicles for the transport of 15 or fewer persons) and 8704.21 and 8704.31; or

(d) motor vehicles provided for in subheadings 8703.21 through 8703.90;

customs value means the value of a good for the purposes of levying duties of customs on an imported good;

F.O.B. means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

fungible goods or fungible materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

identical or similar goods has the same meaning as prescribed for identical goods and similar goods, respectively, in the Customs Valuation Code;

indirect material means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or used in the maintenance or operation of equipment or buildings associated with the production of a good, including:

(a) fuel and energy;

(b) tools, dies and molds;

(c) spare parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding materials and other materials used by labor or used to operate equipment and buildings, or both;

(e) gloves, glasses, footwear, clothing, safety equipment and supplies;

(f) equipment, other devices and supplies used for testing or inspecting the goods;

(g) catalysts and solvents; and

(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

marque means the trade name used by a separate marketing division of a motor vehicle assembler;

material means a good, other than an indirect material, that is used in the production of another good;

model line means a group of motor vehicles having the same platform or model name;

motor vehicle assembler means a producer of motor vehicles and any related persons or joint ventures in which the producer participates;

new building means new construction, including at least the pouring or construction of new foundations and floors, erection of new structure and roof, and installation of new plumbing, electrical and other utilities to house the complete vehicle assembly process (need definition of complete vehicle assembly process);

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

net cost of a good means the net cost that can be reasonably allocated to the good using one of the methods set forth in Article 402 (8) (a);

non-allowable interest costs means interest costs actually incurred by the producer in excess of the applicable federal government rate identified in the Uniform Regulations for comparable maturities, plus seven percentage points;

non-originating good or non-originating material means a good or material that has not satisfied the rule of origin applicable to the good or material under this Chapter;

producer means a person who grows, mines, harvests, manufactures, processes or assembles a good, or any combination thereof;

production means growing, mining, harvesting, manufacturing, processing or assembling a good, or any combination thereof;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

refit means a plant closure for the purposes of plant conversion or retooling that lasts at least three months;

related person means persons who are related only if:

(a) they are officers or directors of one another's business;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds 25 per cent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person; or

(g) they are members of the same family (members of the same family are natural or adoptive children, brothers sisters, parents, grandparents, or spouses);

royalties means payments of any kind, including payments under technical assistance and similar agreements, made as consideration for the use, or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

(a) personnel training, without regard to where performed; and

(b) if performed in the territory of one or more of the Parties, engineering, tooling, die setting, software design and similar computer services, or other services;

sales promotion, marketing and after-sales service costs means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials, exhibits; sales conferences, trade shows and conventions; banners;

marketing displays; free samples; sales, marketing and after- sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (e.g., medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training customer employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after- sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

self-produced material means a material that is produced by the producer of the good;

shipping and packing costs means the costs incurred in packing the good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

total cost means all product costs, period costs and other costs incurred in the territory of one or more of the Parties;

transaction value means the price of a good actually paid or payable to the producer of the good, adjusted to a F.O.B. basis and in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code;

used means used or consumed, or both, in the production of goods; and

wholly obtained or produced in the territory of one or more of the Parties means goods that are:

(a) mineral goods extracted in the territory of one or more of the Parties;

(b) goods harvested in the territory of one or more of the Parties;

(c) live animals born and raised in the territory of one or more of the Parties;

(d) goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(e) goods produced on board factory ships from the goods referred to in subparagraph (d) provided such factory ships are registered or recorded with that Party and fly its flag;

(f) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(g) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a non-Party; and

(h) waste and scrap derived from

(i) production in the territory of one or more of the Parties,

(ii) used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials, or

(iii) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (h) inclusive or from their derivatives, at any stage of production.

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ANNEX 403.1

List of Tariff Provisions for Article 403(1)

INTERIM NOTE: The nomenclature that follows the tariff provisions is for illustrative purposes only.

4009 (tubes, pipes and hoses) 4010.10 (rubber belts) 4011 (tires) 4016.93 (rubber, gaskets, washers and other seals) 4016.99.15.xx (seals) 7007.11 and 7007.21 (laminated safety glass) 7009.10 (mirrors) 8301.20 (locks) 8407.31 (engines of a cylinder capacity not exceeding 50cc) 8407.32 (engines of a cylinder capacity exceeding 50cc but not exceeding 250cc) 8407.33 (engines of a cylinder capacity exceeding 250cc but not exceeding 1000cc) 8407.34.xx (engines of a cylinder capacity exceeding 1000 cc but not exceeding 2,000 cc); 8407.34.yy (engines of a cylinder capacity exceeding 2000 cc) 8408 (diesel engines) 8409 (parts of engines) 8413.30 (pumps) 8414.59 (turbochargers and superchargers) 8415.81 through 8415.83 (air conditioners) 8481.20, 8481.30 and 8481.80 (valves) 8482.10 through 8482.80 (ball bearings) 8483.10 through 8483.40 (transmission shafts) 8483.50 (flywheels) 8501.10 (electric motors) 8501.20 (electric motors) 8501.31 (electric motors) 8501.32.xx (electric motors that provide primary source for electric powered vehicles of subheading 8703.90) 8507.10.xx, 8507.30.xx, 8507.40.xx and 8507.80.xx (batteries that provide primary source for electric cars) 8511.30 (distributors) 8511.40 (starter motors) 8511.50 (other generators) 8512.20 (other lighting or visual signalling equipment) 8512.40 (windscreen wipers, defrosters) 8519.91 (cassette decks) 8527.21 (cassette players combined with radios) 8527.29 (radios) 8536.50 (switches) 8536.90 (junction boxes) 8537.10.99.10 (U.S. tariff provision 8537.10.00.40) (motor control centres) 8539.10 (seal beamed headlamps) 8539.21 (tungsten halogen headlamps) 8544.30 (wire harnesses) 8706 (chassis) 8707 (bodies) 8708.10.xx (bumpers but not parts thereof) 8708.21 (safety seat belts) 8708.29.99.10 (U.S. tariff provision 8708.29.00.10) (body stampings) 8708.29.xx (inflators and modules for airbags) 8708.39 (brakes and servo-brakes, and parts thereof) 8708.40 (gear boxes, transmissions) 8708.50 (drive axles with differential, whether or not provided with other transmission components) 8708.60 (non-driving axles, and parts thereof) 8708.70.xx (road wheels, but not parts or accessories thereof) 8708.80 (suspension shock-absorbers) 8708.91 (radiators) 8708.92 (silencers (mufflers) and exhaust pipes) 8708.93.xx (clutches, but not parts thereof) 8708.94 (steering wheels, steering columns and steering boxes) 8708.99.50.xx (airbags) 8708.99.81 (catalytic convertors) 8708.99.99.11 (half-shafts and drive shafts) 8708.99.99.19 (other parts for powertrains) 8708.99.99.20 (parts for suspension systems) 8708.99.99.49 (parts for steering systems) 8708.99.xx (other parts not included above) 9031.80 (monitoring devices) 9031.80.xx (electronic diagnostics for air bag systems) 9032.89 (automatic regulating instruments) 9401.20 (seats)

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ANNEX 403.2

List of Components and Materials for Article 403(2)

1. Component: Engines of heading 8407 or 8408

Materials: cast block, cast head, fuel nozzle, fuel injector pumps, glow plugs, turbochargers and superchargers, electronic engine controls, intake manifold, exhaust manifold, intake/exhaust valves, crankshaft/camshaft, alternator, starter, air cleaner assembly, pistons, connecting rods and assemblies made therefrom (or rotor assemblies for rotary engines), flywheel (for manual transmissions), flexplate (for automatic transmissions), oil pan, oil pump and pressure regulator, water pump, crankshaft and camshaft gears, and radiator assemblies or charge-air coolers.

2. Component: Gear boxes (transmissions) subheading 8708.40

Materials: (a) for manual transmissions - transmission case and clutch housing; clutch; internal shifting mechanism; gear sets, synchronizers and shafts; and (b) for torque convertor type transmissions - transmission case and convertor housing; torque convertor assembly; gear sets and clutches; and electronic transmission controls.

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ANNEX 403.4

Regional Value-Content Calculation for CAMI

1. For purposes of Article 403, when determining the origin of motor vehicles produced in the territory of Canada and imported into the territory of the United States, CAMI Automotive, Inc. ("CAMI") may average its calculation of the regional value content of a class of motor vehicles or a model line of motor vehicles produced in a fiscal year in the territory of Canada by CAMI for sale in the territory of one or more of the Parties with the calculation of the regional value content of the corresponding class of motor vehicles or model line of motor vehicles produced in the territory of Canada by General Motors of Canada Limited in a fiscal year that corresponds most closely to CAMI's fiscal year, provided that:

(a) General Motors of Canada Limited owns 50 percent or more of the voting common stock of CAMI; and

(b) General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico S.A., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof, ("GM") acquires 75 percent (75 percent) or more by unit of the class of motor vehicles or model line of motor vehicles, as the case may be, that CAMI Automotive Inc. has produced in the territory of Canada in CAMI's fiscal year for sale in the territory of one or more of the Parties.

2. If GM acquires less than 75 percent by unit of the class of motor vehicles or model line of motor vehicles, as the case may be, that CAMI has produced in the territory of Canada in CAMI's fiscal year for sale in the territory of one or more of the Parties, CAMI may average in the manner described in paragraph 1 only those motor vehicles that are acquired by GM for distribution under the GEO marque or other GM marque.

3. In calculating the regional value content of motor vehicles produced by CAMI in the territory of Canada, CAMI may choose to average the calculation in paragraph 1 or 2 over a period of two fiscal years in the event that any motor vehicle assembly plant operated by CAMI or any motor vehicle assembly plant operated by General Motors of Canada Limited with which CAMI is averaging its regional value content is closed for more than two consecutive months:

(a) for the purpose of re-tooling for a model change, or

(b) as the result of any event or circumstance (other than the imposition of antidumping and countervailing duties, or an interruption of operations resulting from a labour strike, lock-out, labour dispute, picketing or boycott of or by employees of CAMI or GM), that CAMI or GM could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials, failure of utilities, or inability to obtain or delay in obtaining raw materials, parts, fuel or utilities.

Such averaging may be for CAMI's fiscal year in which a CAMI or the General Motors of Canada Limited plant with which CAMI is averaging is closed and either the previous or subsequent fiscal year. In the event that the period of closure spans two fiscal year, the averaging may be only for those two fiscal years.

4. For the purposes of this Article, where by virtue of an amalgamation, reorganization, division or similar transaction:

(a) a motor vehicle producer (the "successor producer") acquires all or substantially all of the assets used by GM; and

(b) the successor producer, directly or indirectly controls, or is controlled by, GM, or both the successor producer and GM are controlled by the same person,

the successor producer shall be deemed to be the same person and a continuation of GM from which it acquired the assets. NAFTA Chapter Five Customs Procedures

Subchapter A - Certification of Origin

Article 501: Certificate of Origin

1. Upon the date of entry into force of this Agreement, the Parties shall establish a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.

2. Each Party may provide that a Certificate of Origin for a good imported into its territory be completed in a language required under its laws or regulations.

3. Each Party shall provide that:

(a) an exporter in its territory shall complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of another Party; and

(b) where an exporter in its territory is not the producer of the good, such exporter may complete and sign a Certificate on the basis of

(i) its knowledge of whether the good qualifies as an originating good,

(ii) reasonable reliance upon the producer's written representation that the good qualifies as an originating good, or

(iii) a completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

4. Nothing in paragraph 3 shall be construed to require a producer to provide a Certificate of Origin to an exporter.

5. Each Party shall:

(a) provide that a Certificate of Origin that has been completed and signed by an exporter or a producer in the territory of another Party that is applicable to

(i) a single importation of a good into its territory, or

(ii) multiple importations of identical goods imported into its territory within any specified period, not exceeding 12 months, set out therein by the exporter or producer,

shall be accepted by its customs administration for a period of four years after the date on which the Certificate was signed; and

(b) require an exporter or a producer in its territory that completes and signs a Certificate pursuant to subparagraph (a) to notify in writing all persons to whom such Certificate was given of any change that could affect its accuracy or validity.

Article 502: Obligations Regarding Importations

1. Except as otherwise provided in this Chapter, each Party, with respect to an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of another Party, shall provide that:

(a) the importer shall make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;

(b) the importer shall have the Certificate in its possession at the time such declaration is made;

(c) the importer shall provide, upon the request of that Party's customs administration, a copy of the Certificate;

(d) if the importer fails to comply with any requirement set out in this Chapter, that Party may deny preferential tariff treatment to the good;

(e) the importer, where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct, shall promptly make a corrected declaration and pay any duties owing; and

(f) the importer, who voluntarily makes a corrected declaration pursuant to subparagraph (e), shall not be subject to penalties for the making of an incorrect declaration.

2. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, within one year of the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, upon presentation of:

(a) a written declaration that the good qualifies as an originating good at the time of importation;

(b) a copy of the Certificate of Origin to the same effect; and

(c) such other documentation relating to the importation of the good as that Party may require.

Article 503: Exceptions

Each Party shall provide that a Certificate of Origin shall not be required for:

(a) a commercial importation of a good whose value does not exceed the amount of (US)$1,000 or its equivalent amount in the Party's currency or such higher amount as it may establish, except that it may require that the invoice accompanying such importation include a statement certifying that such goods qualify as originating goods;

(b) a non-commercial importation of a good whose value does not exceed the amount of (US)$1000 or its equivalent amount in the Party's currency, or such higher amount as it may establish; or

(c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin,

provided that such importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements set out in Articles 501 and 502.

Article 504: Obligations Regarding Exportations

Each Party shall provide that:

(a) upon the request of its customs administration, an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to such exporter pursuant to Article 501(3)(b)(iii), shall provide a copy of the Certificate to its customs administration;

(b) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of another Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory with respect to a contravention of its customs laws and regulations regarding the making of a false statement or representation;

(c) where an exporter or a producer in its territory fails to comply with any of the requirements set out in this Chapter, it may apply such measures as the circumstances may warrant;

(d) an exporter or a producer in its territory that has completed and signed a Certificate of Origin, and that has reason to believe that the Certificate contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate was given of any change that could affect the accuracy or validity of the Certificate; and

(e) an exporter or a producer who voluntarily provides written notification pursuant to subparagraph (d) shall not be subject to penalties with respect to the making of an incorrect certification.

Subchapter B - Administration and Enforcement

Article 505: Records

1. Each Party shall provide that:

(a) an exporter or a producer in its territory that completes and signs a Certificate of Origin shall maintain in its territory, for a period of five years from the date the Certificate was signed or for such longer period as such Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of another Party, including records associated with

(i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory, and

(ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and

(iii) the production of the good in the form in which the good is exported from its territory; and

(b) an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for a period of five years from the date of importation of the good or for such longer period as the Party may specify, a copy of the Certificate and all other required documentation relating to the importation of the good.

Article 506: Origin Verifications

1. For purposes of determining whether a good imported into its territory from the territory of another Party qualifies as an originating good, a Party may, through its customs administration, conduct a verification solely by means of:

(a) written questionnaires to an exporter or a producer in the territory of another Party;

(b) visits to the premises of an exporter or a producer in the territory of another Party to review the records and observe the facilities used in the production of the good; or

(c) such other procedure as the Parties may agree.

2. Prior to conducting a verification visit pursuant to paragraph (1)(b), a Party shall, through its customs administration:

(a) deliver a written notification of its intention to conduct such visit;

(i) to the exporter or producer whose premises are to be visited,

(ii) to the customs administration of the Party in whose territory the visit is to occur, and

(iii) to, if requested by the Party in whose territory the visit is to occur, the embassy of such Party in the territory of the Party proposing to conduct the visit; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

3. The notification referred to in paragraph 2 shall include:

(a) the identity of the customs administration issuing the notification;

(b) the name of the exporter or producer whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the proposed verification visit, including specific reference to the good subject to the verification;

(e) the names and titles of the officials performing the verification visit; and

(f) the legal authority for the verification visit.

4. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 2, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

5. Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 2, it may, within 15 days from the date of receipt of such notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may otherwise agree.

6. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 5.

7. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by another Party to designate two observers to be present during such visit, provided that:

(a) the observers do not participate in a manner other than as observers; and

(b) the failure of such exporter or producer to designate observers shall not result in the postponement of the visit.

8. Each Party shall, through its customs administration, conduct a verification of a regional value-content requirement in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party from which the good was exported.

9. The Party conducting a verification shall provide the exporter or producer whose good is subject to the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

10. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, such Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with the provisions of Chapter Four (Rules of Origin).

11. Each Party shall provide that where it determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a customs value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or customs value applied to such materials by the Party from whose territory the good was exported, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.

12. A Party shall not apply a determination made under paragraph 11 to an importation made before the effective date of the determination, provided that:

(a) the customs administration of the Party from whose territory the good was exported has issued an advance ruling on the tariff classification or on the customs value of such materials, or has given consistent treatment to the entry of such materials under the tariff classification or customs value at issue, on which a person is entitled to rely; and

(b) the advance ruling or consistent treatment was given prior to notification of the determination.

13. Where a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 11, it shall postpone the effective date of the denial for a period not exceeding 90 days, provided that the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or customs value applied to such materials by the customs administration of the Party from whose territory the good was exported.

Article 507: Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect that business information from disclosure that could prejudice the competitive position of the persons providing the information.

2. The confidential business information collected pursuant to this Chapter may only be disclosed to those

authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters.

Article 508: Penalties

1. Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

2. Nothing in Articles 502(1)(d) and (f), 504(e) and 506(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Subchapter C - Advance Rulings

Articles 509: Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of another Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

(a) whether materials imported from the territory of a non- Party undergo, as a result of production in the territory of one or more of the Parties, the applicable change in tariff classification under Chapter Four (Rules of Origin) to qualify as an originating good;

(b) whether a good satisfies a regional value-content requirement under either the transaction value method or the net cost method set out in Chapter Four;

(c) the appropriate basis or method for customs value to be applied by an exporter or a producer in the territory of another Party, in accordance with the principles of the Customs Valuation Code, in calculating the transaction value of a good, or the value of materials used in the production of a good, for which an advance ruling is requested, for the purpose of determining whether the good satisfies a regional value-content requirement under Chapter Four;

(d) the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the net cost of a good, or the value of an intermediate material, for which an advance ruling is requested, for the purposes of determining whether the good satisfies a regional value-content requirement under Chapter Four;

(e) whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for duty-free treatment in accordance with Article 307 (Goods Re-entered After Repair or Alteration);

(f) whether the proposed or actual marking of a good satisfies country of origin marking requirements under Article 312 (Country of Origin Marking); or

(g) whether a good to be imported qualifies as a good of a Party under Annexes 300-B or 302.2.

2. Each Party shall provide that an advance ruling issued pursuant to paragraph 1 shall be based on:

(a) for the purpose of determining the origin of a good, Chapter Four (Rules of Origin), the principles of the Customs Valuation Code and the Uniform Regulations;

(b) for the purpose of determining country of origin marking, Article 312 (Country of Origin Marking); and

(c) for the purpose of determining whether a good qualifies as a good of a Party, Annex 302.2.

3. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application.

4. Each Party shall provide that its customs administration:

(a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;

(b) after it has obtained all necessary information from the person requesting an advance ruling, shall issue the ruling in accordance with the time periods specified in the Uniform Regulations; and

(c) where the advance ruling is unfavorable to the person requesting it, shall provide that person with a full explanation of the reasons for the ruling.

5. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, commencing on the date of its issuance or such later date as may be specified therein.

6. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of the provisions of Chapter Four (Rules of Origin) regarding a determination of origin of a good, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

7. The issuing Party may modify or revoke an advance ruling:

(a) if the ruling is based on an error

(i) of fact,

(ii) in the tariff classification of a good or the materials subject to the ruling,

(iii) in the application of a regional value-content requirement under Chapter Four (Rules of Origin), or

(iv) in the application of the rules for determining whether a good qualifies as a good of a Party under Annexes 300-B or 302.2;

(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter Three (National Treatment and Market Access for Goods) and Chapter Four (Rules of Origin);

(c) if there is a change in the material facts or circumstances on which the ruling is based;

(d) to conform with an amendment of Chapter Three, Chapter Four, Marking Rules or Uniform Regulations; or

(e) to conform with a judicial decision or a change in its domestic law.

8. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

9. Notwithstanding paragraph 8, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advance ruling was issued has in good faith relied to its detriment on that ruling.

10. Each Party shall provide that where its customs administration examines the regional value-content of a good for which it has issued an advance ruling with respect to an approved basis or method of customs value under Article 509(1)(c), or with respect to an approved basis or method for reasonably allocating costs under Article 509(1)(d), or with respect to whether a good qualifies for duty-free treatment under Article 509(1)(e), it may evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advance ruling;

(b) the exporter's or producer's operations are consistent with the material facts and circumstances upon which the advance ruling is based; and

(c) the supporting data and computations used in applying the basis or method of customs valuation were correct in all material respects.

11. Each Party shall provide that where its customs administration determines that any requirement in paragraph 10 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

12. Each Party shall provide that, where a person can demonstrate that it used reasonable care and acted in good faith in presenting the facts and circumstances on which an advance ruling was based, and where the customs administration of a Party determines that the ruling was based on incorrect information, the person to whom such advance ruling was issued shall not be subject to penalties.

13. Where a Party issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances upon which the ruling is based or has failed to act in accordance with the terms and conditions of such ruling, it may apply such measures as the circumstances may warrant.

Subchapter D - Review And Appeal of Origin Determinations and Advance Rulings

Article 510: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origins and advance rulings by its customs administration as it provides to importers in its territory to any person:

(a) who completes and signs a Certificate of Origin for a good that has been subject to a determination of origin;

(b) whose good has been subject to a country of origin marking determination pursuant to Article 312 (Country of Origin Marking); or

(c) who has received an advance ruling pursuant to Article 509(1).

2. Further to Articles 1804 (Administrative Proceedings) and 1805 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

(a) at least one level of administrative review, independent of the official or office responsible for the determination under review; and

(b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

Subchapter E - Uniform Regulations

Article 511: Uniform Regulations

1. Upon the date of entry into force of this Agreement, the Parties shall establish, and implement through their respective domestic laws or regulations, Uniform Regulations regarding the interpretation, application and administration of the provisions of Chapter Four (Rules of Origin).

2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Subchapter F - Cooperation

Article 512: Cooperation

1. Each Party shall notify the other Parties of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

(a) a determination of origin issued as the result of a verification conducted pursuant to Article 506(1);

(b) a determination of origin that such Party is aware is contrary to:

(i) a ruling issued by the customs administration of another Party with respect to the tariff classification or customs value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin, or

(ii) consistent treatment given by the customs administration of another Party with respect to the tariff classification or customs value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin, country of origin marking requirements or determinations as to whether a good qualifies as a good of a Party under the Marking Rules; and

(d) an advance ruling, or a ruling modifying or revoking an advance ruling pursuant to Article 509(1).

2. The Parties shall cooperate:

(a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreements or other customs-related agreements to which they are party;

(b) for purposes of the detection and prevention of unlawful transshipments of textile and apparel goods of a non-Party in the enforcement of prohibitions or quantitative restrictions, including the verification by a Party, in accordance with the procedures set out in this Chapter, of the capacity for production of goods by an exporter or a producer in the territory of another Party, provided that the customs administration of the Party proposing to conduct such verification, prior to conducting the verification

(i) obtains the consent of the Party in whose territory the verification is to occur, and

(ii) provides notification to the exporter or producer whose premises are to be visited,

except that procedures for notifying the exporter or producer whose premises are to be visited shall be in accordance with other procedures as the Parties may agree;

(c) to the extent practicable, for purposes of facilitating the flow of trade between their territories, in customs-related matters, such as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information; and

(d) to the extent practicable, in the storage and transmission of customs-related documentation.

Article 513: Working Group and Customs Subgroup

1. The Parties hereby establish a Working Group on Rules of Origin, comprising representatives of each Party, to ensure:

(a) the effective implementation and administration of Articles 303, 308 and 312, Chapter Four (Rules of Origin), this Chapter, the Marking Rules and the Uniform Regulations; and

(b) the effective administration of the customs-related aspects of Chapter Three (National Treatment and Market Access).

2. The Working Group shall meet at least four times a year and at the request of any Party.

3. The Working Group shall:

(a) monitor the implementation and administration by the customs administrations of the Parties of Articles 303, 308 and 312, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations to ensure their uniform interpretation;

(b) endeavor to agree, upon the request of any Party, on any proposed modification of or addition to Articles 303, 308 and 312, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations;

(c) notify the Commission of any agreed modification of or addition to the Uniform Regulations;

(d) propose to the Commission any modification of or addition to Articles 303, 308 and 312, Chapter Three, Chapter Four, this Chapter, the Marking Rules, the Uniform Regulations or other provision of this Agreement as required to conform with any change to the Harmonized System; and

(e) consider any other matter referred to it by a Party, or by the Customs Subgroup established under paragraph 6.

4. Each Party shall, to the greatest extent practicable, take all necessary measures to implement any modification of or addition to this Agreement within 180 days after the Commission agrees on any such modification or addition.

5. If the Working Group fails to resolve a matter referred to it pursuant to paragraph 2(f) within 30 days of such referral, any Party may request a meeting of the Commission pursuant to Article 2007.

6. The Working Group shall establish, and monitor the work of, a Customs Subgroup comprising representatives of each Party. The Subgroup shall meet at least four times a year and on the request of any Party and shall:

(a) endeavor to agree on

(i) the uniform interpretation, application and administration of the provisions of Articles 303, 308 and 312, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations,

(ii) tariff classification and valuation matters relating to determinations of origin,

(iii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,

(iv) revisions to the Certificate of Origin,

(v) any other matter referred to it by a Party, the Working Group or the Committee on Trade in

Goods established under Chapter Three, and

(vi) any other customs-related matter arising under this Agreement;

(b) consider

(i) the harmonization of customs-related automation requirements and documentation, and

(ii) proposed customs-related administrative and operational changes that could affect the flow of trade between the Parties' territories;

(c) report periodically to the Working Group and notify it of any agreement reached under this paragraph; and

(d) refer to the Working Group any matter on which it has been unable to reach agreement within 60 days after the matter was referred to it pursuant to subparagraph (a)(v).

7. Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling related to a matter under consideration by the Customs Subgroup or the Working Group or from taking such other action as it considers necessary pending a resolution of the matter pursuant to this Agreement.

Article 514: Definitions

For purposes of this Chapter:

advance ruling means a written interpretation issued by the customs administration of a Party on the application of a measure to a given set of facts and circumstances regarding a prospective importation of a good into its territory;

commercial importation means the importation of a good into the territory of any Party for the purpose of sale, or any commercial, industrial, or other like use;

customs administration means the competent authority that is responsible under the domestic law of a Party for the administration of customs laws and regulations;

customs value means "customs value" as defined in Article 415;

determination of origin means a determination as to whether a good qualifies as an originating good in accordance with Chapter Four (Rules of Origin);

exporter in the territory of a Party includes an exporter located in the territory of a Party or an exporter required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

identical goods means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to the determination of origin of such goods under Chapter Four (Rules of Origin);

importer in the territory of a Party includes an importer located in the territory of a Party or an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

preferential tariff treatment means the duty rate applicable to an originating good; and

producer includes a person that grows, mines, harvests, manufactures, processes, or assembles a good, or any combination thereof.

NAFTA Chapter Six Energy and Basic Petrochemicals

Article 601: Principles

1. The Parties confirm their full respect for their Constitutions.

2. The Parties recognize that it is desirable to strengthen the important role that trade in energy and basic petrochemical goods play in the North American region and to enhance this role through sustained and gradual liberalization.

3. The Parties recognize the importance of having viable and internationally competitive energy and petrochemical sectors to further their individual national interests.

Article 602: Scope and Coverage

1. This Chapter applies to measures relating to energy and basic petrochemical goods originating in the territories of the Parties and to measures relating to investment and services associated with such energy and basic petrochemical goods, as set forth in this Chapter.

2. For purposes of this Chapter, energy and basic petrochemical goods refer to those goods classified under the Harmonized System as:

(a) Chapter 27 (excluding: subheadings 2707.10, 2707.20, 2707.30, 2707.40, 2707.60, 2707.91,

2707.99 (except solvent naphtha, rubber extender oils and carbon black feedstocks), and in subheading 2710.00 (only normal paraffin mixtures in the range of C9 to C15), and in heading 2711 (only ethylene, propylene, butylene and butadiene, in purities over 50 percent));

(b) subheading 2612.10;

(c) subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings);

(d) subheading 2845.10;

(e) subheading: 2901.10 (ethane, butanes, pentanes, hexanes, and heptanes only);

3. Except as otherwise specified in Annex 602.3, energy and petrochemical goods and activities shall be governed by the provisions of this Agreement.

Article 603: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties incorporate the provisions of the General Agreement on Tariffs and Trade (GATT), with respect to prohibitions or restrictions on trade in energy and basic petrochemical goods. The Parties agree that this language does not incorporate their respective protocols of provisional application to the GATT.

2. The Parties understand that the provisions of the GATT incorporated in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum or maximum export-price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum or maximum import-price requirements.

3. In circumstances where a Party imposes a restriction on importation from or exportation to a non-Party of an energy or basic petrochemical good, nothing in this Agreement shall be construed to prevent the Party from:

(a) limiting or prohibiting the importation from the territory of any Party of such energy or basic petrochemical good of the non-Party; or

(b) requiring as a condition of export of such energy or basic petrochemical good of the Party to the territory of any other Party that the good be consumed within the territory of the other Party.

4. In the event that a Party imposes a restriction on imports of an energy or basic petrochemical good from non-Party countries, the Parties, upon request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Parties may administer a system of import and export licensing for energy and basic petrochemical goods provided that such system is operated in a manner consistent with the provisions of this Agreement, including paragraph 1 and Article 1502 (Monopolies and State Enterprises).

6. In addition, the Parties recognize the provisions of Annex 603.6.

Article 604: Export Taxes

No Party shall maintain or introduce any tax, duty, or charge on the export of any energy or basic petrochemical good to the territory of any other Party, unless such tax, duty, or charge is also maintained or introduced on such energy or basic petrochemical good when destined for domestic consumption.

Article 605: Other Export Measures

A Party may maintain or introduce a restriction otherwise justified under the provisions of Articles XI:2(a) and XX(g), (i) and (j) of the GATT with respect to the export of an energy or basic petrochemical good to the territory of another Party, only if:

(a) the restriction does not reduce the proportion of the total export shipments of a specific energy or basic petrochemical good made available to such other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties involved may agree;

(b) the Party does not impose a higher price for exports of an energy or basic petrochemical good to such other Party than the price charged for such energy good when consumed domestically, by means of any measure such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price which may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

(c) the restriction does not require the disruption of normal channels of supply to such other Party or normal proportions among specific energy or basic petrochemical goods supplied to the other Party such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

Article 606: Energy Regulatory Measures

1. The Parties recognize that energy regulatory measures are subject to the disciplines of:

(a) national treatment, as provided in Article 301;

(b) import and export restrictions, as provided in Article 603; or

(c) export taxes, as provided in Article 604.

2. Each Party shall seek to ensure that in the application of any energy regulatory measure, energy regulatory bodies within its territory avoid disruption of contractual relationships to the maximum extent practicable, and provide for orderly and equitable implementation appropriate to such measures.

Article 607: National Security Measures

1. No Party shall maintain or introduce a measure restricting imports of an energy or basic petrochemical good from, or exports of an energy or basic petrochemical good to, another Party under Article XXI of the GATT or under Article 2102 (National Security), except to the extent necessary to:

(a) supply a military establishment of a Party or enable fulfillment of a critical defense contract of a Party;

(b) respond to a situation of armed conflict involving the Party taking the measure;

(c) implement national policies or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(d) respond to direct threats of disruption in the supply of nuclear materials for defense purposes.

2. The Parties recognize the provisions of Annex 607.2.

Article 608: Miscellaneous Provisions

1. Canada and the United States shall act in accordance with the terms of Annexes 902.5 and 905.2 of the Canada - United States Free Trade Agreement.

2. The Parties agree to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.

3. Canada and the United States intend no inconsistency between the provisions of this Chapter and the Agreement on an International Energy Program (IEP). In the event of any unavoidable inconsistency between the IEP and this Chapter, the provisions of the IEP shall prevail to the extent of that inconsistency as between Canada and the United States.

Article 609: Definitions

For purposes of this Chapter:

consumed means transformed so as to qualify under the rules of origin set out in Chapter Four (Rules of Origin), or actually consumed;

restriction means any limitation, whether made effective through quotas, licenses, permits, minimum or maximum price requirements or any other means;

energy regulatory measure means any measure by federal or sub- federal entities that directly affects the transportation, transmission or distribution, purchase or sale, of an energy or basic petrochemical good;

first hand sale refers to the first commercial transaction affecting the good in question;

Independent Power Producer (IPP) means a facility that is used for the generation of electric energy exclusively for sale to an electric utility for further resale;

investment means investment as defined in Chapter Eleven (Investment);

total supply means shipments to domestic users and foreign users from:

(a) domestic production;

(b) domestic inventory; and

(c) other imports, as appropriate; and

total export shipments means the total shipments from total supply to users located in the territory of the other Party.

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ANNEX 602.3

1. The Mexican State reserves to itself the following strategic activities and investment in such activities:

(a) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production of artificial gas, basic petrochemicals and their feedstocks; and pipelines; and

(b) foreign trade; transportation, storage and distribution, up to and including first hand sales of the following goods: crude oil; natural and artificial gas; goods covered by this Chapter obtained from the refining or processing of crude oil and natural gas; and basic petrochemicals.

2. In the event of an inconsistency between Annex 602.3, paragraphs 1, 5(a) and 6, and another provision of this Agreement, the provisions of Annex 602.3, paragraphs 1, 5(a) and 6, shall prevail to the extent of that inconsistency.

3. Natural Gas and Petrochemical Feedstock Trade

Where end-users and suppliers of natural gas or basic petrochemical goods consider that cross-border trade in such goods may be in their interests, the Parties agree that such end-users and suppliers, and state enterprises of the Parties as may be required under their domestic law, shall have the right to negotiate supply contracts.

The modalities of implementing such arrangements are left to the end-users, suppliers and state enterprises of the Parties as may be required under their domestic law and may take the form of individual contracts between the state enterprise and each of the other entities. Such contracts may be subject to regulatory approval.

4. Performance Contracts

The Parties shall allow state enterprises to negotiate performance clauses in their service contracts.

5. Electricity

(a) In Mexico the supply of electricity as a public service is a strategic area reserved to the State. Except as provided in subparagraph (b) below the activities encompassed by the supply of electricity as a public service in Mexico include the generation, transmission, transformation, distribution and sale of electricity.

(b) The opportunities for private investment in Mexico in electricity generating facilities include:

(i) Production for Own Use

Enterprises of the other Parties may acquire, establish, and/or operate an electrical generating facility to meet its own supply needs. Electricity generated in excess of the enterprise's own supply requirements must be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

(ii) Co-generation

Enterprises of the other Parties may acquire, establish, and/or operate co-generation facilities which generate electricity using heat, steam or other energy sources associated with an industrial process. Owners of the industrial facility need not be the owners of the co-generating facility. Electricity generated in excess of the enterprise's own supply requirements must be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

(iii) Independent Power Production

Enterprises of the other Parties may acquire, establish, and/or operate electricity generating facilities for independent power production (IPP) in Mexico. Electricity generated by IPP facilities for sale in Mexico shall be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise. Where an IPP located in Mexico and an electric utility of another Party consider that cross- border trade in electricity may be in their interest, the Parties agree that these entities and CFE shall have the right to negotiate the terms and conditions of power purchase and power sale contracts. The modalities of implementing such supply arrangements is left to the end-users, suppliers and CFE and may take the form of individual contracts between the state enterprise and each of the other entities. Such contracts shall be subject to regulatory approval.

6. Nuclear

The generation of nuclear energy; the exploration, exploitation and processing of radioactive minerals; the nuclear fuel cycle; the use and reprocessing of nuclear fuels and the regulation of their applications for other purposes; the transportation and storage of nuclear wastes; and the production of heavy water, are reserved to the Mexican state.

7. Pursuant to Article 1101(3), private investment is not permitted in reserved activities listed above in paragraphs 1, 5(a) and 6. Chapter Twelve (Cross Border Trade in Services) shall only apply to activities involving the provision of services covered in paragraphs 1, 5(a) and 6 when Mexico permits a contract to be granted in respect of such activities and only to the extent of that contract.

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ANNEX 603.6

United Mexican States:

1. For only those goods listed below, Mexico may restrict the granting of import and export licenses for the sole purpose of reserving foreign trade in these goods to itself.

2707.50 Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distills at 250 C by the ASTM D 86 method.

2707.99 Rubber extender oils, solvent naphtha and carbon black feedstocks only.

2709 Petroleum oils and oils obtained from bituminous minerals, crude.

2710 aviation gasoline; gasoline and motor fuel blending stocks (except aviation gasoline) and reformates when used as motor fuel blending stocks; kerosene; gas oil and diesel oil; petroleum ether; fuel oil; paraffinic oils other than for lubricating purposes; pentanes; carbon black feedstocks; hexanes; heptanes and naphthas.

2711 Petroleum gases and other gaseous hydrocarbons other than: ethylene, propylene, butylene and butadiene, in purities over 50 percent.

2712.90 only paraffin wax containing by weight more than 0.75% of oil, in bulk (Mexico classifies these goods under HS 2712.90.02) and only when imported to be used for further refining.

2713.11 Petroleum coke not calcined.

2713.20 Petroleum bitumen (except when used for road surfacing purposes under HS 2713.20.01).

2713.90 Other residues of petroleum oils obtained from bituminous materials.

2714 Bitumen and asphalt, natural; bituminous or oil shale and tar sands, asphaltites and asphaltic rocks (except when used for road surfacing purposes under HS 2714.90.01).

2901.10 Ethane, butanes, pentanes, hexanes, and heptanes only.

2. Notwithstanding any other provision of this Chapter, the provisions of Article 605 shall not apply as between the other Parties and Mexico.

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ANNEX 607.2

1. The provisions of Article 607(1) shall impose no obligations and confer no rights on Mexico.

2. Nothwithstanding Article 607(1), the provisions of Article 2102 (National Security) shall apply as between the other Parties and Mexico.

NAFTA Chapter Seven Agriculture

Article 701: Scope

1. This Chapter applies to trade in agricultural goods and to sanitary and phytosanitary measures.

Subchapter A - Market access

Article 702: Scope

1. Further to Article 102 (Objectives), the provisions of this Subchapter address import barriers, domestic support, export subsidies, and grading and marketing standards and measures that affect trade of agricultural goods between the Parties.

2. To the extent of any inconsistency in this Agreement with the provisions of this Subchapter, this Subchapter shall prevail.

Article 703: International obligations

1. Each Party shall comply with Annex 703.1 with respect to its agricultural trade under other international agreements, to the extent set out in that Annex.

2. When a Party desires to adopt a measure pursuant to any international commodity agreement with respect to an agricultural good, it shall consult with the other Parties in order to avoid nullification or impairment of a concession granted by such Party in its Schedule set out in Annex 302.2.

3. Each Party shall comply with Annex 703.3 with respect to actions taken pursuant to any international coffee agreement.

Article 704: Market Access

General Provisions

1. In order to facilitate trade in agricultural goods, the Parties shall work together to improve access to their respective markets through the reduction or elimination of import barriers.

Tariffs and Quantitative Restrictions

2. Each Party shall comply with Annex 704.2 with respect to tariffs and quantitative restrictions, including GATT market access requirements and trade in sugar.

Agricultural Grading and Marketing Standards

3. Each Party shall comply with Annex 704.3 with respect to agricultural grading and marketing standards.

Special Safeguard Provisions

4. Each Party may, during the applicable period of transition, adopt or maintain special safeguards in the form of tariff quotas on specific agricultural goods, as specified in its Schedule set out in Annex 302.2, and further described in Annex 704.4.

5. A Party may not apply, at the same time, measures under paragraph 4 and Chapter 8 (Emergency Action) with respect to the same agricultural good.

Article 705: Domestic Support

The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting effects and effects on production. The Parties further recognize that domestic support commitments may result from the agriculture negotiations in the Uruguay Round of multilateral trade negotiations under the GATT. Accordingly, to the extent a Party decides to support its agricultural producers, such Party should endeavor to move toward domestic support policies that:

(a) have minimal or no trade distortion effects or effects on production; or

(b) are exempt from domestic support reduction commitments under the GATT.

The Parties further recognize that the domestic support mechanisms of each Party, including those that are subject to reduction commitments, may be changed at the Party's discretion so long as such change is in compliance with its GATT rights and obligations.

Article 706: Export Subsidies

1. The Parties recognize that export subsidies may have serious prejudicial effects on importing and exporting Parties, and the Parties share the objective of achieving the multilateral elimination of export subsidies for agricultural goods. The Parties shall cooperate in an effort to achieve an agreement in the General Agreement on Tariffs and Trade which eliminates export subsidies on agricultural goods.

2. The Parties also recognize that export subsidies may cause disruption in the market of an importing Party. Accordingly, the Parties affirm that it is inappropriate for a Party to provide export subsidies for the export of an agricultural good to the territory of another Party when there are no other subsidized imports of that good into that other Party.

3. Except as provided in Annex 703.1, where an exporting Party considers that a non-Party is exporting an agricultural good into the territory of another Party with the benefit of export subsidies, the exporting Party may request consultations with the importing Party with a view toward agreeing on measures that the importing Party could 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, or immediately cease to apply, any export subsidy to exports of such good into the territory of the importing Party.

4. Except as provided in Annex 703.1, a Party proposing to introduce an export subsidy on exports of an agricultural good to the territory of another Party shall notify such Party at least three days in advance, and shall upon request consult with such Party, within 72 hours of receipt of the request, with a view to eliminating the subsidy or minimizing any adverse impact on the importing Party's market for that good. Another Party may request to join such consultations.

5. Each Party shall take into account the interests of the other Parties in the use of any export subsidy on an agricultural good exported to a Party or non-Party, recognizing that such subsidies may have prejudicial effects on the interests of the other Parties.

6. The Parties shall establish a Working Group on Agricultural Subsidies which shall meet at least semi-annually, or at such other times as the Parties may agree, to work toward elimination of all export subsidies in connection with trade in agricultural goods between the Parties. The functions of the Working Group on Agricultural Subsidies shall include:

(a) monitoring the volume and price of imports of agricultural goods that have benefitted from export subsidies into the territory of any Party;

(b) providing a forum for the Parties to develop mutually acceptable criteria and procedures for reaching agreement on the limitation or elimination of the provision of export subsidies in connection with importation of agricultural goods into the territories of the Parties; and

(c) reporting annually to the Committee on Agricultural Trade, established under Article 708, with respect to implementation of this Article.

7. Notwithstanding any other provision of this Article:

(a) if the Parties agree to a particular export subsidy measure on an agricultural good for export to the territory of a Party, the exporting Party may adopt or maintain such measure; and

(b) each Party shall retain its rights to apply countervailing duties to subsidized imports from any source.

Article 707: Resolution of Private Commercial Disputes Regarding Transactions in Agricultural Goods

The advisory committee established pursuant to Article 2022(4) shall work toward a system for resolving private commercial disputes that arise in connection with transactions in agricultural goods. The system of each Party shall be designed to achieve prompt and effective resolution of such disputes with attention to special circumstances, including the perishability of the goods involved.

Article 708: Committee on Agricultural Trade

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

2. The Committee's functions shall include:

(a) monitoring and promoting cooperation on the implementation and administration of this Subchapter;

(b) providing a forum for the Parties to consult at least semi-annually and at such other times as the Parties may agree on issues related to this Subchapter; and

(c) reporting annually to the Commission on the implementation of this Subchapter.

Article 709: Definitions

For purposes of this Subchapter:

agricultural goods means:

(i) HS Chapters 1 to 24 less fish and fish products, plus

(ii) HS Code 29.05.43 (manitol)
HS Code 29.05.44 (sorbitol)
HS Heading 33.01 (essential oils)
HS Headings 35.01 to 35.05 (albuminoidal substances, modified starches, glues)
HS Code 38.09.10 (finishing agents)
HS Code 38.23.60 (sorbitol n.e.p.)
HS Headings 41.01 to 41.03 (hides and skins)
HS Heading 43.01 (raw furskins)
HS Headings 50.01 to 50.03 (raw silk and silk waste)
HS Headings 51.01 to 51.03 (wool and animal hair)
HS Headings 52.01 to 52.03 (raw cotton, waste and cotton carded or combed)
HS Heading 53.01 (raw flax)
HS Heading 53.02 (raw hemp);

fish and fish products for purposes of the definition of agricultural goods means fish or crustaceans, molluscs or other aquatic invertebrates, marine mammals, and their products within the following headings of the Harmonized System:

HS Heading 05.07 (tortoise-shell, whalebone and whalebone hair and those fish or crustaceans, molluscs or other aquatic invertebrates, marine mammals, and their products within this heading)

HS Heading 05.08 (all goods (coral and similar materials))
HS Heading 05.09 (all goods (natural sponges of animal origin))
HS Heading 05.11 (products of fish or crustaceans,molluscs or other

aquatic invertebrates; dead animals of Chapter 3)
HS Heading 15.04 (all goods (fats and oils and their fractions, of fish or marine mammals))
HS Heading 16.03 ("non-meat" extracts and juices)
HS Heading 16.04 (all goods (prepared or preserved fish))
HS Heading 16.05 (all goods (prepared preserved crustaceans, molluscs and other aquatic invertebrates));

net production surplus means the quantity by which a Party's domestic production of sugar exceeds its total consumption of sugar for a marketing year;

net surplus producer means that a Party has been determined to have a net production surplus in accordance with Schedule 704.2(I)(B)(3);

plantation white sugar means crystalline sugar which has not been refined and is intended for human consumption without further processing or refining;

raw value means the equivalent of a quantity of sugar in terms of raw sugar testing 96 degrees by the polariscope, determined as follows:

(a) the raw value of plantation white sugar equals the number of kilograms thereof multiplied by 1.03;

(b) the raw value of liquid sugar and invert sugar equals the number of kilograms of the total sugars thereof multiplied by 1.07; and

(c) the raw value of other imported sugar and syrup goods equals the number of kilograms thereof multiplied by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion);

sugar means raw or refined sugar derived directly or indirectly from sugar cane or sugar beets, including liquid refined sugar; and

sugar and syrup goods means "sugar and syrup goods" as defined in Annex 709.

ANNEX 703.1

Incorporation of Trade Provisions

1. Articles 701.1, 701.2, 701.3, 701.5, 702, 704, 705, 706, 707, 708.1, 708.4 710 and 711 [subject to review] of the Canada - U.S. Free Trade Agreement shall apply to trade in "agricultural goods", as that term is defined in Article 711 of that Agreement, between Canada and the United States, which Articles are hereby incorporated into and made a part of this Agreement for such purpose.

2. For purposes of this incorporation, any reference to Chapter 18 of the Canada - U.S. Free Trade Agreement shall be deemed to be a reference to Chapter 20 of this Agreement.

ANNEX 703.3

International Coffee Agreement

Neither Canada nor Mexico shall take actions pursuant to any international coffee agreement and measures authorized thereunder to restrict trade in coffee between them.

ANNEX 704.2

Market Access

Each Party shall comply with Sections I and II.

Section I

Mexico and the United States

1. This Section shall apply only between the United States and Mexico.

2. Each Party shall comply with Appendices A and B.

Appendix A

Tariffs, Quantitative Restrictions and GATT Market Access

1. The Parties recognize that, upon the date of entry into force of the Agreement, each Party, in accordance with the rights and obligations set forth in Chapter 3, will not adopt or maintain measures regarding quantitative restrictions on the importation of agricultural goods originating in each other's territory, but may apply tariff quotas as set forth in its Schedule set out in Annex 302.2. The Parties further recognize that the over-quota tariff rate

applied by a Party in connection with such tariff quotas will be progressively eliminated in the manner set forth in its Schedule set out in Annex 302.2.

2. Each Party agrees to waive its rights under Article XI.2(c) of the General Agreement on Tariffs and Trade with respect to any measure taken in connection with the importation of agricultural goods originating in the territory of the other.

3. Except as provided in paragraph 4, to the extent a tariff applied by a Party in accordance with a tariff quota as set forth in its Schedule set out in Annex 302.2 at any time exceeds the applicable bound rate of duty for that agricultural good as set forth in its GATT Schedule of Tariff Concessions as of June 12, 1991, the other Party hereby waives its rights with respect to the applicable bound rate of duty under GATT Article II, notwithstanding the provisions of Article 103 of this Agreement.

4. If the GATT Uruguay Round Agreement on Agriculture enters into force with respect to a Party, pursuant to which that Party has agreed to convert its quantitative restrictions into tariff quotas, that Party shall ensure that the over-quota tariff rates it applies to agricultural goods of the other Party are not greater than the lower of (a) the applicable over-quota tariff rates set out in its Schedule set out in Annex 302.2 or (b) the applicable over-quota tariff rates set out in its GATT Schedule of Tariff Concessions.

5. Market access afforded by a Party in accordance with its Schedule set out in Annex 302.2 and applied to imports of agricultural goods of another Party shall count, as between the Parties, toward the satisfaction of market access commitments which have been agreed upon under its GATT Schedule of Tariff Concessions or which may be undertaken by the importing Party as a result of any GATT agreement entering into force as to that Party during the applicable transition period under this Agreement.

6. Neither Party shall seek a voluntary restraint agreement from the other Party with respect to the exportation of meat originating in the territory of that other Party.

7. Notwithstanding the provisions of Chapter 3 (Market Access), goods of subheading 2008.11 of the Harmonized System (HS) that originate in the territory of Mexico shall be subject upon importation into the territory of the United States to the rate of duty provided in the Schedule set out in Annex 302.2 for the United States only if all agricultural goods within heading 12.02 of the HS used in the production of such goods originate in the territory of one or more of the Parties.

8. A good provided for in item 1806.10.a1 or 2106.90.a1 that is:

(a) imported into the territory of the United States from the territory of Mexico; or

(b) imported into the territory of Mexico from the territory of the United States,

shall be eligible for the rate of duty provided in Annex 302.2 only if all agricultural materials provided for in subheading 1701.99 used in the production of such good are originating materials.

9. The United States shall not adopt or maintain, with respect to imports into its territory of agricultural goods originating in the territory of Mexico, any fee applied pursuant to Section 22 of the Agricultural Adjustment Act of 1933, or any successor statute.

10. Agricultural goods entered into maquiladoras or foreign- trade zones and re-exported, including subsequent to processing, shall not count toward the fulfillment of market access commitments under a Party's Schedule set out in Annex 302.2.

Appendix B

Trade in Sugar

1. The United States and Mexico recognize the importance of liberalizing trade in sugar and syrup goods while avoiding conditions of entry that may result in displacement of the consumption of such goods originating in the territories of the United States and Mexico by imports from non-Parties. Accordingly, the United States and Mexico have agreed to the following provisions to govern trade between them in sugar and syrup goods.

2. The over quota customs duty for imports into the territory of the United States of sugar and syrup goods originating in the territory of Mexico shall be reduced to zero during a period of 15 years after the date of entry into force of this Agreement as follows:

(a) from the first to the sixth year after the date of entry into force of this Agreement, the customs duty shall be reduced by a total of 15 percent in equal annual stages;

(b) from the seventh to the fifteenth year after the date of entry into force of this Agreement, the customs duty shall be removed entirely in equal annual stages; and

(c) after the end of the sugar transition period, the duty on all imports of sugar and syrup goods from Mexico shall be zero.

3. In addition to the customs duty reductions provided for under paragraph 2, imports into the territory of the United States of sugar and syrup goods originating in the territory of Mexico shall be duty free for a quantity, on a marketing year (October 1 - September 30) basis, to be determined as follows:

(a) for each upcoming marketing year in which Mexico is not projected to be a net surplus producer, the quantity shall be the greater of 7,258 metric tons raw value or the quota allocated by the United States for a non- Party within the category designated "other specified countries and areas" under paragraph (b)(i) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States;

(b) for each upcoming marketing year in which Mexico is projected to be a net surplus producer of sugar, in accordance with sub-paragraph (d), the quantity shall be the greater of (i) the amount specified in sub- section (a), or (ii) Mexico's projected net production surplus, but not greater than a maximum quantity as follows

(i) for each of the first through sixth marketing years after the date of entry into force of this Agreement, 25,000 metric tons raw value,

(ii) for the seventh marketing year after the date of entry into force of this Agreement, 150,000 metric tons raw value, and

(iii) for each of the eighth through fifteenth marketing years after the date of entry into force of this Agreement, 110 percent of the previous marketing year's maximum quantity;

(c) in any year after the sixth year after the date of entry into force of this Agreement, the quantity of imports of sugar and syrup goods originating in the territory of Mexico shall not be subject to the limitations set out in subparagraph (b) if

(i) Mexico has been a net surplus producer for any two consecutive marketing years, or

(ii) Mexico has been a net surplus producer during the previous marketing year, and Mexico is projected to be a net surplus producer of sugar, in accordance with subparagraph (d), in the upcoming marketing year, unless Mexico ultimately is not a net surplus producer in that marketing year; and

(d) prior to the beginning of each marketing year, Mexico shall make projections of its domestic production and total consumption of sugar. Mexico and the United States shall consult by July 1 of each year to jointly determine whether Mexico is projected to be a net surplus producer in the upcoming marketing year, in accordance with the methodology and sources of information set out in Schedule 704.2(I)(B)(3).

4. Mexico shall implement a tariff quota to be applied on a Most Favored Nation basis for sugar and syrup goods with customs duties equal to those of the United States no later than six years after the date of entry into force of this Agreement. Mexico shall thereafter progressively eliminate its over quota customs duty for imports of sugar and syrup goods originating in the territory of the United States, in identical fashion as the reductions provided for United States customs duties in paragraph 2. Mexico shall establish the quantities of imports of sugar and syrup goods originating in the territory of the United States that shall be duty-free pursuant to the same procedure by which the United States shall establish such quantities with respect to imports of such goods originating in the territory of Mexico in accordance with sub-paragraph 3(b). The United States shall make projections of its domestic production and consumption, and the United States and Mexico shall consult and make the determination whether the United States is projected to be a net surplus producer, on the same terms as provided for in subparagraph 3(d).

5. If the United States eliminates its tariff quota for sugar and syrup goods imported from non-Parties, at such time the United States shall grant to Mexico the better of the treatment, as determined by Mexico, of:

(a) the treatment provided for in paragraph 3; or

(b) the Most-Favored-Nation treatment granted by the United States to non-Parties.

6. The measurement of the quantity imported shall be based on the actual weight of the imported sugar and syrup goods, converted as appropriate to raw value, without regard to the packaging in which the goods are imported or their presentation.

7. With respect to imports into the territory of Mexico of sugar and syrup goods, and products containing sugar or syrup, from the territory of the United States,

(a) Mexico shall accord preferential treatment in accordance with this Agreement when the following conditions apply

(i) with respect to sugar and syrup goods no benefits under any re-export program or any like program have been or will be granted in connection with the export of those goods, and

(ii) with respect to products containing sugar and syrup goods, no benefits under any re-export program or any like program have been or will be granted in connection with the export of those products;

(b) the United States shall provide notification to Mexico of any export to Mexico, within two days of such export, for which the benefits of any re-export program or any other like program have been or will be claimed by the exporter; and

(c) except as provided for in paragraph 8, Mexico shall accord Most Favored Nation treatment to all imports from the territory of the United States of sugar and syrup goods with respect to which benefits under any re-export program or any like program shall have been claimed.

8. Notwithstanding any other provision of this Article:

(a) the United States shall grant duty-free treatment to imports of

(i) raw sugar originating in the territory of Mexico that will be refined within the territory of the United States and re-exported to the territory of Mexico, and

(ii) refined sugar originating in the territory of Mexico that has been refined from raw sugar previously produced within, and exported from, the territory of the United States;

(b) Mexico shall grant duty-free treatment to imports of

(i) raw sugar originating in the territory of the United States that will be refined within the territory of Mexico and re-exported to the territory of the United States, and

(ii) refined sugar originating in the territory of the United States that has been refined from raw sugar previously produced within, and exported from, the territory of Mexico; and

(c) imports qualifying for duty-free treatment pursuant to subparagraphs (a) and (b) of this paragraph shall not be subject to, or counted under, any quota of the importing Party.

Schedule 704.2(I)(B)(3)

Net Production Surplus Determination

1. Methodology

(a) The size of a Party's net production surplus, shall be determined in accordance with the following formula:

(i) If a net production surplus has not been projected for any previous year, the formula shall be:

NPS = (PPy - CPy)

(ii) If a Party is projected to be a net surplus producer and has been projected to be a net surplus producer in a previous year, the Party's projected net production surplus shall be adjusted, to account for an underestimate or overestimate, as follows:

NPS = (PPy - CPy) - ((PPys - CPys) - (PAys - CAys))

where:

NPS = Net production surplus
PP = Projected Domestic Production of sugar
CP = Projected Total Consumption of sugar
y = upcoming marketing year
ys = most recent previous marketing year in which a net production surplus was projected
PA = Actual Domestic Production of sugar
CA = Actual Total Consumption of sugar

(b) The net production surplus shall be determined in metric tons raw value.

(c) For purpose of determining whether a Party is a net surplus producer, imported sugar shall not

be treated as part of domestic production.

(d) The domestic production of a Party shall not include sugar, that has been either processed or refined from sugar beets or sugar cane grown, or sugar processed or refined, outside of the territory of such Party.

(e) When making projections of its net production surplus, each Party shall consider adjustments, in appropriate circumstances, to such projections to take into account a change in stocks for the current marketing year exceeding an upper bound calculated in accordance with the following formula:

where:

B = upper bound, expressed as a percentage

F = the absolute value of the change in stocks from the beginning of the marketing year to the end of the marketing year, expressed as a percentage of beginning stocks and calculated in accordance with the following formula:

$$F = \frac{|Sb - Se|}{Sb} \times 100$$

Sb = beginning stocks

Se = ending stocks

N = previous marketing year, ranging from 1 (first preceding year) to 5 (fifth preceding year)

2. Sources of Information

(a) For Mexico, statistics on production, consumption and stocks shall be provided by the Secretaria de Agricultura y Recursos Hidraulicos, the Secretaria de Comercio y Fomento Industrial, and the Secretaria de Hacienda y Credito Publico.

(b) For the United States, statistics on production, consumption and stocks shall be provided by the United States Department of Agriculture (USDA).

(c) Each Party shall permit representatives from the other Party to observe and comment on the methodology it uses to prepare its data.

Section II

Mexico and Canada

1. This Section shall apply only between Canada and Mexico.

2. Each Party shall comply with Appendices A and B.

Appendix A

Tariffs, Quantitative Restrictions and GATT Market Access

1. Subject to the provisions of this Section, the Parties recognize that, upon the date of entry into force of this Agreement, each Party, in accordance with the rights and obligations set forth in Chapter 3, will not adopt or maintain measures regarding quantitative restrictions on the importation of agricultural goods originating in each other's territory, but may apply tariff quotas as set forth in its Schedule set out in Annex 302.2. The Parties further recognize that the over-quota tariff rate applied by a Party in connection with such tariff quotas will be progressively eliminated in the manner set forth in its Schedule set out in Annex 302.2.

2. Except as provided in paragraph 3, to the extent a tariff applied by a Party in accordance with a tariff quota as set forth in its Schedule set out in Annex 302.2 at any time exceeds the applicable bound rate of duty for that agricultural good as set forth in its GATT Schedule of Tariff Concessions as of June 12, 1991, the other Party hereby waives its rights with respect to the applicable bound rate of duty under GATT Article II, notwithstanding the provisions of Article 103.

3. If the GATT Uruguay Round Agreement on Agriculture enters into force with respect to a Party, pursuant to which that Party has agreed to convert its quantitative restrictions into tariff quotas, that Party shall ensure that the over-quota tariff rates it applies to agricultural goods of the other Party are not greater than the lower of (a) the applicable over-quota tariff rates set out in its Schedule set out in Annex 302.2 or (b) the applicable over-quota tariff rates set out in its GATT Schedule of Tariff Concessions.

4. Market access afforded by a Party in accordance with its Schedule set out in Annex 302.2 and applied to imports of agricultural goods of another Party shall count, as between the Parties, toward the satisfaction of market access commitments which have been agreed upon under its GATT Schedule of Tariff Concessions or which may be

undertaken by the importing Party as a result of any GATT agreement entering into force as to that Party during the applicable transition period under this Agreement.

5. In respect of the dairy, poultry and egg goods designated in Schedule 704.2(II)(A)(5), either Party may adopt or maintain quantitative restrictions or tariffs consistent with its rights and obligations under the GATT, with respect to such goods originating in the territory of the other Party.

6. Without prejudice to the provisions of Chapter 8 of this Agreement and paragraph 5, neither Party shall introduce, maintain or seek any quantitative restriction or any other measure having equivalent effect on any agricultural goods covered under this Subchapter originating in the territory of the other Party.

7. Subject to this Section, Canada and Mexico incorporate their respective rights and obligations with respect to agricultural goods under the General Agreement on Tariffs and Trade (GATT) and agreements negotiated under the GATT, including the rights and obligations under GATT Article XI.

8. Notwithstanding paragraph 7 and Annex 301.3(A)(1)(j), the rights and obligations contained in Article XI:2(c)(i) of the GATT shall apply only to dairy, poultry and egg goods of Canada and Mexico designated in Schedule 704.2(II)(A)(5).

9. A good provided for in item 1806.10.a1 or 2106.90.a1 that is:

(a) imported into the territory of Canada from the territory of Mexico; or

(b) imported into the territory of Mexico from the territory of Canada,

shall be eligible for the rate of duty provided in Annex 302.2 only if all materials provided in subheading 1701.99 used in the production of such good are originating materials.

Schedule 704.2(II)(A)(5)

Dairy, Poultry and Egg Goods

For Canada: a dairy, poultry or egg good under one of the following subheadings:

Note: "X" indicates that a new tariff subheading will be established for this item

0105.11.90X Broiler chicks for domestic production, <185G

0105.91.00 Poultry, >185g

0105.99.00 Ducks, geese, turkeys, etc, >185g

0207.10.00 Poultry not cut in pieces, fresh or chilled

0207.21.00 Poultry, not in pieces, frozen

0207.22.00 Turkey, not in pieces, frozen

0207.39.00 Poultry cuts & offal, fresh

0207.41.00 Poultry cuts & offal, frozen

0207.42.00 Turkey cuts & offal, frozen

0209.00.20 Poultry fat

0210.90.10 Poultry meat, salted, dried, etc.

0401.10.00 Milk & cream, fat <1%

0401.20.00 Milk & cream, fat > 1% < 6%

0401.30.00 Milk & cream, fat > 6%

0402.10.00 Skim milk powder

0402.21.10 Whole milk powder

0402.21.20 Whole cream powder

0402.29.10 Milk powder fat > 1.5%

0402.29.20 Cream powder fat < 1.5%

0402.91.00 Milk & cream, conc., n.s.

0402.99.00 Milk & cream, not solid, added sweetener

0403.10.00 Yogurt

0403.90.10 Powdered buttermilk

0403.90.90 Curdled milk & cream, etc.

0404.10.10 Whey powder

0404.10.90 Whey, not powdered

0404.90.00 Other

0405.00.10 Butter

0405.00.90 Fats & oils derived from milk

0406.10.00 Fresh cheese

0406.20.10 Cheddar cheese

0406.20.90 Cheeses, not cheddar

0406.30.00 Processed cheese

0406.40.00 Blue-veined cheese

0406.90.10 Cheddar cheese, not processed

0406.90.90 Cheese, not cheddar, not processed

0407.00.00 Bird's eggs, in shell

0408.11.00 Dried egg yolks

0408.19.00 Egg yolks, not dried

0408.91.00 Bird's eggs, not in shell, dried

0408.99.00 Bird's eggs, not in shell, not dried

1601.00.10X Sausages or similar products of poultry meat, poultry meat offal or blood, in air tight containers

1602.31.10 Prep. meals, of meat or meat offal of turkeys

1602.31.91 Prep. or preserved meat, meat offal or blood, of turkeys, other than sausages or prep. meals, in air-tight containers

1602.31.99 Prep. or preserved meat, meat offal or blood, of turkeys, other than sausages or prep. meals, other than in air-tight containers

1602.39.10 Prep. meals containing meat or meat offal of fowls of the species (Gallus domesticus) ducks, geese or guinea fowls, incl. mixtures

1602.39.91 Prep. or preserved meat, meat offal or blood, of fowls of the species (Gallus domesticus), ducks, geese or guinea fowls, other than sausages, liver or prep. meals, in air-tight containers

1602.39.99 Prep. or preserved meat, meat offal or blood, of ducks, geese, etc., other than sausages, liver or prep. meals, in other than air-tight containers

2105.00.00 Ice cream & other edible ice, containing cocoa or not

2106.90.70 Food preps. not elsewhere specified or incl. Egg preps.

2106.90.90X Ice cream or ice milk mixes

2309.90.91X Complete feeds & feed supplements, incl. concentrates, containing more than 50% by weight of dairy products

3501.10.00 Casein

3501.90.00 Caseinates & other casein derivatives; casein glues

3502.10.10 Egg albumin, dried, evaporated, desiccated or powdered

3502.10.90 Egg albumin, nes

For Mexico: a dairy, poultry or egg good under one of the following subheadings:

Note: "X" indicates that a new tariff subheading item will be established for this item

MEXICO HTS NUMBER DESCRIPTION

0105.11.01 Day old chickens without being fed during its transportation

0105.91.01 Game cocks

0105.91.99 Other

0105.99.99 Other poultry

0207.10.01 Poultry, not cut into pieces, fresh or chilled

0207.21.01 Chickens

0207.22.01 Turkey

0207.39.01 Chicken offals except liver

0207.39.99 Other, poultry cut and offals

0207.41.0X Chicken cuts, frozen

0207.41.0Y Chicken offals, frozen

0207.41.0Z Chicken meat mechanically deboned, frozen

0207.41.ZZ Chicken meat mechanically deboned, fresh or chilled

0207.42.0X Turkey cuts, frozen

0207.42.0Y Turkey offals

0207.42.0Z Turkey meat, mechanically deboned, frozen

0207.42.ZY Turkey meat, mechanically deboned, fresh or chilled

0207.50.01 Poultry livers, frozen

0209.00.0Z Chicken or turkey bacon and lean parts

0210.90.99 Other

0401.10.01 In hermetic containers milk not concentrated

0401.10.99 Other

0401.20.01 In hermetic containers;

0401.20.99 Other

0401.30.01 In hermetic containers;

0401.30.99 Other

0402.10.01 Milk powder

0402.10.99 Other

0402.21.01 Milk powder

0402.21.99 Other

0402.29.99 Other

0402.91.01 Evaporated milk

0402.91.99 Other

0402.99.01 Condensed milk

0402.99.99 Other

0403.10.01 Yogurt

0403.90.01 Powdered milk whey with a protein content less than or equal to 12 percent

0403.90.99 Other butter whey

0404.10.01 Whey, concentrated, sweetened

0404.90.99 Other

0405.00.01 Butter, including the immediate container, with a weight less than or equal to 1kg

0405.00.02 Butter, including the immediate container, with a weight over 1 kg

0405.00.03 Butiric fat, dehydrated

0405.00.99 Other

0406.10.01 Fresh cheese, including whey cheese

0406.20.01 Cheese, grated or powdered

0406.30.01 Melted cheese, not grated or powdered

0406.30.99 Other, melted cheese

0406.40.01 Blue veined cheese

0406.90.01 Hard paste cheese called sardo

0406.90.02 Hard paste reggi cheese

0406.90.03 Soft paste cologne cheese

0406.90.04 Hard or semi-hard cheeses with a fat content by weight less than or equal to 40 percent, and with a water content by weight in non-fat matter less than or equal to 47 percent (called "grana", "parmigiana" or "reggiano,") or with a non-fat matter content by weight over 47 percent without exceeding 72 percent (called "danloo, edam, fontan, fontina, fynbo, gouda, Avarti, maribo, samsoe, esron, italico, kernhem, saint-nactarie, saint paulin, or talegil)

0406.90.05 Petit suisse cheese

0406.90.06 Egmont cheese

0406.90.99 Other hard and semihard cheese

0407.00.01 Fresh birds eggs, fertile

0407.00.02 Frozen eggs

0407.00.99 Other poultry eggs

0408.11.01 Dried yolks

0408.19.99 Other

0408.91.01 Frozen or powdered

0408.91.99 Other

0408.99.01 Frozen or powdered

0408.99.99 Other

1601.00.9X Chicken and turkey sausages

1602.20.0X Homogenized preparations of chickens or turkey livers

1602.31.01 Prepared or preserved turkey meat

2105.00.01 Ice cream and similar products

2106.90.9X Egg preparations

2309.90.9X Preparations containing over 50 percent of milk products

3501.10.01 Casein

3501.90.01 Casein glues

3501.90.02 Caseinates

3501.90.99 Other

3502.10.01 Egg albumin

Appendix B

Trade in Sugar

1. Mexico's customs duty for imports of sugar and syrup goods originating in the territory of Canada shall be equal to its Most-Favored-Nation over-quota customs duty.

2. Canada may apply a customs duty on sugar and syrup goods originating in the territory of Mexico equal to the customs duty applied by Mexico on such goods originating in the territory of Canada.

ANNEX 704.3

Agricultural Grading and Marketing Standards

Each Party shall comply with Sections I and II.

Section I

United States and Mexico

1. When either the United States or Mexico adopts or maintains a measure regarding the classification, grading or marketing of a domestic agricultural good, it shall, with respect to the like agricultural good imported from the territory of the other destined for processing, accord treatment no less favorable than the treatment it accords under the measure to the domestic agricultural good destined for processing. The importing Party may also adopt or maintain measures to ensure that such imported good is processed.

2. Paragraph 1 shall be without prejudice to the rights of either the United States or Mexico under the GATT or under Article 301 of this Agreement with respect to measures concerning the classification, grading or marketing of an agricultural good (whether or not destined for processing).

3. Mexico and the United States agree to form a Working Group to review, in coordination with the Committee on Standards-Related Measures established under Chapter 9, the operation of grade and quality standards regarding agricultural goods as they affect the other Parties to this Agreement, and to resolve issues which may arise. This Working Group shall report to the Committee on Agriculture established under Article 708, and shall meet at least once a year or as otherwise agreed by the two Parties.

Section II

Canada and Mexico

Mexico and Canada agree to form a Working Group to review, in coordination with the Committee on Standards-Related Measures established under Chapter Nine (Standards-Related Measures), the operation of grade and quality standards regarding agricultural goods as they affect the other Parties to this Agreement, and to resolve issues which may arise. This Working Group shall report to the Committee on Agriculture established under Article 708, and shall meet at least once a year or as otherwise agreed by the two Parties. ANNEX 704.4

Special Safeguards

Section I

Mexican Special Safeguard Goods

MEXICO HTS NUMBER DESCRIPTION

0103.91.99 Live swine, weighing less than

50 kilograms each, except purebred breeding animals and those with pedigree or selected breed certificate

0103.92.99 Live swine, weighing 50 kilograms or more each, except purebred breeding animals and those with pedigree or selected breed certificate

0203.11.01 Meat of swine, carcasses and half-carcasses, fresh or chilled

0203.12.01 Hams, shoulders or cuts thereof, with bone in, fresh or chilled

0203.19.99 Other swine meat, fresh or chilled

0203.21.01 Meat of swine, carcasses and half-carcasses, frozen

0203.22.01 Hams, shoulders and cuts thereof, with bone in, frozen

0203.29.99 Other swine meat, frozen

0210.11.01 Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked

0210.12.01 Bellies (streaky) and cuts thereof, salted, in brine, dried or smoked

0210.19.99 Other swine meat, salted, in brine, dried or smoked

0710.10.01 Potatoes, uncooked or cooked by steaming or boiling in water, frozen

0712.10.01 Dried potatoes, whole cut, sliced, broken or in powder, but not further prepared

0808.10.01 Apples, fresh

2004.10.01 Potatoes prepared or preserved otherwise than by vinegar or acetic acid, frozen

2005.20.01 Potatoes prepared or preserved otherwise than by vinegar or acetic acid, not frozen

2101.10.01 Extracts, essences or concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee

Section II

U.S. Special Safeguard Goods

U.S. HTS NUMBER DESCRIPTION

Note: A new U.S. HTS number will be established for each item

0702.00.XX Tomatoes (except cherry tomatoes), fresh or chilled; if entered during the period from November 15 to the last day of the following February, inclusive

0702.00.XX Tomatoes (except cherry tomatoes), fresh or chilled; if entered during the period from March 1 to July 14, inclusive

0703.10.XX Onions and shallots, fresh or chilled (not including onion sets and not including pearl onions not over 16 mm in diameter) if entered January 1 to April 30, inclusive

0709.30.XX Eggplants (aubergines), fresh or chilled, if entered during the period from April 1 to June 30, inclusive

0709.60.XX "Chili" peppers; if entered during the period from October 1 to July 31, inclusive (current 0709.60.00.20)

0709.90.XX Squash, fresh or chilled; if entered during the period from October 1 to the following June 30, inclusive

0807.10.XX Watermelons, fresh; if entered during the period from May 1 to September 30, inclusive

Section III

Canadian Special Safeguard Goods

Canadian HTS NUMBER DESCRIPTION

0603.10.90 Fresh cut flowers
0702.00.91 Tomatoes n.e.s., fresh or chilled (dutiable period)
0703.10.31 Onions or shallots, green (dutiable period), fresh
0707.00.91 Cucumber, fresh or chilled, n.e.s. (dutiable period)
0710.80.20 Broccoli and cauliflowers, blanched or not, frozen
0811.10.10 Strawberries, for processing, frozen
0811.10.90 Strawberries, frozen, other than for processing
2002.90.00 Tomatoes, other than whole (tomato paste)

ANNEX 709

Country-Specific Definitions

For purposes of this Subchapter, sugar and syrup goods means:

(a) for imports into Mexico, goods classifiable under current subheadings 1701.11.01, 1701.11.99, 1701.12.01, 1701.12.99, 1701.91 (except those that contain added flavoring matter), 1701.99.01, 1701.99.99, 1702.90.01, 1806.10.01 (except those with a sugar content less than 90 per cent) and 2106.90.05 (except those that contain flavoring matter) of the Mexican Tariff Schedules;

(b) for imports into the United States, goods classifiable under current subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the U.S. Harmonized Tariff Schedule, without regard to the quantity imported; and

(c) for imports into Canada, goods classifiable under current subheadings 1701.11.10, 1701.11.20, 1701.11.30, 1701.11.40, 1701.11.50, 1701.12.00, 1701.91.00, 1701.99.00, 1702.90.31, 1702.90.32, 1702.90.33, 1702.90.34, 1702.90.35, 1702.90.36, 1702.90.37, 1702.90.38, 1702.90.40, 1806.10.00 (except those with a sugar content less than 90 per cent) and 2106.90.20 (except those that contain flavoring matter) of the Canadian Tariff Schedule.

Subchapter B - Sanitary and Phytosanitary Measures

Article 751: Scope

In order to establish a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures, this Subchapter applies to any such measure of a Party that may, directly or indirectly, affect trade between the Parties.

Article 752: Relation to Other Chapters

Articles 301 (National Treatment), 309 (Import and Export Restrictions) and 310 (Non-Discriminatory Administration of Restrictions), and the provisions of Article XX(b) of the GATT as incorporated into Article 2101(1), do not apply to any sanitary or phytosanitary measure.

Article 753: Reliance on Non-Governmental Entities

Each Party shall ensure that any non-governmental entity on which it relies in applying a sanitary or phytosanitary measure acts in a manner consistent with this Subchapter.

Article 754: Basic Rights and Obligations

Right to Take Sanitary and Phytosanitary Measures

1. Each Party may, in accordance with this Subchapter, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Subchapter, each Party may, in protecting human, animal or plant life or health, establish its appropriate level of protection in accordance with Article 757.

Scientific Principles

3. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is:

(a) based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions;

(b) not maintained where there is no longer a scientific basis for it; and

(c) based on a risk assessment, as appropriate to the circumstances.

Non-Discriminatory Treatment

4. Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

Unnecessary Obstacles

5. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

Disguised Restrictions

6. No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction to trade between the Parties.

Article 755: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal, or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

2. A Party's sanitary or phytosanitary measure that conforms to a relevant international standard, guideline or recommendation shall be presumed to be consistent with Article 754. A measure that results in a level of sanitary or phytosanitary protection different from that which would be achieved by a measure based on a relevant international standard, guideline or recommendation shall not for that reason alone be presumed to be inconsistent with this Subchapter.

3. Notwithstanding paragraph 1 and in accordance with the other provisions of this Subchapter, a Party may adopt, maintain or apply a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation.

4. Where a Party has reason to believe that a sanitary or phytosanitary measure of another Party is adversely affecting or may adversely affect its exports and the measure is not based on a relevant international standard, guideline or recommendation, it may request, and the other Party shall provide in writing, the reasons for such measure.

5. Each Party shall, to the greatest extent practicable, participate in relevant international and North American standardizing organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, the International Plant Protection Convention, and the North American Plant Protection Organization, with a view to promoting the development and periodic review of international standards, guidelines and recommendations.

Article 756: Equivalence

1. Without reducing the level of protection of human, animal, or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Subchapter, pursue equivalence of their respective sanitary or phytosanitary measures.

2. Each importing Party:

(a) shall treat a sanitary or phytosanitary measure adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, provides to the importing Party scientific evidence or other information, in accordance with risk assessment methodologies agreed upon by those Parties, to demonstrate objectively, subject to subparagraph (b), that the exporting Party's measure achieves the importing Party's appropriate level of protection;

(b) may, where it has a scientific basis, determine that the exporting Party's measure does not achieve the importing Party's appropriate level of protection; and

(c) shall, upon the request of the exporting Party, provide its reasons in writing for a determination under subparagraph (b).

3. For purposes of establishing equivalency, each exporting Party shall, upon the request of an importing Party, take such reasonable measures as may be available to it to facilitate access in its territory for inspection, testing, and other relevant procedures.

4. Each Party should, in the development of a sanitary or phytosanitary measure, consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties.

Article 757: Risk Assessment and Appropriate Level of Protection

1. In conducting a risk assessment, each Party shall take into account:

(a) relevant risk assessment techniques and methodologies developed by international or North American standardizing organizations;

(b) relevant scientific evidence;

(c) relevant processes and production methods;

(d) relevant inspection, sampling, and testing methods;

(e) the prevalence of relevant diseases or pests, including the existence of pest-free or disease-free areas or areas of low pest or disease prevalence;

(f) relevant ecological and other environmental conditions; and

(g) relevant treatments, such as quarantines.

2. Further to paragraph 1, each Party shall, in establishing its appropriate level of protection regarding the risk associated with the introduction, establishment or spread of an animal or plant pest or disease, and in assessing such risk, also take into account the following economic factors, where relevant:

(a) loss of production or sales that may result from such pest or disease;

(b) costs of control or eradication of the pest or disease in its territory; and

(c) the relative cost-effectiveness of alternative approaches to limiting risks.

3. Each Party, in establishing its appropriate level of protection:

(a) should take into account the objective of minimizing negative trade effects; and

(b) shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.

4. Notwithstanding paragraphs (1) through (3) and Article 754(3)(c), where a Party conducting a risk assessment determines that available relevant scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including from international or North American standardizing organizations and from sanitary or phytosanitary measures of other Parties. Such Party shall, within a reasonable period after information sufficient to complete the assessment is presented to it, complete its assessment, review and where appropriate revise the provisional measure in light of such assessment.

5. Where a Party is able to achieve its appropriate level of protection through the phased application of a sanitary or phytosanitary measure, it may, upon the request of another Party and in accordance with this Subchapter, allow for such a phased application, or grant specified exceptions for limited periods from such measure, taking into account the requesting Party's export interests.

Article 758: Adaptation to Regional Conditions

1. Each Party shall adapt any of its sanitary or phytosanitary measures relating to the introduction, establishment, or spread of an animal or plant pest or disease, to the sanitary or phytosanitary characteristics of the area where a good subject to such measure is produced and the area in its territory to which such good is destined, taking into account any relevant conditions, including those relating to transportation and handling, between such areas. In assessing such characteristics of an area, including whether an area is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, each Party shall take into account, among other factors:

(a) the prevalence of relevant pests or diseases in that area;

(b) the existence of eradication or control programs in that area; and

(c) any relevant international standard, guideline or recommendation.

2. Further to paragraph 1, each Party shall, in determining whether an area is a pest-free or disease-free area or an area of low pest or disease prevalence, base such determination on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in that area.

3. Each importing Party shall recognize that an area in the territory of the exporting Party is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, where the exporting Party provides to the importing Party scientific evidence or other information sufficient to so demonstrate to the satisfaction of the importing Party. For this purpose, each exporting Party shall provide reasonable access in its territory to the importing Party for inspection, testing and other relevant procedures.

4. Each Party may, in accordance with this Subchapter:

(a) adopt, maintain or apply a different risk assessment procedure for a pest-free or disease-free area than for an area of low pest or disease prevalence; or

(b) make a different final determination for the disposition of a good produced in a pest-free or disease-free area than for a good produced in an area of low pest or disease prevalence,

taking into account any relevant conditions, including those relating to transportation and handling.

5. Each Party shall, in adopting, maintaining or applying a sanitary or phytosanitary measure relating to the introduction, establishment, or spread of an animal or plant pest or disease, accord a good produced in a pest-free or disease-free area in the territory of another Party no less favorable treatment than it accords a good produced in a pest-free or disease-free area, in another country, that poses the same level of risk. Such Party shall use equivalent risk assessment techniques to evaluate relevant conditions and controls in the pest-free or disease-free area and in the area surrounding that area and take into account any relevant conditions, including those relating to transportation and handling.

6. Each importing Party shall pursue an agreement with an exporting Party, upon request, on specific requirements the fulfillment of which allows a good produced in an area of low pest or disease prevalence in the territory of an exporting Party to be imported into the territory of the importing Party and achieves the importing Party's appropriate level of protection.

Article 759: Control, Inspection and Approval Procedures

1. Each Party, with respect to any control or inspection procedure that it conducts:

(a) shall initiate and complete such procedure as expeditiously as possible and in no less favorable manner for a good of another Party than for a good of such Party or a like good of any other country;

(b) shall publish the normal processing period for each such procedure or communicate the anticipated processing period to the applicant upon request;

(c) shall ensure that the competent body

(i) upon receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,

(ii) transmits to the applicant as soon as possible the results of the procedure in a form that is precise and complete so that such applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with such procedure if the applicant so requests, and

(iv) informs the applicant, upon request, of the status of the application and the reasons for any delay;

(d) shall limit the information the applicant is required to supply to that necessary for conducting such procedure;

(e) shall accord confidential or proprietary information arising from, or supplied in connection with, such procedure conducted for a good of another Party

(i) treatment no less favorable than for a good of such Party, and

(ii) in any event, treatment that protects the applicant's legitimate commercial interests, to the extent provided under the Party's law;

(f) shall limit any requirement regarding individual specimens or samples of a good to that which is reasonable and necessary;

(g) should not impose a fee for conducting such procedure that is higher for a good of another Party than is equitable in relation to any such fee it imposes for its like goods or for like goods of any other country, taking into account communication, transportation and other related costs;

(h) should use criteria for selecting the location of facilities at which a procedure is conducted that do not cause unnecessary inconvenience to an applicant or its agent;

(i) shall provide a mechanism to review complaints concerning the operation of such procedure and to take corrective action when a complaint is justified;

(j) should use criteria for selecting samples of goods that do not cause unnecessary inconvenience to an applicant or its agent; and

(k) shall limit such procedure, for a good modified subsequent to a determination that such good fulfills the requirements of the applicable sanitary or phytosanitary measure, to that necessary to determine that such good continues to fulfill the requirements of such measure.

2. Each Party shall apply, with such modifications as may be necessary, paragraphs 1(a) through (i) to its approval procedures.

3. Where an importing Party's sanitary or phytosanitary measure requires the conduct of a control or inspection procedure at the level of production, an exporting Party shall, upon the request of the importing Party, take such reasonable measures as may be available to it to facilitate access in its territory and to provide assistance necessary to facilitate the conduct of the importing Party's control or inspection procedure.

4. A Party maintaining an approval procedure may require its approval for the use of an additive, or its establishment of a tolerance for a contaminant, in a food, beverage or feedstuff, under such procedure, prior to granting access to its domestic market for a food, beverage or feedstuff containing such additive or contaminant. Where such Party so requires, it shall consider using a relevant international standard, guideline or recommendation as the basis for granting access until it completes such procedure.

Article 760: Notification, Publication and Provision of Information

1. Further to Articles 1802 and 1803, each Party proposing to adopt or modify a sanitary or phytosanitary measure of general application at the federal level shall:

(a) at least 60 days prior to the adoption or modification of such measure, other than a law, publish a notice and notify in writing the other Parties of the proposed measure and provide to the other Parties and publish the full text of the proposed measure, in such a manner as to enable interested persons to become acquainted with the proposed measure;

(b) identify in such notice and notification the good to which the proposed measure would apply, and provide a brief description of the objective and reasons for such measure;

(c) provide a copy of such proposed measure to any Party or interested person that so requests and, wherever possible, identify any provision that deviates in substance from relevant international standards, guidelines or recommendations; and

(d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, upon request, discuss such comments and take the comments and the results of such discussions into account.

2. Each Party shall seek, through appropriate measures, to ensure, with respect to a sanitary or phytosanitary measure of a state or provincial government:

(a) that, at an early appropriate stage, a notice and notification of the type referred to in paragraphs 1(a) and (b) are made prior to their adoption; and

(b) observance of paragraphs 1(c) and (d).

3. Where a Party considers it necessary to address an urgent problem relating to sanitary and phytosanitary protection, it may omit any step set out in paragraph 1 or 2, provided that, upon adoption of a sanitary or phytosanitary measure, it shall:

(a) immediately provide to the other Parties a notification of the type referred to in paragraph 1(b), including a brief description of the urgent problem;

(b) provide a copy of such measure to any Party or interested person that so requests; and

(c) without discrimination, allow other Parties and interested persons to make comments in writing and shall, upon request, discuss such comments and take such comments and the results of such discussions into account.

4. Except where necessary to address an urgent problem referred to in paragraph 3, each Party shall allow a reasonable period between the publication of a sanitary or phytosanitary measure of general application and the date that it becomes effective to allow time for interested persons to adapt to such measure.

5. Each Party shall designate a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for such purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.

6. Where an importing Party denies entry into its territory of a good of another Party because it does not comply with a sanitary or phytosanitary measure, the importing Party shall provide a written explanation to the exporting Party, upon request, that identifies the applicable measure and the reasons that the good is not in compliance.

Article 761: Inquiry Points

1. Each Party shall ensure that there is one inquiry point that is able to answer all reasonable enquiries from other Parties and interested persons, and to provide relevant documents, regarding:

(a) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure, proposed, adopted or maintained in its territory at the federal, provincial, or state government level;

(b) such Party's risk assessment procedures and factors it considers in conducting such assessment and in establishing its appropriate levels of protection;

(c) the membership and participation of such Party, or its relevant federal, provincial or state government authorities in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements within the scope of this Subchapter, and the provisions of such systems and arrangements; and

(d) the location of notices published pursuant to this Subchapter or where such information can be obtained.

2. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Subchapter, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 762: Technical Cooperation

1. Each Party shall, upon the request of another Party, facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance that Party's sanitary and phytosanitary measures and related activities, including research, processing technologies, infrastructure and the establishment of national regulatory bodies. Such assistance may include credits, donations and grants, for the purpose of acquiring technical expertise, training and equipment to allow the Party to adjust to and comply with a Party's sanitary or phytosanitary measure.

2. Each Party shall, on the request of another Party:

(a) provide to that Party information on its technical cooperation programs regarding sanitary or phytosanitary measures relating to specific areas of interest; and

(b) consult with the other Party during the development of, or prior to the adoption or change in the application of, any sanitary or phytosanitary measure.

Article 763: Limitations on the Provision of Information

Nothing in this Subchapter shall be construed as requiring a Party to:

(a) communicate, publish texts or provide particulars or copies of documents other than in an official language of such Party; or

(b) furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Article 764: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Committee should facilitate:

(a) the enhancement of food safety and improvement of sanitary and phytosanitary conditions in the territories of the Parties;

(b) activities of the Parties pursuant to Articles 755 and 756;

(c) technical cooperation between the Parties, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures; and

(d) consultations on specific matters relating to sanitary or phytosanitary measures.

3. The Committee:

(a) shall, to the extent possible, in carrying out its functions, seek the assistance of relevant international and North American standardizing organizations to obtain available scientific and technical advice and minimize duplication of effort;

(b) may draw upon such experts and expert bodies as it considers appropriate;

(c) shall report annually to the Commission on the implementation of this Subchapter;

(d) shall meet upon the request of any Party and, unless the Parties otherwise agree, at least once each year; and

(e) may, as it considers appropriate, establish and determine the scope and mandate of working groups.

Article 765: Technical Consultations

1. A Party may request consultations with another Party on any matter covered by this Subchapter.

2. Each Party should use the good offices of relevant international and North American standardizing organizations, including those referred to in Article 755(5), for advice and assistance on sanitary and phytosanitary matters within their respective mandates.

3. Where a Party requests consultations regarding the application of this Subchapter to a Party's sanitary or phytosanitary measure, and so notifies the Committee, the Committee may facilitate such consultations, if it does not consider the matter itself, by referring the matter for non-binding technical advice or recommendations to a working group, including an ad hoc working group, or to another forum.

4. The Committee should consider any matter referred to it under paragraph 3 as expeditiously as possible, particularly regarding perishable goods, and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.

5. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 3, such consultations shall, upon the agreement of the Parties involved, constitute consultations conducted for purposes of Article 2006 (Consultations).

6. The Parties confirm that a Party asserting that a sanitary or phytosanitary measure of another Party is inconsistent with the provisions of this Subchapter shall have the burden of establishing such inconsistency.

Article 766: Definitions

For purposes of this Subchapter:

animal includes fish and wild fauna;

appropriate level of protection means the level of protection of human, animal or plant life or health in the territory

of a Party that the Party considers appropriate;

approval procedure means any registration, notification or other mandatory administrative procedure for:

(a) approving the use of an additive for a stated purpose or under stated conditions; or

(b) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage or feedstuff prior to permitting the use of such additive or the marketing of a food, beverage or feedstuff containing such additive or contaminant;

area means a country, part of a country or all or parts of several countries;

area of low pest or disease prevalence means an area in which a specific pest or disease occurs at low levels;

contaminant includes pesticide and veterinary drug residues and extraneous matter;

control or inspection procedure means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing or use of a good, but does not mean an approval procedure;

international standard, guideline or recommendation means a standard, guideline or recommendation:

(a) regarding food safety, adopted by the Codex Alimentarius Commission, including one regarding decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(b) regarding animal health and zoonoses, developed under the auspices of the International Office of Epizootics;

(c) regarding plant health, developed under the auspices of the Secretariat of the International Plant Protection Convention in coÄoperation with the North American Plant Protection Organization; or

(d) established by or developed under any other international organization agreed upon by the Parties;

pest includes a weed;

pest-free or disease-free area means an area in which a specific pest or disease does not occur;

plant includes wild flora;

risk assessment means an evaluation of:

(a) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(b) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff;

sanitary or phytosanitary measure means a measure that a Party adopts, maintains or applies to:

(a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease,

(b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff,

(c) to protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof,

(d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest,

including end product criteria; a product-related processing or production method; a testing, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a method of risk assessment; a packaging and labelling requirement directly related to food safety; and a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation; and

scientific basis means a reason based on data or information derived using scientific methods. NAFTA Chapter Eight Emergency Action

Article 801: Bilateral Actions

1. Subject to paragraphs 2, 3 and 4 and Annex 801, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of another Party in such increased quantities, in absolute terms, and under such conditions so that the imports of such good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on such good;

(b) increase the rate of duty on such good to a level not to exceed the lesser of

(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken, or

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on such good for the corresponding season immediately preceding the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

(a) a Party shall, without delay, deliver to any Party that may be affected written notice of, and a request for consultations regarding, the institution of a proceeding that could result in emergency action against a good originating in the territory of a Party;

(b) any such action shall commence not later than one year from the date of institution of the proceeding;

(c) no action shall be maintained

(i) for a period exceeding three years, except where the good against which the action is taken is provided for in the items in staging category C+ of the Tariff Schedule of the Party taking the action, and that Party determines that the affected industry has undertaken adjustment and requires an extension of the period of relief, in which case the period of relief may be extended for one year provided that the duty applied during the initial period of relief is substantially reduced at the commencement of the extension period, or

(ii) beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;

(d) no action shall be taken by a Party against any particular good originating in the territory of another Party more than once during the transition period; and

(e) upon the termination of the action, the rate of duty shall be the rate that, according to the original Schedule for the staged elimination of the tariff, would have been in effect a year after the commencement of the action, and commencing January 1 of the year following the termination of the action, at the option of the Party that has taken the action

(i) the rate of duty shall conform to the schedule in the Tariff Schedule of the Party, or

(ii) the tariff shall be eliminated in equal annual stages ending on the date set forth in the Tariff Schedule of the Party for the elimination of the tariff.

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the Party against whose good the action would be taken.

4. The Party taking an action pursuant to this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects to the other Party, or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree upon compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under paragraph 1. The Party taking such tariff action shall apply the action only for the minimum period necessary to achieve such substantially equivalent effects.

5. This Article does not apply to emergency actions respecting goods covered by Annex 300-B (Textile and Apparel Goods).

Article 802: Global Actions

1. Each Party shall retain its rights and obligations under Article XIX of the GATT or any safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX or any such agreement shall exclude imports of a good from each other Party from such action unless:

(a) imports from a Party, considered individually, account for a substantial share of total imports; and

(b) imports from a Party, considered individually, or in exceptional circumstances imports from Parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

2. In determining whether:

(a) imports from a Party, considered individually, account for a substantial share of total imports, such imports normally shall not be considered to account for a substantial share of total imports if such Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and

(b) imports from a Party or Parties contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of each Party, and the level and change in the level of imports of each Party. In this regard, imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

3. A Party taking such action, from which a good from another Party or Parties is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good of the other Party or Parties in the action in the event that the competent investigating authority determines that a surge in imports of such good of the other Party or Parties undermines the effectiveness of such action.

4. A Party shall, without delay, deliver written notice to the other Parties of the institution of a proceeding that may result in emergency action under paragraph 1 or 3.

5. In no case shall a Party impose restrictions on a good in an action under paragraph 1 or 3:

(a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the Party or Parties against whose good the action is proposed to be taken, as far in advance of taking the action as practicable; and

(b) that would have the effect of reducing imports of such good from a Party below the trend of imports of such good from that Party over a recent representative base period with allowance for reasonable growth.

6. The Party taking an action pursuant to this Article shall provide to the Party or Parties against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects to that Party or Parties or equivalent to the value of the additional duties expected to result from the action. If such Parties are unable to agree upon compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 803: Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its respective laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex 803.

4. This Article does not apply to emergency actions respecting goods covered by Annex 300-B (Textile and Apparel Goods).

Article 804: Dispute Settlement in Emergency Action Matters

No party may request the establishment of an arbitral panel under Article 2008 regarding any proposed emergency action.

Article 805: Definitions

For purposes of this Chapter:

competent investigating authority means the "competent investigating authority" of a Party as defined in Annex 804;

contribute importantly means an important cause, but not necessarily the most important cause;

critical circumstances means circumstances where delay would cause damage that would be difficult to repair;

domestic industry means the producers as a whole of the like or directly competitive good operating within the territory of a Party;

emergency action means any emergency action proceeding instituted after the date of entry into force of this Agreement;

serious injury means a significant overall impairment of a domestic industry;

surge means a significant increase in imports over the trend for a recent representative base period;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

transition period means the 10-year period commencing on the date of the entry into force of this Agreement, except where the good against which the action is taken is provided for in the items in staging category C+ of the Tariff Schedule of the Party taking the action, in which case the transition period shall be the period of staged tariff elimination for that good.

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ANNEX 801

Bilateral Actions

Notwithstanding Article 801, bilateral emergency actions between Canada and the United States on goods originating in the territory of either Party shall be governed in accordance with the terms of Article 1101 of the Canada-U.S. Free Trade Agreement, which is hereby incorporated into and made a part of this Agreement for such purpose.

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ANNEX 803

Administration of Emergency Action Proceedings

1. Institution of a Proceeding:

(a) An emergency action proceeding may be instituted by a petition or complaint by entities specified in domestic law. The entity filing the petition or complaint shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good.

(b) A Party may institute a proceeding on its own motion or request the competent investigating authority to conduct a proceeding.

2. Contents of a petition or complaint. When the basis for an investigation is a petition or complaint filed by an entity representative of a domestic industry, the petitioning entity shall, in its petition or complaint, provide the following information to the extent that such information is publicly available from governmental and other sources, and best estimates and the basis therefore if such information is not available:

(a) Product description. The name and description of the imported good concerned, the tariff subheading under which such good is classified, its current tariff treatment, and the name and description of the like or directly competitive domestic good concerned,

(b) Representativeness:

(i) The names and addresses of the entities filing the petition or complaint, and the locations of the establishments in which they produce the domestic good,

(ii) the percentage of domestic production of the like or directly competitive good that such entities account for and the basis for claiming that they are representative of an industry, and

(iii) the names and locations of all other domestic establishments in which the like or directly competitive good is produced;

(c) Import data. Import data for each of the five most recent full years that form the basis of the claim that the good concerned is being imported in increased quantities, either in absolute terms or relative to domestic production;

(d) Domestic production data. Data on total domestic production of the like or directly competitive

good for each of the five most recent full years;

(e) Data showing injury. Quantitative and objective data indicating the nature and extent of injury to the concerned industry, such as data showing changes in the level of sales, prices, production, productivity, capacity utilization, market share, profits and losses, and employment;

(f) Cause of injury. An enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that increased imports, either actual or relative to domestic production, of the imported good are causing or threatening to cause serious injury, supported by pertinent data; and

(g) Criteria for inclusion. Quantitative and objective data indicating the share of imports accounted for by imports from the territory of each other Party and the petitioner's views on the extent to which such imports are contributing importantly to the serious injury, or threat thereof, caused by imports of that good.

3. Petitions or complaints, except to the extent they contain confidential business information, shall promptly be made available for public inspection upon being filed.

4. With respect to an emergency action proceeding instituted on the basis of a petition or complaint filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice required by paragraph 6 without first assessing carefully that the petition or complaint meets the requirements of paragraph 4, including representativeness.

5. Notice requirement. Upon instituting an emergency action proceeding, the competent investigating authority shall publish notice of the institution of the proceeding in the official journal of the Party. The notice shall identify: the petitioner or other requester; the imported good that is the subject of the proceeding and its tariff subheading; the nature and timing of the determination to be made; the time and place of the public hearing; dates of deadlines for filing briefs, statements, and other documents; the place at which the petition and any other documents filed in the course of the proceeding may be inspected; and the name, address and telephone number of the office to be contacted for more information.

6. Public hearing. In the course of each such proceeding, the competent investigating authority shall:

(a) hold a public hearing, after providing reasonable notice, to allow all interested parties, and any association whose purpose is to represent the interests of consumers in the territory of the Party instituting the proceeding, to appear in person or by counsel, to present evidence, and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and

(b) provide an opportunity to all interested parties and any such association appearing at the hearing to cross-question interested parties making presentations at that hearing.

7. Confidential information. The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties and consumer associations providing such information furnish non-confidential written summaries thereof, or if they indicate that such information cannot be summarized, the reasons why a summary cannot be provided.

8. Evidence of injury and causation:

(a) In conducting its proceeding the competent investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the good concerned, in absolute and relative terms, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. In making its determination, the competent investigating authority may also consider other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital;

(b) The competent investigating authority shall not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and serious injury, or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports;

9. Time period for deliberation. Except in critical circumstances and in global actions involving perishable agricultural products, the competent investigating authority, before making an affirmative determination in an emergency action proceeding, shall allow sufficient time to gather and consider the relevant information, hold a public hearing, and provide an opportunity for all interested parties and consumer associations to prepare and submit their views.

10. The competent investigating authority shall publish promptly a report, including a summary thereof, in the official journal of the Party setting forth its findings and reasoned conclusions on all pertinent issues of law and fact. The report shall describe the imported good and its tariff item number, the standard applied and the finding made. The statement of reasons shall set forth the basis for the determination, including a description of: the domestic industry seriously injured or threatened with serious injury; information supporting a finding that imports are

increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and, if provided for by domestic law, any finding or recommendation regarding the appropriate remedy and the basis therefor. In its report, the competent investigating authority shall not disclose any confidential information provided pursuant to any undertakings concerning confidential information that may have been made in the course of the proceedings.

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ANNEX 804

Country-Specific Definitions

For purposes of this Chapter:

competent investigating authority means:

(a) in the case of Canada, the Canadian International Trade Tribunal, or its successor;

(b) in the case of the Mexico, the designated authority within the Ministry of Trade and Industrial Development ("Secretar¡a de Comercio y Fomento Industrial"), or its successor; and

(c) in the case of the United States, the U.S. International Trade Commission, or its successor.

NAFTA PART THREE TECHNICAL BARRIERS TO TRADE Chapter Nine Standards-Related Measures

Article 901: Scope

1. This Chapter applies to any standards-related measure of a Party, other than those covered by Chapter Seven, Subchapter B (Sanitary and Phytosanitary Measures), that may, directly or indirectly, affect trade in goods or services between the Parties, and to measures of the Parties relating to such measures.

2. Purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies shall be governed exclusively by Chapter Ten (Government Procurement).

Article 902: Extent of Obligations

1. Article 105 (Extent of Obligations) does not apply to this Chapter.

2. Each Party shall seek, through appropriate measures, to ensure observance of Articles 904 through 908 by provincial or state governments and by non-governmental standardizing bodies in its territory.

Article 903: Affirmation of Agreement on Technical Barriers to Trade and Other Agreements

Further to Article 104, the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under the GATT Agreement on Technical Barriers to Trade and all other international agreements, including environmental and conservation agreements, to which such Parties are party.

Article 904: Basic Rights and Obligations

Right to Take Standards-Related Measures

1. Each Party may, in accordance with this Agreement, adopt, maintain and apply standards-related measures, including those relating to safety, the protection of human, animal and plant life and health, the environment, and consumers, and measures to ensure their enforcement or implementation. Such measures include those to prohibit the importation of a good of another Party or the provision of a service by a service provider of another Party that fails to comply with the applicable requirements of such measures or to complete its approval procedures.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment, or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907(3).

Non-Discriminatory Treatment

3. Each Party shall, in respect of its standards-related measures, accord to goods or service providers of another Party:

(a) national treatment in accordance with Article 301 (Market Access) or Article 1202 (Cross-Border Trade in Services); and

(b) treatment no less favorable than that it accords to like goods, or in like circumstances to service providers, of any other country.

Unnecessary Obstacles

4. No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade shall not be deemed to be created if:

(a) the demonstrable purpose of such measure is to achieve a legitimate objective; and

(b) such measure does not operate to exclude goods of another Party that meet that legitimate objective.

Article 905: Use of International Standards

1. Each Party shall use, as a basis for its standards-related measures, international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate.

2. A Party's standards-related measure that conforms to an international standard shall be presumed to be consistent with Article 904(3) and (4).

3. Paragraph 1 shall not be construed to prevent a Party, in pursuing its legitimate objectives, from adopting, maintaining, or applying any standards-related measure that results in a higher level of protection than would be achieved if such measure were based on an international standard.

Article 906: Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in promoting and protecting legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall, to the greatest extent practicable, make compatible their respective standards- related measures, so as to facilitate trade in a good or service between the Parties.

3. Further to Articles 902 and 905, a Party shall, upon the request of another Party, seek, through appropriate measures, to promote the compatibility of a specific standard or conformity assessment procedure that is maintained in its territory with the standards or conformity assessment procedures maintained in the territory of the other Party.

4. Each importing Party shall treat a technical regulation adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, demonstrates to the satisfaction of the importing Party that its technical regulation adequately fulfills the importing Party's legitimate objectives.

5. The importing Party shall provide to the exporting Party, upon request, its reasons in writing for not treating a technical regulation as equivalent under paragraph 4.

6. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of another Party, provided that it is satisfied that such procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good or service complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.

7. Prior to acceptance of results of a conformity assessment procedure pursuant to paragraph 6, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards through such means as accreditation.

Article 907: Assessment of Risk

1. A Party may, in pursuing its legitimate objectives, conduct an assessment of risk. In conducting such assessment, a Party may consider, among other factors relating to a good or service:

(a) available scientific evidence or technical information;

(b) intended end uses;

(c) processes or production, operating, inspection, sampling or testing methods; or

(d) environmental conditions.

2. Where a Party conducting an assessment of risk determines that available scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional technical regulation on the basis of available relevant information. The Party shall, within a reasonable period after information sufficient to complete the assessment of risk is presented to it, complete its assessment, review and where appropriate revise the provisional technical regulation in light of such assessment.

3. Where a Party pursuant to Article 904(2) establishes the level of protection that it considers appropriate and conducts an assessment of risk, it should avoid arbitrary or unjustifiable distinctions between similar goods or services in the level of protection it considers appropriate, if such distinctions:

(a) result in arbitrary or unjustifiable discrimination against goods or service providers of another Party;

(b) constitute a disguised restriction on trade between the Parties; or

(c) discriminate between similar goods or services for the same use under the same conditions that pose the same level of risk and provide similar benefits.

Article 908: Conformity Assessment

1. The Parties shall, further to Article 906 and recognizing the existence of substantial differences in the structure, organization, and operation of conformity assessment procedures in their respective territories, make compatible to the greatest extent practicable such procedures.

2. Recognizing that it should be to the mutual advantage of the Parties concerned and except as set out in Annex 908(2), each Party shall accredit, approve, license or otherwise recognize conformity assessment bodies in the territory of another Party on terms no less favorable than those accorded to such bodies in its territory.

3. With respect to a Party's conformity assessment procedure, such Party shall:

(a) not adopt or maintain any such procedure that is stricter, nor apply such procedure more strictly, than necessary to give it confidence that a good or a service conforms with an applicable technical regulation or standard, taking into account the risks that non-conformity would create;

(b) initiate and complete such procedure as expeditiously as possible;

(c) in accordance with Article 904(3), undertake processing of applications in non-discriminatory order;

(d) publish the normal processing period for each such procedure or communicate the anticipated processing period to an applicant upon request;

(e) ensure that the competent body

(i) upon receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,

(ii) transmits to the applicant as soon as possible the results of the conformity assessment procedure in a form that is precise and complete so that such applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with such procedure if the applicant so requests, and

(iv) informs the applicant, upon request, of the status of the application and the reasons for any delay;

(f) limit the information the applicant is required to supply to that necessary to conduct such procedure and to determine appropriate fees;

(g) accord confidential or proprietary information arising from, or supplied in connection with, the conduct of such procedure for a good of another Party or for a service provided by a person of another Party

(i) the same treatment as that for a good of such Party or a service provided by a person of such Party, and

(ii) in any event, treatment that protects an applicant's legitimate commercial interests to the extent provided under the Party's law;

(h) ensure that any fee it imposes for conducting such procedure is no higher for a good of another Party or a service provider of another Party than is equitable in relation to any such fee imposed for its like goods or service providers or for like goods or service providers of any other country, taking into account communication, transportation and other related costs;

(i) ensure that the location of facilities at which a conformity assessment procedure is conducted does not cause unnecessary inconvenience to an applicant or its agent;

(j) limit such procedure, for a good or service modified subsequent to a determination that such good or service conforms to the applicable technical regulation or standard, to that necessary to determine that such good or service continues to conform to such technical regulation or standard; and

(k) limit any requirement regarding samples of a good to that which is reasonable, and ensure that the selection of samples does not cause unnecessary inconvenience to an applicant or its agent.

4. Each Party shall apply, with appropriate modifications, the relevant provisions of paragraph 3 to its approval procedures.

5. Each Party shall, upon the request of another Party, take such reasonable measures as may be available to it to facilitate access in its territory for conformity assessment activities.

6. Each Party shall give sympathetic consideration to a request by another Party to negotiate agreements for the mutual recognition of the results of that other Party's conformity assessment procedures.

Article 909: Notification, Publication, and Provision of Information

1. Further to Articles 1802 (Publication) and 1803 (Notification and Provision of Information), each Party proposing to adopt or modify a technical regulation, shall:

(a) at least 60 days prior to the adoption or modification of such technical regulation, other than a law, publish a notice and notify in writing the other Parties of the proposed measure in such a manner as to enable interested persons to become acquainted with such measure, except that in the case of any such measure related to perishable goods, each Party shall, to the greatest extent practicable, publish such notice and provide such notification at least 30 days prior to the adoption or modification of such measure, but no later than when notification is provided to domestic producers;

(b) identify in such notice and notification the good or service to which the proposed measure would apply, and shall provide a brief description of the objective of, and reasons for, such measure;

(c) provide a copy of the proposed measure to any Party or interested person that so requests, and shall, wherever possible, identify any provision that deviates in substance from relevant international standards; and

(d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, upon request, discuss such comments and take such comments and the results of such discussions into account.

2. Each Party proposing to adopt or modify a standard or any conformity assessment procedure not otherwise considered to be a technical regulation shall, where an international standard relevant to the proposed measure does not exist or such measure is not substantially the same as an international standard, and where the measure may have a significant effect on the trade of the other Parties:

(a) at an early appropriate stage, publish a notice and provide a notification of the type required in paragraphs 1 (a) and (b); and

(b) observe paragraphs 1 (c) and (d).

3. Each Party shall seek, through appropriate measures, to ensure, with respect to a technical regulation of a state or provincial government other than a local government:

(a) that, at an early appropriate stage, a notice and notification of the type required under paragraphs 1 (a) and (b) are made prior to their adoption; and

(b) observance of paragraphs 1 (c) and (d).

4. Where a Party considers it necessary to address an urgent problem relating to safety or to protection of human, animal or plant life or health, the environment or consumers, it may omit any step set out in paragraphs 1 or 3, provided that upon adoption of a standards-related measure it shall:

(a) immediately provide to the other Parties a notification of the type required under paragraph 1(b), including a brief description of the urgent problem;

(b) provide a copy of such measure to any Party or interested person that so requests; and

(c) without discrimination, allow other Parties and interested persons to make comments in writing, and shall, upon request, discuss such comments and take such comments and the results of such discussions into account.

5. Each Party shall, except where necessary to address an urgent problem referred to in paragraph 4, allow a reasonable period between the publication of a standards-related measure and the date that it becomes effective to allow time for interested persons to adapt to such measure.

6. Where a Party allows non-governmental persons in its territory to be present during the process of development of standards-related measures, it shall also allow non-governmental persons from the territories of the other Parties to be present.

7. Each Party shall notify the other Parties of the development of, amendment to, or change in the application of its standards- related measures no later than the time at which it notifies non- governmental persons in general or the relevant sector in its territory.

8. Each Party shall seek, through appropriate measures, to ensure the observance of paragraphs 6 and 7 by a provincial or state government, and by non-governmental standardizing bodies in its territory.

9. Each Party shall designate a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for such purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.

Article 910: Inquiry Points

1. Each Party shall ensure that there is an inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons, and to provide relevant documents regarding:

(a) any standards-related measure proposed, adopted or maintained in its territory at the federal, provincial, or state government level;

(b) the membership and participation of such Party, or its relevant federal, provincial or state government authorities, in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-related measures, and the provisions of such systems and arrangements;

(c) the location of notices published pursuant to Article 909, or where such information can be obtained;

(d) the location of the inquiry points referred to in paragraph 3; and

(e) such Party's procedures for assessment of risk, factors it considers in conducting such assessment and in establishing, pursuant to Article 904(2), the levels of protection that it considers appropriate.

2. Where a Party designates more than one inquiry point, it shall:

(a) provide to the other Parties complete and unambiguous information on the scope of responsibility of each inquiry point; and

(b) ensure that any enquiry addressed to an incorrect inquiry point is promptly conveyed to the correct inquiry point.

3. Each Party shall take such reasonable measures as may be available to it to ensure that there is at least one enquiry point that is able to answer all reasonable enquiries from other Parties and interested persons and to provide relevant documents or information as to where they can be obtained regarding:

(a) any standard or conformity assessment procedure proposed, adopted or maintained by non-governmental standardizing bodies in its territory; and

(b) the membership and participation of relevant non- governmental bodies in its territory in international and regional standardizing bodies and conformity assessment systems.

4. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Chapter, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 911: Technical Cooperation

1. Each Party shall, upon the request of another Party:

(a) provide to that Party technical advice, information and assistance on mutually agreed terms and conditions to enhance that Party's standards-related measures, and related activities, processes, and systems;

(b) provide to that Party information on its technical cooperation programs regarding standards-related measures relating to specific areas of interest; and

(c) consult with that Party during the development of, or prior to the adoption or change in the application of,

any standards-related measure.

2. Each Party shall encourage its standardizing bodies to cooperate with the standardizing bodies of the other Parties in their participation, as appropriate, in standardizing activities, such as through membership in international standardizing bodies.

Article 912: Limitations on the Provision of Information

Nothing in this Chapter shall be construed as requiring a Party to:

(a) communicate, publish texts, or provide particulars or copies of documents other than in an official language of such Party; or

(b) furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises.

Article 913: Committee on Standards-Related Measures

1. The Parties hereby establish a Committee on Standards- Related Measures, comprising representatives of each Party.

2. The Committee's functions shall include:

(a) monitoring the implementation and administration of this Chapter, including the progress of the subcommittees and working groups established under paragraph 4, and the operation of the enquiry points established under Article 910;

(b) facilitating the process by which the Parties make compatible their standards-related measures;

(c) providing a forum for the Parties to consult on issues relating to standards-related measures, including the provision of technical advice and recommendations under Article 914;

(d) enhancing cooperation on the development, application and enforcement of standards-related measures;

(e) considering non-governmental, regional and multilateral developments regarding standards-related measures, including under the GATT; and

(f) reporting annually to the Commission on the implementation of this Chapter.

3. The Committee shall meet upon the request of any Party and, unless the Parties otherwise agree, at least once each year.

4. The Committee may, as it considers appropriate, establish and determine the scope and mandate of subcommittees or working groups, comprising representatives of each Party. Each such subcommittee or working group may:

(a) as it considers necessary or desirable, include or consult with

(i) representatives of non-governmental bodies, including standardizing bodies,

(ii) scientists, and

(iii) technical experts; and

(b) determine its work program, taking into account relevant international activities.

5. Further to paragraph 4, the Committee shall establish:

(a) the following subcommittees or working groups

(i) Land Transportation Standards Subcommittee, in accordance with Annex 913-A,

(ii) Telecommunications Standards Subcommittee, in accordance with Annex 913-B,

(iii) Automotive Standards Council, in accordance with Annex 913-C, and

(iv) Subcommittee on Labelling of Textile and Apparel Goods, in accordance with Annex 913-D;

(b) such other subcommittees or working groups as it considers appropriate to address any topic, including:

(i) identification and nomenclature for goods subject to standards-related measures,

(ii) quality and identity standards and technical regulations,

(iii) packaging, labelling, and presentation of consumer information, including languages, measurement systems, ingredients, sizes, terminology, symbols, and related matters,

(iv) product approval and post-market surveillance programs,

(v) principles for the accreditation and recognition of conformity assessment bodies, procedures, and systems,

(vi) development and implementation of a uniform chemical hazard classification and communication system,

(vii) enforcement programs, including training and inspections by regulatory, analytical, and enforcement personnel,

(viii) promotion and implementation of good laboratory practices,

(ix) promotion and implementation of good manufacturing practices,

(x) criteria for assessment of potential environmental hazards of goods,

(xi) methodologies for assessment of risk,

(xii) guidelines for testing of chemicals, including industrial and agricultural chemicals, pharmaceuticals, and biologicals,

(xiii) methods by which consumer protection, including matters relating to consumer redress, can be facilitated, and

(xiv) extension of the application of this Chapter to other services.

6. Each Party shall, upon the request of another Party, take such reasonable measures as may be available to it to provide for the participation in the work of the Committee, where and as appropriate, of representatives of provincial or state governments in the activities of the Committee.

7. A Party requesting technical advice, information, or assistance pursuant to Article 911 shall notify the Committee which shall facilitate any such request.

Article 914: Technical Consultations

1. Where a Party requests consultations regarding the application of this Chapter to a Party's standards-related measure, and so notifies the Committee, the Committee may facilitate such consultations, if it does not consider the matter itself, by referring the matter for non-binding technical advice or recommendations to a subcommittee or working group, including an ad hoc subcommittee or working group, or to another forum.

2. The Committee should consider any matter referred to it under paragraph 1 as expeditiously as possible and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.

3. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 1, such consultations shall, if agreed by the Parties involved, constitute consultations under Article 2006 (Consultations).

4. The Parties confirm that a Party asserting that a standards- related measure of another Party is inconsistent with the provisions of this Chapter shall have the burden of establishing such inconsistency.

Article 915: Definitions

1. For purposes of this Chapter:

approval procedure means any registration, notification, or other mandatory administrative procedure for obtaining permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions;

assessment of risk means evaluation of the potential for adverse effects;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that a relevant technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure;

international standard means a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public;

international standardizing body means a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT Agreement on Technical Barriers to Trade, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), Codex Alimentarius Commission, the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the International Telecommunications Union (ITU); or any other body that the Parties designate;

land transportation service means a transportation service provided by means of motor carrier or rail;

legitimate objective includes an objective such as:

(a) safety;

(b) protection of human, animal or plant life or health, the environment or consumers (including matters relating to quality and identifiability of goods or services); or

(c) sustainable development,

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification but does not include the protection of domestic production;

make compatible means bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical, equivalent, or have the effect of permitting goods or services to be used in place of one another or fulfill the same purpose;

services means land transportation services and telecommunication services;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products, or related processes and production methods, or for services or related operating methods with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production or operating method;

standardizing body means a body having recognized activities in standardization;

standards-related measure means a standard, technical regulation or conformity assessment procedure;

technical regulation means a document which lays down product characteristics or their related processes and production methods, or for services or operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production or operating method;

telecommunication service means a service provided by means of the transmission and reception of signals by any electromagnetic means.

2. Except as they are otherwise defined in this Agreement, other terms in this Chapter shall be interpreted in accordance with their ordinary meaning in context and in the light of the objectives of this Agreement, and where appropriate by reference to the terms presented in the sixth edition of the ISO/IEC Guide 2: 1991, General Terms and Their Definitions Concerning Standardization and Related Activities.

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ANNEX 908.2

Transitional Rules for Conformity Assessment Procedures

1. Except in respect of governmental conformity assessment bodies, Article 908(2) shall impose no obligation and confer no right on Mexico until four years after the date of entry into force of this Agreement.

2. Where a Party charges a reasonable fee, limited in amount to the approximate cost of the service rendered, to accredit, approve, license, or otherwise recognize a conformity assessment body in the territory of another Party, it need not, prior to December 31, 1998 or such earlier date as the Parties may agree, charge such a fee to a conformity assessment body in its territory.

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ANNEX 913 - A

Land Transportation Standards Subcommittee

1. The Land Transportation Standards Subcommittee, established under Article 913, shall comprise representatives of each Party.

2. The Subcommittee shall implement the following work program for making compatible the Parties' relevant standards-related measures for:

(a) motor carrier operations,

(i) no later than one and one-half years from the date of entry into force of this Agreement, for non-medical standards-related measures respecting drivers, including measures relating to the age of and language used by drivers,

(ii) no later than two and one-half years from the date of entry into force of this Agreement, for medical standards-related measures respecting drivers,

(iii) no later than three years from the date of entry into force of this Agreement, for standards-related measures respecting vehicles, including measures relating to weights and dimensions, tires, brakes, parts and accessories, securement of cargo, maintenance and repair, inspections, and emissions and environmental pollution levels not covered by the Automotive Standards work program established under Annex 913-C,

(iv) no later than three years from the date of entry into force of this Agreement, for standards-related measures respecting each Party's supervision of motor carriers' safety compliance, and

(v) no later than three years from the date of entry into force of this Agreement, for standards-related measures respecting road signs;

(b) rail operations,

(i) no later than one year from the date of entry into force of this Agreement, for standards- related measures respecting operating personnel that are relevant to cross-border operations, and

(ii) no later than one year from the date of entry into force of this Agreement, for standards- related measures respecting locomotives and other rail equipment; and

(c) transportation of dangerous goods, no later than six years from the date of entry into force of this Agreement, using as their basis the United Nations Recommendations on the Transport of Dangerous Goods, or such other standards as the Parties may agree.

3. The Subcommittee may address other related standards-related measures as it considers appropriate.

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ANNEX 913 - B

Telecommunications Standards Subcommittee

1. The Telecommunications Standards Subcommittee, established under Article 913, shall comprise representatives of each Party.

2. The Subcommittee shall, within six months of the date of entry into force of this Agreement, develop a work program, including a timetable, for making compatible the Parties' standards-related measures for authorized equipment as defined in Chapter 13 (Telecommunications).

3. The Subcommittee may address other appropriate standards- related matters respecting telecommunications equipment or services and such other matters as it considers appropriate.

4. The Subcommittee shall take into account relevant work carried out by the Parties in other forums, and that of non- governmental standardizing bodies.

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ANNEX 913 - C

Automotive Standards Council

1. The Automotive Standards Council, established under Article 913, shall comprise representatives of each Party.

2. The purpose of the Council shall be, to the extent practicable, to facilitate the attainment of compatibility among, and review the implementation of, national standards-related measures of the Parties that apply to automotive goods and other related issues.

3. To facilitate its objectives, the Council may establish subgroups, consultation procedures and other appropriate operational mechanisms. With the agreement of all the Parties, the Council may include state and provincial government or private sector representatives in its subgroups.

4. All Council recommendations shall require agreement of all the Parties. When the adoption of a new law is not required for a Party, the Council's recommendations shall be implemented by the Party within a reasonable period of time in accordance with the legal and procedural requirements and international obligations of the Party. Where the adoption of a new law is required for a Party, the Party shall make best efforts to secure the passage of such legislation and shall implement any new legislation within a reasonable period of time.

5. Recognizing the existing disparity in standards-related measures, the Council shall develop its work program for making compatible the national standards-related measures that apply to automotive goods and other related issues

based on the following criteria:

(a) the impact on industry integration;

(b) the extent of the barriers to trade;

(c) the level of trade affected; and

(d) the extent of such disparity.

In developing its work program, the Council may address other closely related issues, including emissions from on-road and non-road mobile sources.

6. Each Party shall take such reasonable measures as may be available to it to promote the objectives of this Annex with respect to standards-related measures that are developed or maintained by state, provincial and local authorities and private sector organizations. The Council shall make every effort to assist these entities with these activities, especially the identification of priorities and the establishment of work schedules.

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ANNEX 913 - D

Subcommittee on Labelling of Textile and Apparel Goods

1. The Subcommittee on Labelling of Textile and Apparel Goods, established under Article 913, shall comprise representatives of each Party.

2. This Subcommittee shall include, and consult with, technical experts as well as a broadly representative group from the manufacturing and retailing sectors in the territory of each Party.

3. The Subcommittee shall develop and pursue a Work Program on the Harmonization of Labelling Requirements, to facilitate trade in textile and apparel goods between the Parties through the adoption of uniform labelling provisions. The agenda for this Work Program should include the following issues:

(a) pictograms and symbols to replace required written information where possible as well as other methods to reduce the need for labels on textile and apparel goods in multiple languages;

(b) care instructions for textile and apparel goods;

(c) fiber content information for textile and apparel goods;

(d) uniform methods acceptable for the attachment of required information to textile and apparel goods; and

(e) use in the territory of other Parties of each Party's national registration numbers for manufacturers or importers of textile and apparel goods.

NAFTA Chapter Ten Government Procurement

Article 1001: Objectives

The Parties shall strive to achieve the liberalization of their measures regarding government procurement, as specified by the obligations in this Chapter, so as to provide balanced, non-discriminatory, predictable and transparent government procurement opportunities for the suppliers of each Party.

Article 1002: Scope and Coverage

1. Subject to Annexes 1002.1 through 1002.7, this Chapter applies to any measure regarding the procurement of goods or services or any combination thereof, by any entity listed in Annex 1002.1 (Federal Government Entities), Annex 1002.3 (Government Enterprises) and, when completed, Annex 1002.2 (State and Provincial Government Entities), where the value of the contract to be awarded is estimated, at the time of publication of a notice in accordance with Article 1010 (Invitation to Participate), to equal or exceed the applicable threshold as set forth in paragraph 3.

2. Where the contract to be awarded by the entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract. However, no Party shall prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.

3. Subject to Annex 1002-A, the applicable thresholds in U.S. dollars are:

(a) for entities listed in Annex 1002.1 (Federal Government Entities),

(i) $50,000 for goods contracts,

(ii) $50,000 for services contracts, except for construction services contracts, and

(iii) $6.5 million for construction services

contracts; and

(b) for entities listed in Annex 1002.3 (Government Enterprises)

(i) $250,000 for goods contracts,

(ii) $250,000 for services contracts, except for construction services contracts, and

(iii) $8.0 million for construction services contracts.

4. Threshold values are denominated in real terms and therefore shall incorporate the inflation rate of the United States. The United States shall, every two years, calculate and notify to the other Parties the threshold values denominated in nominal terms according to of Annex 1002.8 (1) (Indexation and Conversion of Thresholds).

5. Each Party shall comply with Annex 1002.8 with respect to the calculation and conversion of the value of thresholds into national currencies.

6. For purposes of this Chapter, procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy, in accordance with the thresholds and coverage applicable in this Chapter. Procurement does not include the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

7. As between any Parties who are also party to the GATT Agreement on Government Procurement or any successor agreement to which such Parties are party, this Chapter shall prevail to the extent of any inconsistency between the provisions of such agreement and this Chapter.

Article 1003: Valuation of Contracts

1. Each Party shall ensure that its entities, in determining whether any contract is subject to this Chapter, apply paragraphs 2 through 6 in calculating the value of that contract.

2. An entity, in calculating the value of a contract, shall take into account all forms of remuneration, including premiums, fees, commissions and interest.

3. An entity shall not select a valuation method, or divide procurement requirements into separate contracts, to avoid the application of this Chapter.

4. Where an individual requirement for a procurement results in:

(a) the award of more than one contract, or

(b) in contracts being awarded in separate parts,

the basis for valuation shall be either:

(c) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve months; or

(d) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

5. In the case of a contract for lease or rental, with or without an option to buy, or in the case of a contract that does not specify a total price, the basis for valuation shall be:

(a) in the case of a fixed-term contract, where the term is 12 months or less, the total contract value for its duration or, where the term exceeds 12 months, the total contract value including the estimated residual value; or

(b) in the case of a contract for an indefinite period, the estimated monthly installment multiplied by 48.

If the entity is uncertain as to whether a contract is for a fixed or an indefinite term, the entity shall calculate the value of the contract using the method set forth in subparagraph (b).

6. In cases in which tender documentation specifies the need for optional purchases, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of all possible optional purchases.

Article 1004: National Treatment and Non-discrimination

1. With respect to all measures regarding government procurement covered by this Chapter, each Party shall accord to goods of any other Party, as determined in accordance with the rules of origin referred to in Article 1005(1) (Rules of Origin), to services of any other Party, as determined in accordance with Article 1005(2), and to the suppliers of such goods or services, treatment no less favorable than the most favorable treatment that it accords to:

(a) goods, services and suppliers of that Party; and

(b) goods, services and suppliers of any other Party.

2. With respect to all measures regarding government procurement covered by this Chapter, no Party may:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier if the goods or services offered by that supplier for the particular procurement are goods or services of any other Party.

3. Paragraph 1 does not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, and other import regulations, including restrictions and formalities.

4. Each Party reserves the right to deny to an enterprise of any other Party the benefits of this Chapter in accordance with the provisions of Article 1113 (Denial of Benefits), except subparagraph (a).

Article 1005: Rules of Origin

1. No Party shall apply to goods that are imported from any other Party for purposes of government procurement covered by this Chapter, rules of origin that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade, which will be the non-preferential rules set out in Chapter Three (for country of origin marking purposes) at such time as they become the rules of origin applied in the normal course of trade.

2. Notwithstanding any other provision of this Chapter, a Party may deny to an enterprise that is a supplier of services of another Party the benefits of this Chapter if:

(a) nationals of any non-Party own or control that enterprise; and

(b) that enterprise has no substantial business activities in the territory of the Party under whose laws it is constituted.

Article 1006: Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, or in the evaluation of bids and the award of contracts, consider, seek or impose offsets.

Article 1007: Technical Specifications

1. Each Party shall ensure that its entities do not, with the purpose or the effect of creating unnecessary obstacles to trade, prepare, adopt or apply any technical specification laying down:

(a) the characteristics of the goods or services to be procured such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling;

(b) the processes and methods for their production related to the goods characteristics; or

(c) requirements relating to conformity assessment.

2. Each Party shall ensure that any technical specification prescribed by its entities is, where appropriate:

(a) specified in terms of performance criteria rather than design or descriptive characteristics; and

(b) based on international standards, national technical regulations, recognized national standards or building codes.

3. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or name, patent, design or type, specific origin or producer or service provider unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

4. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

Article 1008:Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities:

(a) are applied in a non-discriminatory manner; and

(b) are consistent with the provisions of this Article and with Articles 1009 (Qualification of Suppliers) through 1016 (Limited Tendering).

2. In this regard, each Party shall ensure that its entities:

(a) do not provide to any supplier information with regard to

a specific procurement in a manner that would have the effect of precluding competition; and

(b) provide all suppliers equal access to information with respect to a procurement during the period prior to the issuance of any notice or tender documentation.

Article 1009: Qualification of Suppliers

1. No entity of a Party may, in the process of qualifying suppliers in tendering procedures, discriminate between suppliers of the other Parties or between domestic suppliers and suppliers of the other Parties.

2. The qualification procedures followed by an entity of a Party shall be consistent with the following:

(a) any conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance so as to provide the suppliers adequate time to initiate and, to the extent that it is compatible with efficient operation of the procurement process, to complete the qualification procedures;

(b) any conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfillment of the contract in question;

(c) the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity and its activity, if any, in the territory of the Party of the procuring entity;

(d) no entity may misuse the process of, including the time required for, qualification in order to exclude suppliers of any other Party from a suppliers' list or from being considered for a particular procurement;

(e) an entity shall recognize as qualified suppliers those suppliers of any other Party that meet the conditions for participation in a particular procurement;

(f) an entity shall consider for a particular procurement those suppliers of any other Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;

(g) an entity that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time and that all qualified suppliers included in the list are notified of the termination of any such list or of their removal from it;

(h) if, after publication of a notice in accordance with Article 1010 (Invitation to Participate), a supplier that is not yet qualified requests to participate in a particular procurement, the entity shall promptly start the qualification procedure;

(i) an entity shall advise any supplier that requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and

(j) where an entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall, upon request of the supplier, promptly provide pertinent information concerning the entity's reasons for doing so.

3. Each Party shall:

(a) ensure that each of its entities uses a single qualification procedure, except that an entity may use additional qualification procedures where the entity determines the need for a different procedure and is prepared, upon request of any other Party, to demonstrate such need; and

(b) make efforts to minimize differences in the qualification procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding any supplier on grounds such as bankruptcy or false declarations.

Article 1010: Invitation to Participate

1. An entity shall, in accordance with paragraphs 2, 3 and 5, publish an invitation to participate for all procurements, except as otherwise provided for in Article 1016 (Limited Tendering), in the appropriate publication listed in Annex 1010.1 (Publications).

2. The invitation to participate shall take the form of a notice of proposed procurement, which notice shall contain the following information:

(a) a description of the nature and quantity of the goods or services to be procured, including any

options for further procurement and, if possible

(i) an estimate of the timing when such options may be exercised, and

(ii) in the case of recurring contracts, an estimate of the timing of the subsequent tender notices for the goods or services to be procured;

(b) a statement as to whether the procedure is open or selective and whether it will involve negotiation;

(c) any date for starting delivery, or completion of delivery, of goods or services to be procured;

(d) the address to which an application to be invited to tender or to qualify for the suppliers' lists must be submitted, the final date for receiving such an application and the language or languages in which it may be submitted;

(e) the address to which tenders must be submitted, the final date for receiving tenders and the language or languages in which tenders may be submitted;

(f) the address of the entity that will award the contract and that will provide any information necessary for obtaining specifications and other documents;

(g) a statement of any economic and technical requirements to be met and of any financial guarantees, information and documents required from suppliers;

(h) the amount and terms of payment of any sum payable for the tender documentation; and

(i) a statement as to whether the entity is inviting offers for purchase, lease or rental with or without an option to buy, or more than one of these methods.

3. Notwithstanding paragraph 2, any entity listed in Annex 1002.2 (State and Provincial Government Entities) or Annex 1002.3 (Government Enterprises) may use, as an invitation to participate, a notice of planned procurement, which shall contain as much of the information referred to in paragraph 2 as is available to the entity but which shall include, at a minimum, the following information:

(a) a description of the subject matter of the procurement;

(b) the time limits set for the receipt of tenders or an application to be invited to tender;

(c) the address at which requests for documents relating to the procurement should be made;

(d) a statement that interested suppliers should express their interest in the procurement to the entity; and

(e) the identification of a contact point within the entity from which further information may be obtained.

4. Any entity that uses a notice of planned procurement as an invitation to participate shall subsequently invite suppliers that have expressed an interest in the procurement to confirm their interest on the basis of information provided by the entity, which information shall include at least the information referred to in paragraph 2.

5. Notwithstanding paragraph 2, any entity listed in Annex 1002.2 (State and Provincial Government Entities) or Annex 1002.3 (Government Enterprises) may use, as an invitation to participate, a notice regarding a qualification system. Any entity that uses such a notice shall, subject to the considerations referred to Article 1015 (8) (Submission, Receipt and Opening of Tenders and Awarding of Contracts), provide in a timely manner information that allows all suppliers that have expressed an interest in participating in the procurement to have a meaningful opportunity to assess their interest. The information shall normally include the information contained in the notices referred to in paragraph 2. Information provided to one interested supplier shall be provided in a non-discriminatory manner to all other interested suppliers.

6. In the case of selective tendering procedures, any entity that maintains a permanent list of qualified suppliers shall publish annually in one of the publications listed in Annex 1010.1 (Publications) a notice containing the following information:

(a) an enumeration of any lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;

(b) the conditions to be fulfilled by suppliers in view of their inscription on the lists referred to in subparagraph (a) and the methods according to which each of those conditions will be verified by the entity concerned; and

(c) the period of validity of the lists and the formalities for their renewal.

7. If, after publication of an invitation to participate, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, an entity finds that it has become necessary to amend or reissue the notice or tender documentation, the entity shall ensure that the amended or reissued notice or tender documentation is given the same circulation as the original. Any significant information given by an entity to one supplier with respect to a particular procurement shall be given simultaneously to all other suppliers concerned and sufficiently in advance so as to provide all suppliers concerned adequate time to consider such information and to respond to it.

8. An entity shall indicate, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by this Chapter.

Article 1011: Selective Tendering Procedures

1. To ensure optimum effective competition between the suppliers of all Parties under selective tendering procedures, an entity of a Party shall, for each procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Parties, consistent with the efficient operation of the procurement system.

2. Subject to paragraph 3, any entity that maintains a permanent list of qualified suppliers may select suppliers to be invited to tender for a particular procurement from among those listed. In the process of making any selection, the entity shall provide for equitable opportunities for suppliers on the list.

3. Subject to Article 1009 (2)(f) (Qualification of Suppliers), an entity shall allow any supplier that requests to participate in a particular procurement to submit a tender and shall consider the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. If an entity does not invite or admit a supplier to tender, the entity shall, upon request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

Article 1012: Time Limits for Tendering and Delivery

1. An entity of a Party shall:

(a) in prescribing any time limit, provide adequate time to allow suppliers of the other Parties to prepare and submit tenders before the closing of the tendering procedures;

(b) in determining any time limit, consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated, and the time normally required for transmitting tenders by mail from foreign as well as domestic points; and

(c) take due account of publication delays when setting the final date for receipt of tenders or applications to be invited to tender.

2. Subject to paragraph 3, an entity shall provide that:

(a) in open procedures, the period for the receipt of tenders is no less than 40 days from the date of publication of the notice referred to in Article 1010 (Invitation to Participate);

(b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender is no less than 25 days from the date of publication of the notice referred to in Article 1010 (Invitation to Participate), and the period for receipt of tenders is no less than 40 days from the date of issuance of the invitation to tender; and

(c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders is no less than 40 days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of publication of the notice referred to in Article 1010 (Invitation to Participate), there shall not be less than 40 days between those two dates.

3. An entity may reduce the periods referred to in paragraph 2 in accordance with the following:

(a) where a notice referred to Article 1010 (3) or (5) (Invitation to Participate) has been published for a period of no less than 40 days and no more than 12 months, the 40 day limit for receipt of tenders may be reduced to no less than 24 days;

(b) in the case of the second or subsequent publications dealing with recurring contracts within the meaning of Article 1010 (2) (Invitation to Participate), the 40 day limit for receipt of tenders may be reduced to no less than 24 days;

(c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods may be reduced to no less than 10 days from the date of publication of the notice referred to in Article 1010 (Invitation to Participate); or

(d) where an entity listed in Annex 1002.2 (State and Provincial Government Entities) or Annex 1002.3 (Government Enterprises) is using as an invitation to participate a notice referred to in of Article 1010 (5) (Invitation to Participate), the periods may be fixed by mutual agreement between the entity and all selected suppliers; but in the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive bidding and shall not be less than 10 days.

4. An entity shall, in establishing any delivery date for goods or services and consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the time realistically required for production, destocking and transport of goods from the points of supply.

Article 1013: Tender Documentation

1. Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders, including information required to be published in the notice of procurement, except for Article 1010 (2)(h) (Invitation to Participate). It must also include the following information:

(a) the address of the entity to which tenders should be sent;

(b) the address where requests for supplementary information should be sent;

(c) the language or languages in which tenders and tendering documents may be submitted;

(d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;

(e) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;

(f) a statement of any economic and technical requirement to be met and of any financial guarantee, information and documents required from suppliers;

(g) a complete description of the goods or services required and any requirements to be fulfilled, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;

(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of goods or services of any other Party, customs duties and other import charges, taxes and currency of payment;

(i) the terms of payment; and

(j) any other terms or conditions.

2. An entity shall:

(a) forward tender documentation at the request of any supplier that is participating in open procedures or has requested to participate in selective procedures, and reply promptly to any reasonable request for explanations relating thereto; and

(b) reply promptly to any reasonable request for relevant information made by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

Article 1014: Negotiation Disciplines

1. An entity may conduct negotiations:

(a) in the context of procurements in which the entity has, in the notice referred to in Article 1010 (Invitation to Participate), indicated its intent to negotiate; or

(b) when it appears from the evaluation of the tenders that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. Negotiations shall be used primarily to identify the strengths and weaknesses in the tenders.

3. An entity shall treat all tenders in confidence. In particular, an entity may not provide to any person information intended to assist any supplier to bring its tender up to the level of any other tender.

4. An entity may not, in the course of negotiations, discriminate between different suppliers. In particular, an entity shall:

(a) carry out any elimination of suppliers in accordance with

the criteria set forth in the notices and tender documentation;

(b) provide in writing all modifications to the criteria or to the technical requirements to all suppliers remaining in the negotiations;

(c) permit all remaining suppliers to submit new or amended tenders on the basis of the revised criteria or requirements; and

(d) when negotiations are concluded, permit all remaining suppliers to submit final tenders in accordance with a common deadline.

Article 1015: Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. An entity shall use procedures for the submission, receipt and opening of tenders and the awarding of contracts that are consistent with the following:

(a) tenders shall normally be submitted in writing directly or by mail;

(b) if tenders by telex, telegram, telecopy or other means of electronic transmission are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms, conditions and provisions of the invitation to tender;

(c) a tender made by telex, telegram, telecopy or other means of electronic transmission must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, telecopy or electronic message;

(d) the content of the telex, telegram, telecopy or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time limit for submission of tenders;

(e) tenders presented by telephone shall not be permitted;

(f) requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy and if permitted, may be submitted by other means of electronic transmission; and

(g) the opportunities that may be given to suppliers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

In this paragraph, "means of electronic transmission" consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.

2. An entity may not penalize a supplier whose tender is received in the office designated in the tender documentation after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the entity. An entity may also consider, in exceptional circumstances, tenders received after the time specified for receiving tenders if the entity's procedures so provide.

3. All tenders solicited by an entity under open or selective procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The entity shall retain the information on the opening of tenders and the information shall remain at the disposal of the competent authorities of the respective Party so that it may be used if required under the procedures of Article 1017 (Bid Challenge), Article 1019 (Provision of Information) or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

4. An entity shall award contracts in accordance with the following:

(a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation;

(b) if the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may enquire of the supplier to ensure that it can comply with the conditions of participation and is or will be capable of fulfilling the terms of the contract;

(c) unless the entity decides in the public interest not to award the contract, the entity shall make the

award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender that in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous;

(d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation; and

(e) option clauses shall not be used in a manner that circumvents the provisions of this Chapter.

5. No entity of a Party shall make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party, or that the supplier has prior work experience within the territory of that Party.

6. An entity shall:

(a) upon request, promptly inform suppliers participating in tendering procedures of decisions on contract awards and, if so requested, inform them in writing; and

(b) upon request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender and the characteristics and relevant advantages of the tender selected, as well as the name of the winning supplier.

7. An entity shall publish a notice in the appropriate publication listed in Annex 1010.1 (Publications) no later than 72 days after the award of a contract, which notice shall contain the following information:

(a) a description of the nature and quantity of goods or services included in the contract;

(b) the name and address of the entity awarding the contract;

(c) the date of the award;

(d) the name and address of each winning supplier;

(e) the value of the contract, or the highest and lowest tenders considered in the process of awarding the contract; and

(f) the tendering procedure used.

8. Notwithstanding any other provision of this Article, an entity may withhold certain information on the award of a contract, where disclosure of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of a particular person, or might prejudice fair competition between suppliers.

Article 1016: Limited Tendering

1. An entity of a Party may, in the circumstances and subject to the conditions specified in paragraph 2, deviate from the provisions of Articles 1008 (Tendering Procedures) through 1015 (Submission, Receipt and Opening of Tenders and Awarding of Contracts), provided that such limited tendering is not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers.

2. An entity may use limited tendering in the following circumstances and subject to the following conditions, as applicable:

(a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or when the tenders submitted come from suppliers who do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

(b) when, for works of art or for reasons connected with the protection of patents, copyrights or other exclusive rights, proprietary information, confidential consulting services or, when there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, when a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;

(e) when an entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development.

When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to Articles 1008 (Tendering Procedures) through 1015 (Submission, Receipt and Opening of Tenders and Awarding of Contracts). Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards. It does not extend to quantity production to establish commercial viability or to recover research and development costs;

(f) for goods purchased on a commodity market;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers; or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers; and

(h) for a contract awarded to the winner of an architectural design contest, on condition that the contest

(i) has been organized in a manner that is consistent with the principles of this Chapter, notably as regards the publication, in the sense of Article 1010 (Invitation to Participate), of an invitation to suitably qualified suppliers to participate in the contest,

(ii) has been organized with a view to awarding the design contract to the winner, and

(iii) is to be judged by an independent jury.

3. An entity shall prepare a report in writing on each contract awarded by it under the provisions of paragraph 2. Each report shall contain the name of the procuring entity, indicate the value and kind of goods or services procured, the name of the country of origin, and a statement indicating the circumstances and conditions described in paragraph 2 that justified the use of limited tendering. Each report shall remain with the entity concerned at the disposal of the competent authorities of the respective Party, so that it may be used if required under the procedures of Article 1017 (Bid Challenge), Article 1019 (Provision of Information) or Chapter 20 (Institutional Arrangements and Dispute Settlement Procedures).

Article 1017: Bid Challenge

1. In order to promote fair, open and impartial procurement procedures, each Party shall adopt and maintain bid challenge procedures for procurements covered by this Chapter in accordance with the following:

(a) each Party shall allow suppliers of any good or service of another Party to submit bid challenges concerning any aspect of the procurement process, which for purposes of this Article begins after an entity has decided on its procurement requirement, leading up to and including the contract award;

(b) a Party may encourage a supplier to seek a resolution of any complaint with the entity concerned prior to initiating a bid challenge;

(c) each Party shall ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;

(d) whether or not a supplier has attempted to resolve its complaint with the entity, or upon an unsuccessful attempt at such a resolution, no Party shall prevent the supplier from initiating a bid challenge or seeking any other relief available to such supplier;

(e) a Party may require a supplier to notify the entity upon initiation of a bid challenge;

(f) a Party may limit the period within which a supplier may initiate a bid challenge, but in no case shall the period be less than 10 working days from the time when the basis of the complaint became known, or reasonably should have become known, to the supplier;

(g) each Party shall establish or designate a reviewing authority with no substantial interest in the outcome of procurements to receive bid challenges and make findings and recommendations concerning them;

(h) upon receipt of a bid challenge, the reviewing authority shall expeditiously investigate the challenge, and may be required to limit its considerations to the challenge itself;

(i) in investigating the challenge, the reviewing authority may delay the awarding of the proposed contract pending resolution of the challenge, except in cases of urgency or where such a delay would be contrary to the public interest;

(j) the reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to reevaluate offers, terminate or re-compete the contract in question;

(k) entities normally shall follow the recommendations of the reviewing authority;

(l) each Party should authorize its reviewing authority, following the conclusion of a bid challenge, to make additional recommendations in writing to an entity respecting any facet of the entity's procurement process that is identified as problematic during the investigation of the challenge, including recommendations for changes in the procurement procedures of the entity to bring them into conformity with the obligations of this Chapter;

(m) the reviewing authority shall provide its findings and recommendations respecting bid challenges in writing and in a timely manner, and shall make them available to the Parties and all interested persons;

(n) each Party shall specify in writing and shall make generally available all its bid challenge procedures; and

(o) each Party shall ensure that each of its entities maintains complete documentation concerning each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with the obligations of this Chapter.

2. A Party may require that a bid challenge be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. If a Party imposes such a requirement, the 10 working day period described in paragraph 1(f) shall begin not earlier than the date that the notice is published or the tender documentation is made available.

Article 1018: Exceptions

1. Notwithstanding Article 2102 (National Security), for purposes of this Chapter nothing shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent any Party from adopting or maintaining measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.

Article 1019: Provision of Information

1. Each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure, including standard contract clauses, regarding government procurement covered by this Chapter in the appropriate publications listed in Annex 1010.1 (Publications).

2. Each Party shall:

(a) be prepared, upon request, to explain to any other Party its government procurement procedures; and

(b) ensure that its entities, upon request from a supplier, promptly explain their procurement practices and procedures.

3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders and further to Article 1015(6) (Submission, Receipt and Opening of Tenders and Awarding Contracts). To this end, the Party of the procuring entity shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. In cases where release of this information would prejudice competition in future tenders, the information shall not be released except after consultation with and agreement of the Party which gave the information to the requesting Party.

4. Each Party shall provide, upon request, to any other Party, information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.

5. No Party shall disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to that Party.

6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. With a view to ensuring effective monitoring of procurement covered by this Chapter, each Party shall collect

statistics and provide to the other Parties each year an annual report in accordance with the following reporting requirements, unless the Parties unanimously agree to modify such requirements:

(a) statistics on the estimated value of all contracts awarded, both above and below the applicable threshold values, broken down by entities;

(b) statistics on the number and total value of contracts covered by this Chapter above the applicable threshold values, broken down by entities, categories of goods or services according to uniform classification systems to be determined by the Parties, and country of origin of the contract;

(c) statistics, broken down by entities, and by categories of goods or services, on the number and total value of contracts awarded under each use of the procedures described in Article 1016 (Limited Tendering), and country of origin of the contract; and

(d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Chapter listed in the appropriate annexes.

8. With respect to the reports described in paragraph 7 that pertain to entities listed in Annex 1002.2 (State and Provincial Government Entities), each Party may organize such reports by state or province.

9. Each Party shall give favorable consideration, where appropriate, to a request from any other Party for the exchange of additional information on a reciprocal basis.

10. The Parties shall undertake and complete by the date of entry into force of this Agreement further technical work to make available the complete goods and services classification list to be used by their entities in procuring goods and services under this Chapter and develop concordances between each of these systems, and, if necessary, the agreed uniform system.

Article 1020: Technical Cooperation

1. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for the suppliers of all Parties.

2. Each Party shall provide to the other Parties and to the suppliers of such Parties, on a cost recovery basis, information concerning training and orientation programs regarding its government procurement system, and access on a non-discriminatory basis to such programs as it conducts.

3. The training and orientation programs referred to in paragraph 2 include:

(a) training of personnel directly involved in government procurement procedures;

(b) training of suppliers interested in pursuing government procurement opportunities;

(c) explanation and description of specific elements of each Party's government procurement system, such as the bid challenge mechanism; and

(d) information about government procurement market opportunities.

4. Each Party shall establish at least one contact point to provide the information regarding the training and orientation programs pertaining to its government procurement system.

Article 1021: Joint Programs for Small Business

1. The Parties shall establish, within 12 months after the date of entry into force of this Agreement, the Committee on Small Business comprising representatives of the Parties. The Committee shall meet as mutually agreed, but no less than once a year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their small businesses.

2. The Committee shall work to facilitate the following activities of the Parties:

(a) identification of available opportunities for the training of small business personnel in their government procurement procedures;

(b) identification of small businesses interested in becoming trading partners of small businesses in the territory of any other Party;

(c) development of data bases of small businesses in the territory of each Party for use by entities of any other Party wishing to procure from small businesses;

(d) consultations regarding the factors that each Party uses in establishing its criteria for eligibility for small business programs, if any; and

(e) actions to address any related matter.

Article 1022: Rectifications or Modifications

1. A Party may make modifications to its coverage under this Chapter only in exceptional circumstances.

2. Where a Party makes modifications to its coverage under this Chapter, the Party shall:

(a) notify the other Parties and its Section of the Secretariat of the modification;

(b) reflect the change in its schedule of the appropriate Annex; and

(c) propose to the other Parties appropriate compensatory adjustments to its coverage in order to maintain a comparable level of coverage as existed prior to the modification.

The other Parties shall consider whether any proposed adjustment made pursuant to subparagraph (c) is adequate to maintain a comparable level of the mutually agreed coverage under this Chapter. Where any Party does not agree that the proposed adjustment is sufficient, it may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to its Annexes 1002.1 through 1002.7, provided that it notifies such rectifications to the other Parties and its Section of the Secretariat, and any other Party does not object to such proposed rectification within 30 days. In such cases, subparagraph 2(c) shall not apply. If a Party does object that the proposed rectification would result in a substantive change in the balance of coverage under this Chapter, it may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

4. Notwithstanding any other provision of this Chapter, a Party may undertake legitimate reorganizations of its government procurement entities covered by this Chapter, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity, whether or not subject to this Chapter. In such cases, subparagraph 2(c) shall not apply. No Party shall undertake such reorganizations or programs to avoid the obligations of this Chapter. If a Party objects to the withdrawal on the grounds that the functions continue to be performed by a government entity, that Party may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Article 1023: Divestiture of Entities

1. Nothing in this Chapter shall be construed to prevent a Party from divesting an entity subject to the obligations of this Chapter.

2. If, upon the public offering of shares of an entity listed in Annex 1002.3 (Government Enterprises), or through other methods, such entity is no longer subject to federal government control, the respective Party may delete the entity from Annex 1002.3 (Government Enterprises), and withdraw the entity from the obligations of the Chapter, upon notification to the other Parties.

3. If a Party objects to the withdrawal on the grounds that the entity remains subject to federal government control, that Party may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Article 1024: Further Negotiations

1. The Parties shall commence further negotiations no later than December 31, 1998, with a view towards the substantial liberalization of their respective procurement markets. The Parties recognize that such liberalization would ensure more competitive opportunities for all suppliers of the Parties in their respective procurement markets.

2. The Parties will review all features of government procurement practices for the purposes of:

(a) assessing the workings of the procurement system;

(b) seeking to expand the coverage of this Chapter;

(c) including within the obligations of this Chapter

(i) government enterprises, and

(ii) legislated and administrative exceptions; and

(d) reviewing thresholds.

3. Prior to the review specified in paragraph 2, the Parties will endeavor to consult with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within the obligations of this Chapter procurement by state and provincial government entities and enterprises.

4. If the negotiations pursuant to Article 96B of the GATT Agreement on Government Procurement (the Code) are

completed prior to the new review specified in paragraph 2, the Parties shall:

(a) immediately begin consultations with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within the obligations of this Chapter procurement by state and provincial government entities and enterprises; and

(b) increase the obligations and coverage of this Chapter to a level at least commensurate with that of the Code.

5. The Parties shall undertake further negotiations no later than December 31, 1998, on the subject of electronic transmission of tender information with a view to exploring the feasibility of amending this Chapter to permit electronic transmission as an additional or alternate means of publication.

Article 1025: Definitions

For purposes of this Chapter:

construction services contract means a contract which has as its objective the realization by whatever means of civil or building works, as specified in the Appendix of Annex 1002.5 (Construction Services);

entity means an entity listed in Annexes 1002.1 (Federal Government Entities), Annex 1002.2 (State and Provincial Government Entities) or Annex 1002.3 (Government Enterprises) to this Chapter;

offsets means conditions imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, and can involve requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

services includes construction services contracts, unless otherwise specified;

supplier means a person that has provided or could provide goods or services in response to an entity's call for tender; and

tendering procedures means:

(a) open tendering procedures, being those procedures under which all interested suppliers may submit a tender;

(b) selective tendering procedures, being those procedures under which, consistent with Article 1011 (3) (Selective Tendering Procedures), those suppliers invited to do so by an entity may submit a tender; and

(c) limited tendering procedures, being those procedures where an entity contacts suppliers individually, only in the circumstances and under the conditions specified in Article 1016 (Limited Tendering).

ANNEX 1002.1

Federal Government Entities

Schedule of Canada

1. Department of Agriculture 2. Department of Communications 3. Department of Consumer and Corporate Affairs 4. Department of Employment and Immigration 5. Immigration and Refugee Board 6. Canada Employment and Immigration Commission 7. Department of Energy, Mines and Resources 8. Atomic Energy Control Board 9. National Energy Board 10. Department of the Environment 11. Department of External Affairs 12. Canadian International Development Agency (on its own account) 13. Department of Finance 14. Office of the Superintendent of Financial Institutions 15. Canadian International Trade Tribunal 16. Municipal Development and Loan Board 17. Department of Fisheries and Oceans 18. Department of Forestry 19. Department of Indian Affairs and Northern Development 20. Department of Industry, Science and Technology 21. Science Council of Canada 22. National Research Council of Canada 23. Natural Sciences and Engineering Research Council of Canada 24. Department of Justice 25. Canadian Human Rights Commission 26. Statute Revision Commission 27. Supreme Court of Canada 28. Department of Labour 29. Canada Labour Relations Board 30. Department of National Health and Welfare 31. Medical Research Council 32. Department of National Revenue 33. Department of Public Works 34. Department of Secretary of State of Canada 35. Social Sciences and Humanities Research Council 36. Office of the Co-ordinator, Status of Women 37. Public Service Commission 38. Department of the Solicitor General 39. Correctional Service of Canada 40. National Parole Board 41. Department of Supply and Services (on its own account) 42. Canadian General Standards Board 43. Department of Transport (Pursuant to Article 1018 the national security considerations applicable to the Department of National Defence are equally applicable to the Canadian Coast Guard.) 44. Secretariat and the Office of the Controller General 45. Department of Veterans Affairs 46. Veterans Land Administration 47. Department of Western Economic Diversification 48. Atlantic Canada Opportunities Agency 49. Auditor General of Canada 50. Federal Office of Regional Development (Quebec) 51. Canadian Centre for Management Development 52. Canadian Radio-television and Telecommunications Commission 53. Canadian Sentencing Commission 54. Civil Aviation Tribunal 55. Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario 56. Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance 57. Commissioner for Federal Judicial Affairs 58. Competition Tribunal Registry 59. Copyright Board 60. Emergency Preparedness Canada 61. Federal Court of Canada 62. Grain Transportation Agency 63. Hazardous Materials Information Review Commission 64. Information

and Privacy Commissioners 65. Investment Canada 66. Multiculturalism and Citizenship 67. The National Archives of Canada 68. National Farm Products Marketing Council 69. The National Library 70. National Transportation Agency 71. Northern Pipeline Agency 72. Patented Medicine Prices Review Board 73. Petroleum Monitoring Agency 74. Privy Council Office 75. Canadian Intergovernmental Conference Secretariat 76. Commissioner of Official Languages 77. Economic Council of Canada 78. Public Service Staff Relations Office 79. Office of the Secretary to the Governor General 80. Office of the Chief Electoral Officer 81. Federal Provincial Relations Office 82. Procurement Review Board 83. Royal Commission on Electoral Reform and Party Financing 84. Royal Commission on National Passenger Transportation 85. Royal Commission on New Reproductive Technologies 86. Royal Commission on the Future of the Toronto Waterfront 87. Statistics Canada 88. Tax Court of Canada, Registry of the 89. Agricultural Stabilization Board 90. Canadian Aviation Safety Board 91. Canadian Centre for Occupational Health and Safety 92. Canadian Transportation Accident Investigation and Safety Board 93. Director of Soldier Settlement 94. Director, The Veterans' Land Act 95. Fisheries Prices Support Board 96. National Battlefields Commission 97. Royal Canadian Mounted Police 98. Royal Canadian Mounted Police External Review Committee 99. Royal Canadian Mounted Police Public Complaints Commission 100. Department of National Defence

The following goods purchased by the Department of National Defence and the Royal Canadian Mounted Police are included in the coverage of this Chapter, subject to the provisions of Article 1018(1) (Exceptions).

(Numbers refer to the Federal Supply Classification code)

22. Railway equipment
23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24. Tractors
25. Vehicular equipment components
26. Tires and tubes
29. Engine accessories
30. Mechanical power transmission equipment
32. Woodworking machinery and equipment
34. Metal working equipment
35. Service and trade equipment
36. Special industry machinery
37. Agricultural machinery and equipment
38. Construction, mining, excavating and highway maintenance equipment
39. Materials handling equipment
40. Rope, cable, chain and fittings
41. Refrigeration and air conditioning equipment
42. Fire fighting, rescue and safety equipment (except 4220 Marine Life-saving and diving equipment, 4230 Decontaminating and impregnating equipment)
43. Pumps and compressors
44. Furnace, steam plant, drying equipment and nuclear reactors
45. Plumbing, heating and sanitation equipment
46. Water purification and sewage treatment equipment
47. Pipe, tubing, hose and fittings
48. Valves
49. Maintenance and repair shop equipment
52. Measuring tools
53. Hardware and abrasives
54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials
61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, dental and veterinary equipment and supplies
66. Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components 6665: Hazard-detecting instruments and apparatus)
67. Photographic equipment
68. Chemicals and chemical products
69. Training aids and devices
70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations)
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment
74. Office machines, text processing system and visible

record equipment
75. Office supplies and devices
76. Books, maps and other publications (except 7650 drawings and specifications)
77. Musical instruments, phonographs and home-type radios
78. Recreational and athletic equipment
79. Cleaning equipment and supplies
80. Brushes, paints, sealers and adhesives
81. Containers, packaging and packing supplies
85. Toiletries
87. Agricultural supplies
88. Live animals
91. Fuels, lubricants, oils and waxes
93. Non-metallic fabricated materials
94. Non-metallic crude materials
96. Ores, minerals and their primary products
99. Miscellaneous

Notes:

1. Notwithstanding anything in this Annex, this Chapter does not apply to procurements in respect of:

(a) the Departments of Transport Canada, Communications Canada and Fisheries and Oceans respecting FSCs 70 (automatic data processing equipment, software supplies and support equipment), 74 (office machines, text processing systems and visible record equipment) and 36 (special industry machinery); and

(b) agricultural products made in furtherance of agricultural support programs or human feeding programs.

2. The General Notes for Canada as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.1

Schedule of Mexico

1. Secretar¡a de Gobernaci¢n
- Centro Nacional de Estudios Municipales
- Comisi¢n Calificadora de Publicaciones y Revistas Ilustradas
- Consejo Nacional de Poblaci¢n
- Archivo General de la Naci¢n
- Instituto Nacional de Estudios Hist¢ricos de la Revoluci¢n Mexicana
- Patronato de Asistencia para la Reincorporaci¢n Social
- Centro Nacional de Prevenci¢n de Desastres
- Consejo Nacional de Radio y Televisi¢n
- Comisi¢n Mexicana de Ayuda a Refugiados

2. Secretar¡a de Relaciones Exteriores
- Secci¢n Mexicana de la Comisi¢n Intercional de L¡mites y Aguas Mxico-EEUU
- Secci¢n Mexicana de la Comisi¢n Internacional de L¡mites y Aguas Mxico-Guatemala

3. Secretar¡a de Hacienda y Crdito P£blico
- Comisi¢n Nacional Bancaria
- Comisi¢n Nacional de Valores
- Comisi¢n Nacional de Seguros y Fianzas
- Instituto Nacional de Estadistica , Geograf¡a e Inform tica

4. Secretar¡a de Agricultura y Recursos Hidraulicos
- Instituto Mexicano de Tecnolog¡a del Agua
- Instituto Nacional de Investigaciones Forestales y Agropecuarias
- Apoyos a Servicios a la Comercializaci¢n Agropecuaria, Aserca

5. Secretar¡a de Comunicaciones y Transportes (including the Instituto Mexicano de Comunicaciones and the Instituto Mexicano de Transporte)
- Comisi¢n Nacional Coordinadora de Puertos

6. Secretar¡a de Comercio y Fomento Industrial

7. Secretar¡a de Educaci¢n P£blica
- Instituto Nacional de Antropolog¡a e Historia
- Instituto Nacional de Bellas Artes y Literatura
- Radio Educaci¢n
- Centro de Ingenier¡a y Desarrollo Industrial
- Consejo Nacional para la Cultura y las Artes
- Comisi¢n Nacional del Deporte

8. Secretar¡a de Salud
- Administraci¢n del Patrimonio de la Beneficencia P£blica
- Centro Nacional de la Transfusi¢n Sanguinea
- Gerencia General de Farmacias
- Gerencia General de Biol¢gicos y Reactivos
- Consejo Interno del Centro de Obras y Equipamiento en Salud
- Instituto de la Comunicaci¢n Humana Dr. Andrs Bustamante Gurr¡a
- Instituto Nacional de Medicina de la Rehabilitaci¢n
- Instituto Nacional de Ortopedia
- Consejo Nacional para la Prevenci¢n y Control del S¡ndrome de la Inmunodeficiencia Adquirida, Conasida

9. Secretar¡a del Trabajo y Previsi¢n Social
- Procuradur¡a Federal de la Defensa del Trabajo
- Unidad Coordinadora del Empleo, Capacitaci¢n y Adiestramiento

10. Secretar¡a de la Reforma Agraria
- Instituto de Capacitaci¢n Agraria

11. Secretar¡a de Pesca
- Instituto Nacional de la Pesca

12. Procuradur¡a General de la Rep£blica

13. Secretar¡a de Energia Minas e Industria Paraestatal
- Comisi¢n Nacional de Seguridad Nuclear y Salvaguardias
- Centro de Promoci¢n y Evaluaci¢n de Proyectos
- Centro Nacional de Ahorro Energtico

14. Secretar¡a de Desarrollo Social

15. Secretar¡a de Turismo

16. Secretar¡a de la Contralor¡a General de La Federaci¢n

17. Comisi¢n Nacional de Zonas Aridas

18. Comisi¢n Nacional de Libros de Texto Gratuito

19. Comisi¢n Nacional de Derechos Humanos

20. Consejo Nacional de Fomento Educativo

21. Secretar¡a de la Defensa Nacional

22. Secretar¡a de Marina

The following products purchased by the Secretar¡a de la Defensa Nacional and the Secretar¡a de Marina are included in the coverage of this Chapter, subject to the application of paragraph 1 in Article 1018(1) (Exceptions).

(Numbers refer to the Federal Supply Classification Code, FSC)

22. Railway equipment
23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24. Tractors
25. Vehicular equipment components
26. Tires and tubes
29. Engine accessories
30. Mechanical power transmission equipment
32. Woodworking machinery and equipment
34. Metal working machinery
35. Service and trade equipment
36. Special industry machinery
37. Agricultural machinery and equipment

38. Construction, mining, excavating and highway maintenance equipment
39. Materials handling equipment
40. Rope, cable, chain and fittings
41. Refrigeration and air conditioning equipment
42. Fire fighting, rescue and safety equipment
43. Pumps and compressors
44. Furnace, steam plant, drying equipment and nuclear reactors
45. Plumbing, heating and sanitation equipment
46. Water purification and sewage treatment equipment
47. Pipe, tubing, hose and fittings
48. Valves
49. Maintenance and repair shop equipment
52. Measuring tools
53. Hardware and abrasives
54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials
61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, Dental, and Veterinary Equipment and Supplies
66. Instruments and laboratory equipment
67. Photographic equipment
68. Chemicals and chemical products
69. Training aids and devices
70. General purpose ADPE, software, supplies and support equipment
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment
74. Office machines, text processing system and visible record equipment
75. Office supplies and devices
76. Books, maps and other publications (except 7650: Drawings and specifications)
77. Musical instruments, phonographs and home-type radios
78. Recreational and athletic equipment
79. Cleaning equipment and supplies
80. Brushes, paints, sealers and adhesives
81. Containers, packaging and packing supplies
85. Toiletries
87. Agricultural supplies
88. Live animals
93. Non-metallic fabricated materials
94. Non-metallic crude materials
96. Ores, minerals and their primary products (except 9620: minerals, natural and synthetic)
99. Miscellaneous

Notes:

1. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.

2. The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.1

Schedule of the United States

1. Department of Agriculture (This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs.) Federal buy national requirements imposed as conditions of funding by the Rural Electrification Administration will not apply to products and services of Mexico and Canada. 2. Department of Commerce 3. Department of Education 4. Department of Health and Human Services 5. Department of Housing and Urban Development 6. Department of the Interior, including the Bureau of Reclamation (For suppliers of goods and services of Canada, the obligations of this Chapter will apply to procurements by the Bureau of Reclamation of the Department of Interior only at such time as the obligations of this Chapter take effect for procurements by Canadian Provincial Hydro utilities.) 7. Department of Justice 8. Department of Labor 9. Department of State 10. United States Agency for International Development 11. Department of the Treasury 12. Department of Transportation (Pursuant to Article 1018, the national security considerations applicable to the Department of Defense are equally applicable to the Coast Guard, a military unit of the United States.) 13.

Department of Energy (This Chapter does not apply, pursuant to Article 1018, to national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act; and to oil purchases related to the Strategic Petroleum Reserve.) 14. General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340) 15. National Aeronautics and Space Administration 16. The Department of Veterans Affairs 17. Environmental Protection Agency 18. United States Information Agency 19. National Science Foundation 20. Panama Canal Commission 21. Executive Office of the President 22. Farm Credit Administration 23. National Credit Union Administration 24. Merit Systems Protection Board 25. ACTION 26. United States Arms Control and Disarmament Agency 27. The Office of Thrift Supervision 28. The Federal Housing Finance Board 29. National Labor Relations Board 30. National Mediation Board 31. Railroad Retirement Board 32. American Battle Monuments Commission 33. Federal Communications Commission 34. Federal Trade Commission 35. Inter-State Commerce Commission 36. Securities and Exchange Commission 37. Office of Personnel Management 38. United States International Trade Commission 39. Export-Import Bank of the United States 40. Federal Mediation and Conciliation Service 41. Selective Service System 42. Smithsonian Institution 43. Federal Deposit Insurance Corporation 44. Consumer Product Safety Commission 45. Equal Employment Opportunity Commission 46. Federal Maritime Commission 47. National Transportation Safety Board 48. Nuclear Regulatory Commission 49. Overseas Private Investment Corporation 50. Administrative Conference of the United States 51. Board for International Broadcasting 52. Commission on Civil Rights 53. Commodity Futures Trading Commission 54. The Peace Corps 55. National Archives and Records Administration 56. Department of Defense, including the Army Corps of Engineers

This Chapter will not apply to the following purchases of the DOD:

(a) Federal Supply Classification (FSC) 83 - all elements of this classification other than pins, needles, sewing kits, flagstaffs, flagpoles, and flagstaff trucks;
(b) FSC 84 - all elements other than sub-class 8460 (luggage);
(c) FSC 89 - all elements other than sub-class 8975 (tobacco products);
(d) FSC 2310 - (buses only);
(e) speciality metals, defined as steels melted in steel manufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by DOD: (1) manganese, 1.65 per cent; silicon, 0.60 per cent; or copper, 0.06 per cent; or which contains more than 0.25 per cent of any of the following elements: aluminium, chromium, cobalt, columbium, olybdenum, nickel, titanium, tungsten, or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or (4) zirconium base alloys;
(f) FSC 19 and 20 - that part of these classifications defined as naval vessels or major components of the hull or superstructure thereof;
(g) FSC 51; and
(h) the following FSC categories are not generally covered due to application of Article 1018(1) (Exceptions): 10, 12, 13, 14, 15, 16, 17, 19, 20, 28, 31, 58, 59 and 95.

This Chapter will generally apply to DOD purchases of the following FSC categories subject to United States Government determinations under the provisions of Article 1018(1) (Exceptions):

22. Railway Equipment
23. Motor Vehicles, Trailers, and Cycles (except buses in 2310)
24. Tractors
25. Vehicular Equipment Components
26. Tires and Tubes
29. Engine Accessories
30. Mechanical Power Transmission Equipment
32. Woodworking Machinery and Equipment
34. Metalworking Machinery
35. Service and Trade Equipment
36. Special Industry Machinery
37. Agricultural Machinery and Equipment
38. Construction, Mining, Excavating, and Highway Maintenance Equipment
39. Materials Handling Equipment
40. Rope, Cable, Chain and Fittings

41. Refrigeration and Air Conditioning Equipment
42. Fire Fighting, Rescue and Safety Equipment
43. Pumps and Compressors
44. Furnace, Steam Plant, Drying Equipment and Nuclear Reactors
45. Plumbing, Heating and Sanitation Equipment
46. Water Purification and Sewage Treatment Equipment
47. Pipe, Tubing, Hose and Fittings
48. Valves
49. Maintenance and Repair Shop Equipment
52. Measuring Tools
53. Hardware and Abrasives
54. Prefabricated Structures and Scaffolding
55. Lumber, Millwork, Plywood and Veneer
56. Construction and Building Materials
61. Electric Wire, and Power and Distribution Equipment
62. Lighting Fixtures and Lamps
63. Alarm and Signal Systems
65. Medical, Dental, and Veterinary Equipment and Supplies
66. Instruments and Laboratory Equipment
67. Photographic Equipment
68. Chemicals and Chemical Products
69. Training Aids and Devices
70. General Purpose ADPE, Software, Supplies and Support Equipment
71. Furniture
72. Household and Commercial Furnishings and Appliances
73. Food Preparation and Serving Equipment
74. Office machines, text processing system and visible record equipment
75. Office Supplies and Devices
76. Books, Maps and Other Publications
77. Musical Instruments, Phonographs, and Home Type Radios
78. Recreational and Athletic Equipment
79. Cleaning Equipment and Supplies
80. Brushes, Paints, Sealers and Adhesives
81. Containers, Packaging and Packing Supplies
85. Toiletries
87. Agricultural Supplies
88. Live Animals
91. Fuels, Lubricants, Oils and Waxes
93. Non-metallic Fabricated Materials
94. Non-metallic Crude Materials
96. Ores, Minerals and their Primary Products
99. Miscellaneous

Note:

The General Notes for the United States as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.2

State and Provincial Government Entities

Coverage under this Annex will be addressed following consultations with state and provincial governments under the terms and conditions set out in Article 1024 (Further Negotiations).

Note:

The General Notes as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.3

Government Enterprises

Schedule of Canada

1. Canada Post Corporation 2. National Capital Commission 3. St. Lawrence Seaway Authority 4. Royal Canadian Mint 5. Canadian National Railways 6. Via Rail 7. Canadian Museum of Civilization 8. Canadian Museum of Nature 9. National Gallery of Canada 10. National Museum of Science and Technology 11. Defence Construction (1951) Ltd.

Notes:

1. With respect to procurements by Canadian National Railways, St. Lawrence Seaway Authority and Via Rail, coverage is subject to Article 1019(5) (Provision of Information), respecting the protection of the commercial confidentiality of information provided.

2. The General Notes for Canada as set out in Annex 1002.7 apply to this Annex.

Schedule of Mexico

Printing and Editorial 1. Talleres Gr ficos de la Naci¢n 2. Productora e Importadora de Papel S.A de C.V., Pipsa

Communications and Transportation 3. Aeropuertos y Servicios Auxiliares, ASA 4. Caminos y Puentes Federales de Ingreso y Servicios Conexos, Capufe 5. Puertos Mexicanos 6. Servicio Postal Mexicano 7. Ferrocarriles Nacionales de Mxico, Ferronales 8. Telecomunicaciones de Mxico, Telecom

Industry 9. Petr¢leos Mexicanos, Pemex (This Chapter does not apply to procurement of fuels and gas.) 10. Comisi¢n Federal de Electricidad, CFE 11. Consejo de Recursos Minerales 12. Comisi¢n de Fomento Minero

Commerce 13. Compa¤¡a Nacional de Subsistencias Populares, Conasupo (This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes.) 14. Bodegas Rurales Conasupo, S.A. de C.V. 15. Distribuidora e Impulsora de Comercio, Diconsa 16. Leche Industrializada Conasupo, S.A. de C.V., Liconsa (This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes.) 17. Procuradur¡a Federal del Consumidor 18. Instituto Nacional del Consumidor 19. Laboratorios Nacionales de Fomento Industrial 20. Servicio Nacional de Informaci¢n de Mercados

Social Security 21. Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, ISSSTE 22. Instituto Mexicano del Seguro Social, IMSS 23. Sistema Nacional para el Desarrollo Integral de la Familia, DIF (This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes.) 24. Servicios Asistenciales de la Secretar¡a de Marina 25. Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas 26. Instituto Nacional Indigenista, INI 27. Instituto Nacional Para la Educaci¢n de los Adultos 28. Centros de Integraci¢n Juvenil 29. Instituto Nacional de la Senectud

Others 30. Comite Administrador del Programa Federal de Construcci¢n de Escuelas, Capfce 31. Comisi¢n Nacional del Agua, CNA 32. Comisi¢n Para la Regularizaci¢n de la Tenencia de la Tierra 33. Consejo Nacional de Ciencia y Tecnolog¡a, Conacyt 34. Notimex, S.A . de C.V. 35. Instituto Mexicano de Cinematograf¡a 36. Loter¡a Nacional para la Asistencia P£blica 37. Pron¢sticos Deportivos

Notes:

1. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.

2. The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

Schedule of the United States

1. Tennessee Valley Authority
2. Power Marketing Administrations of the Department of Energy
   - Bonneville Power Administration
   - Western Area Power Administration
   - Southeastern Power Administration
   - Southwestern Power Administration
   - Alaska Power Administration
3. St. Lawrence Seaway Development Corporation

Notes:

1. For suppliers of goods and services of Canada, the obligations of this Chapter will apply to procurements by the Tennessee Valley Authority and the Power Marketing Administrations of the Department of Energy only at such time as the obligations of this Chapter take effect for procurements by Canadian Provincial Hydro utilities.

2. The General Notes for the United States as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.4

Services

I. General Provisions

1. Except for the services listed in Part II of this Annex, all services procured by the entities listed in Annex 1002.1 (Federal Government Entities) and Annex 1002.3 (Government Enterprises) are subject to this Chapter.

2. Contracts for construction services are subject to this Chapter as specified in Annex 1002.5 (Construction Services).

3. The Parties shall adopt a universal list of services for reporting purposes, which is indicative of the services procured by the entities of the Parties, and is contained in the Appendix to this Annex.

4. The Parties shall update, as appropriate, the list of universal services included in the Appendix to this Annex at such time as they mutually agree.

5. Notwithstanding paragraph 1, for Mexico only the services included in the Temporary Schedule of Mexico will be subject to this Chapter, until such time as Mexico has completed its schedule under Part II pursuant to paragraph 6.

6. Mexico will develop and, after consultations with the other Parties, complete its list of services set out under the Schedule of Mexico in Part II of this Annex no later than July 1, 1995.

Temporary Schedule of Mexico: Services Included

(Based on the United Nations Central Product Classification, CPC)

Professional Services
863 Taxation services (excluding legal services)
8671 Architectural services
86711 Advisory and pre-design architectural services
87612 Architectural design services
87713 Contract administration services
86714 Combined architectural design and contract administration services
86719 Other architectural services
8672 Engineering services
86721 Advisory and consultative engineering services
86722 Engineering design services for foundations and building structures
86723 Engineering design services for mechanical and electrical installations for buildings
86724 Engineering design services for civil engineering construction
86725 Engineering design for industrial processes and production
86726 Engineering design services n.e.c.
86727 Other engineering services during the construction and installation phase
86729 Other engineering services
8673 Integrated engineering services
86731 Integrated engineering services for transportation, infrastructure turnkey projects
86732 Integrated engineering and project management services for water supply and sanitation works turnkey projects
86733 Integrated engineering services for the construction of manufacturing turnkey projects
86739 Integrated engineering services for other turnkey projects
8674 Urban planning and landscape architectural services

Computer and Related Services
841 Consultancy services related to the installation of computer hardware
842 Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services
843 Data processing services, including processing, tabulation and facilities management services
844 Data base services
845 Maintenance and repair services of office machinery and equipment including computers
849 Other computer services

Real Estate Services
821 Real estate services involving own or leased property
822 Real estate services on a fee or contract basis

Rental/Leasing Services without Operators
831 Leasing or rental services concerning machinery and equipment without operator, including computers
832 Leasing or rental services concerning personal and household goods (excluding in 83201, the rental of prerecorded records, sound cassettes, CD's and excluding

83202, rental services concerning video tapes)

Other Business Services
865 Management consulting services
86501 General management consulting services
86503 Marketing management consulting services
86504 Human resources management consulting services
86505 Production management consulting services
86509 Other management consulting services, including agrology, agronomy, farm management and related consulting services
8676 Technical testing and analysis services including quality control and inspection
8814 Services incidental to forestry and logging, including forest management
883 Services incidental to mining, including, drilling and field services
5115 Site preparation for mining
8675 Related scientific and technical consulting services
86751 Geological, geophysical and other scientific prospecting services, including those related to mining
86752 Subsurface surveying services
86753 Surface surveying services
86754 Map making services
663 Repair services of personal and household goods
8861 Repair services incidental to metal products, to machinery and equipment including computers,
8866 and communications equipment
874 Building-cleaning
876 Packaging services

Environmental Services
940 Sewage and refuse disposal, sanitation and other environmental protection services, including sewage services, nature and landscape protection services and other environmental protection services n.e.c.

Hotels and restaurants(including catering)
641 Hotel and other lodging services
642/3 Food and beverage serving services

Travel agency and tour operators services
7471 Travel agency and tour operator services

II. Services Excluded from Coverage

[Subject to review]

The following services contracts are excluded in their entirety by the Parties:

Schedule of Canada

(Based on the United Nations Central Product Classification, CPC)

CPC

1. Transport, storage and communication services
- Land Transport services 71
- Water Transport services 72
- Air Transport Services 73
- Supporting and Auxiliary Transport services (except 7471: Travel Agencies and Tour Operator services) 74
- Post and Telecommunication services (except 7512: Courier services and 7523: Data Transmission services) 75

Note: All transportation services, including related repair and overhaul and launching services and transportation services, where incidental to procurement contracts, are not subject to this Chapter.

2. Business services; agricultural, mining and manufacturing services
- Financial, Intermediation services and Auxiliary services therefor 81
- Leasing or rental services concerning televisions, radios, video cassette recorders and related

equipment and accessories 83201
- Leasing or rental services concerning video tapes 83202
- Research and Development services 85
- Legal services (except: Advisory services on Foreign Law) 861
- Legal services incidental to Taxation Services 863
- Market Research and Public Opinion Polling services 864
- Financial Management consulting services (except corporate tax) 86502
- Public relations services 86506
- Services related to management consulting 866
- Related scientific and technical consulting services 8675
- Business Services, n.e.c. (except 8740: Building cleaning services and 8760: Packaging services) 87
- Services incidental to agriculture, hunting and forestry (except 8814: services incidental to forestry and logging; and 8830: services incidental to mining) 881
- Services incidental to fishing 882
- Services incidental to manufacturing, except to the manufacture of metal products, machinery and equipment 884
- Services incidental to the manufacture of metal products, machinery and equipment (except 8852: Manufacture of fabricated metal products, except machinery and equipment on a fee or contract basis) 885
- Repair services, n.e.c. of motor vehicles, trailers and semi-trailers, on a fee or contract basis 8867
- Repair services of other transport equipment, on a fee or contract basis 8868
- Services incidental to energy distribution 887
- Intangible assets 89

3. Community, Social and Professional Services
- Education services 92
- Health and Social Services 93
- Services of Membership Organizations 95
- Recreation, cultural and sporting services 96
- Other services 97
- Services provided by extraterritorial organizations and bodies 99

4. Contracts of the departments of Transport Canada, Communications Canada and Fisheries and Oceans respecting FSCs 70 (automatic data processing equipment, software supplies and support equipment), 74 (office machines, text processing systems and visible record equipment), 36 (special industry machinery).

5. Research and development services.

6. Dredging.

7. All services purchased in support of military forces located overseas.

8. Management and operation contracts awarded to federally-funded research and development centers or related to carrying out government sponsored research programs.

9. Public utilities services.

10. Printing and publishing.

Note:

The General Notes for Canada as set out in Annex 1002.7 apply to this Annex.

Schedule of Mexico

(Based on the United Nations Central Product Classification, CPC)

CPC
1. All transportation services, including transportation services incidental to procurement contracts:
- Land transportation 71
- Water transport 72

- Air transport 73
- Supporting and auxiliary transport 74
- Post and telecommunication 75
- Repair services of other transport equipment, on a fee or contract basis 8868

2. All risk-sharing contracts by Pemex.

3. Public utilities services (including telecommunications, transmission, water or energy services).

4. Management and operation contracts awarded to federally-funded research and development centers or related to carrying out government sponsored research programs.

5. Financial services

6. Research and development services

7. Confidential consulting services (provided that they are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination among suppliers of the other Parties or protection to Mexican suppliers).

Note:
The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

Schedule of the United States

(Based on the Procurement Data System Services Codes)
FSC
1. Transportation and related services (except V231: Lodging and Hotel/Motel; and V302: travel agent)
- Transportation V
- Maintenance, Repair and Rebuilding of Ships JO19
- Non-nuclear Ship Repair J998 and J999
- Modification of Ships KO19
In addition, transportation services, where incidental to procurement contracts, are not subject to this Chapter.

2. Dredging Y216

3. All services purchased in support of military forces overseas.

4. Management and operation contracts awarded to
- federally-funded research and development centers (FFRDCs) or related to carrying out government-sponsored research programs (classification to be clarified) M181-184
- by DOD, DOE, and NASA M

5. Public utilities and telecommunications services:
- Utilities S1
- ADP Telecommunications and Transmission Services D304
- ADP Teleprocessing and Timesharing Services D305
- Telecommunications Network Management Services D316
- Automated News Services, Data Services, or other information D317
- Other ADP and Telecommunications services D399

6. Research and Development services A

Note: The General Notes for the United States as set out in Annex 1002.7 apply to this Annex.

Appendix to ANNEX 1002.4
Universal List of Services

ANNEX 1002.5

Construction Services

I. General Provisions

1. Except for the construction services listed in Part II of this Annex, all construction services as specified in the Appendix to this Annex, which are procured by the entities listed in Annex 1002.1 (Federal Government Entities) and Annex 1002.3 (Government Enterprises) are subject to this Chapter.

2. The Parties will update, as appropriate, the list of construction services included in the Appendix at such time as

they mutually agree.

II. Construction Services Excluded from Coverage

The following services contracts are excluded in their entirety by the Parties:

Schedule of Canada

1. Dredging.

2. Construction contracts tendered by or on behalf of Department of Transport.

Note: The General Notes for Canada as set out in Annex 1002.7 apply to this Annex.

Schedule of Mexico

All risk-sharing contracts by Pemex.

Notes:

The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

Schedule of the United States

Dredging.

Notes:

1. In accordance with the obligations of this Chapter, buy national requirements on articles, supplies, and materials acquired for use in construction contracts subject to the obligations of this Chapter will not apply to products of Canada or Mexico.

2. The General Notes for the United States as set out in Annex 1002.7 apply to this Annex.

Appendix to ANNEX 1002.5

List of Construction Services

List of contracts for construction services which are subject to the obligations of this Chapter, except as otherwise provided:

(Based on the United Nations Central Product Classification, CPC)

Division 51 Construction work

511 Pre-erection work at construction sites 5111 Site investigation work 5112 Demolition work 5113 Site formation and clearance work 5114 Excavating and earthmoving work 5115 Site preparation work for mining 5116 Scaffolding work

512 Construction works for buildings 5121 For one and two dwelling buildings 5122 For multi-dwelling buildings 5123 For warehouses and industrial buildings 5124 For commercial buildings 5125 For public entertainment buildings 5126 For hotel, restaurant and similar buildings 5127 For educational buildings 5128 For health buildings 5129 For other buildings

513 Construction work for civil engineering
5131 For highways (except elevated highways), streets, roads, railways and airfield runways
5132 For bridges, elevated highways, tunnels and subways
5133 For waterways, harbours, dams and other water works
5134 For long distance pipelines, communication and power lines (cables)
5135 For local pipelines and cables; ancillary works
5136 For constructions for mining and manufacturing
5137 For constructions for sport and recreation
5139 For engineering works n.e.c.

514 5140 Assembly and erection of prefabricated constructions

515 Special trade construction work
5151 Foundation work, including pile driving
5152 Water well drilling
5153 Roofing and water proofing
5154 Concrete work
5155 Steel bending and erection, including welding)
5156 Masonry work
5159 Other special trade construction work

516 Installation work
5161 Heating, ventilation and air conditioning work
5162 Water plumbing and drain laying work
5163 Gas fitting construction work
5164 Electrical work
5165 Insulation work (electrical wiring, water, heat, sound)
5166 Fencing and railing construction work
5169 Other installation work

517 Building completion and finishing work 5171 Glating work and window glass installation work 5172 Plastering work 5173 Painting work 5174 Floor and wall tilling work 5175 Other floor laying, wall covering and wall papering work 5176 Wood and metal joinery and carpentry work 5177 Interior fitting decoration work 5178 Ornamentation fitting work 5179 Other building completion and finishing work

518 5180 Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator

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ANNEX 1002.6

Transition Provisions for Mexico

Notwithstanding any other provision of this Chapter, Annexes 1002.1 through 1002.5 are subject to the following:

Pemex, CFE and Non-Energy Construction

1. The obligations of this Chapter shall not apply to:

(a) 50 percent of the total annual procurement above thresholds of goods, services and construction services by Pemex;

(b) 50 percent of the total annual procurement above thresholds of goods, services and construction services by CFE; and

(c) 50 percent of the total annual procurement above thresholds of construction services, excluding construction services procured by Pemex and CFE.

2. Loans from regional and multilateral financial institutions will not be included for purposes of calculating the reservations specified in paragraph 1 or subject to other restrictions.

3. As of January 1st, 1994, the reservation specified in paragraph 1 will decrease according to the following schedule:

1994 1995 1996 1997 1998
50% 45% 45% 40% 40%

1999 2000 2001 2002 2003 and thereafter 35% 35% 30% 30% 0%

4. For Pemex and CFE, no more than 10 percent of their respective reserved procurement under paragraphs 1 and 3 shall be applied within a single Federal Supply Classification (FSC) class (or other classification system as agreed by all Parties) in a single year.

5. After December 31, 1998, Pemex and CFE each will make all reasonable efforts to assure that their respective total reservation in each FSC class (or other classification system as agreed by all Parties) shall not exceed 50 percent in a single year.

Pharmaceuticals

6. The provisions of this Chapter shall not apply to drugs whose patents have expired or are not currently patented (FSC class 6505) procured by the Secretar¡a de Salud, IMSS, ISSSTE, Secretar¡a de Defensa and the Secretar¡a de Marina. This exception shall be eliminated after 8 years from the date of entry into force of this Agreement. Procurement of biologicals and patented drugs shall not be exempted under any other provision of the Annexes of this Chapter. Nothing in this Chapter shall be interpreted in a way which will impair the protection provided by Chapter 17 (Intellectual Property) of this Agreement.

Time Limits for Tendering and Delivery

7. Upon the date of entry into force of this Agreement in January 1, 1994, Mexico will make best efforts to comply with the provisions of Article 1012 (Time Limits for Tendering and Delivery) with respect to the 40 day time limits. However, Mexico will fully comply with such obligations as from January 1, 1995.

Provision of Information

8. The Parties recognize that Mexico may be required to undertake extensive retraining of personnel, introduce

new data maintenance and reporting systems and make major adjustments to the procurement systems of certain entities in order to comply with the obligations of this Chapter. The Parties also recognize that Mexico may encounter difficulties in making the transition to procurement systems that facilitate full compliance with the obligations of this Chapter.

9. The Parties shall, therefore, consult on an annual basis for the first five years that the Agreement is in effect to review transitional problems and to develop mutually agreed solutions. Such solutions may include, when appropriate, temporary adjustment to the obligations of Mexico under this Chapter, such as those related to reporting requirements.

10. In addition, the United States and Canada shall cooperate with Mexico to provide technical assistance, as appropriate and mutually agreed pursuant to Article 1020 (Technical Cooperation) of this Chapter, to aid Mexico's transition.

11. Notwithstanding any other provision of this Annex, each Party shall assume all of its obligations specified in this Chapter upon the date of entry into force of this Agreement.

Note: The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.7

General Notes

Schedule of Canada

1. Notwithstanding any other provision of this Chapter, this Chapter does not apply to procurements in respect of:

(a) shipbuilding and repair;

(b) urban rail and urban transportation equipment, systems, components and materials incorporated there in as well as all project related materials of iron or steel;

(c) contracts respecting FSC 58 (communications, detection and coherent radiation equipment);

(d) set-asides for small and minority businesses;

(e) pursuant to Article 1018 national security exemptions include oil purchases related to any strategic reserve requirements; and

(f) national security exceptions include procurements made in support of safeguarding nuclear materials or technology.

2. Procurement in terms of Canadian coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. It does not include non-contractual agreements or any form of government assistance, including but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services, given to individuals, firms, private institutions, and sub-central governments.

Schedule of Mexico

1. Notwithstanding any other provision of this Chapter, this Chapter does not apply to procurements made:

(a) with a view to commercial resale by government-owned retail stores;

(b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements); and

(c) between entities.

2. Notwithstanding any other provision in this Chapter, Mexico may allocate a non-specific sector set-aside as follows:

(a) upon the date of entry into force of this Agreement, up to the equivalent in real terms of $1.0 billion USD of 1994 shall annually be available to all procurements of entities subject to this Chapter, except Pemex and CFE and construction services procured by other entities subject to this Chapter as well as those procurements of goods in FSC class 6505;

(b) after December 31, 2002, up to the equivalent in real terms of $1.2 billion USD of 1994 shall annually be available to all procurement of entities subject to this Chapter, except Pemex and CFE and construction services procured by other entities subject to this Chapter as well as those procurements of goods of FSC class 6505;

(c) after December 31, 2002, up to the equivalent in real terms of $300 million USD of 1994 shall annually be availble to Pemex and CFE combined; and

(d) for purposes of this paragraph

(i) no more than 10 percent of the total procurement reserved shall be applied within a single FSC

category (or other classification system as agreed by all Parties) in a single year, and

(ii) no more than 20 percent may be used by a single entity.

These values shall remain constant in real terms.

3. Notwithstanding any other provision of this Chapter, the entities subject to this Chapter may impose a local content requirement of no more than:

(a) 40 percent, for labor intensive turnkey or major integrated projects; and

(b) 25 percent, for capital intensive turnkey or major integrated projects.

For purposes of these provisions, a turnkey or major integrated project means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity subject to this Chapter with respect to which:

(c) the prime contractor is vested with the authority to select the general contractors or subcontractors;

(d) Mexico does not fund the project itself;

(e) the person bears the risk of performance; and

(f) the facility will be operated by an entity subject to this Chapter or through a procurement contract of that entity.

4. Regardless of the thresholds, Pemex shall apply the disciplines of Article 1004 regarding national treatment and non-discrimination to:

(a) procurements of oil and gas field supplies and equipment, when such supplies and equipment are procured at the location where works pursued by Pemex are being performed; and

(b) the selection of suppliers, when such suppliers are established at the location where works pursued by Pemex are being performed.

5. If the obligations of the procurements covered by this Chapter are not met, the Parties may seek compensation in the form of more market opportunities during the following year, or through reliance of Chapter 20 (Institutional Arrangements and Dispute Settlement Procedures).

6. Procurement in terms of the Mexican coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. It does not include non-contractual agreements or any form of government assistance, including, but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provisions of goods and services, given to individuals, firms, private institutions and state governments.

Schedule of the United States

1. Notwithstanding any other provision of this Chapter, this Chapter does not apply to set asides on behalf of small and minority businesses.

2. Procurement in terms of U.S. coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. It does not include non-contractual agreements or any form of government assistance, including, but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of goods and services, given to individuals, firms, private institutions, and subcentral governments.

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ANNEX 1002.8

Indexation and Conversion of Thresholds

1. The calculations described in Article 1002(4) (Scope and Coverage) shall be made in accordance with the following:

(a) the United States inflation rate shall be measured by the the Producer Price Index for Finished Goods published by the United States Department of Commerce; and

(b) the inflationary adjustment shall be estimated according to the following formula

T0 x (1+ pi) = T1

T0= threshold value at base period
pi= accumulated U.S. inflation rate for the ith two year-period
T1= new threshold value.

2. Mexico and Canada shall calculate and convert the value of the thresholds specified in paragraph 3 into their national currencies using the conversion formulas set out in paragraph 3 or 4, as appropriate. Mexico and Canada shall notify each other and the United States of the value, in their respective currencies, of the newly calculated thresholds not less than one month before the respective thresholds take effect.

3. Canada shall base the calculation on the official conversion rates of the Bank of Canada. From January 1, 1994 through December 31, 1995, the conversion rate shall be the average of the weekly values of the Canadian dollars in terms of the U.S. dollars over the period October 1, 1992 through September 30, 1993. For each subsequent two-year period, beginning January 1, 1996, the conversion rate shall be the average of the weekly values of the Canadian dollar in terms of the U.S. dollar over the two-year period ending September 30 of the year preceding the beginning of each two-year period.

4. Mexico shall use the conversion rate of the Banco de Mxico. The conversion rate shall be the existing value of the Mexican peso in terms of the US dollar as of December 1 and June 1 of each year, or the 1st working day after. The conversion rate as of December 1 shall apply from January 1 to June 30 of the following year, and as of June 1 shall apply from July 1 to December 31 of that year.

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ANNEX 1002-A

Country-Specific Thresholds

As between Canada and the United States,

a) for covered federal entities, thresholds on procurement between Canada and the United States are as follows:

i) goods and services: goods — US$25,000; services — US$50,000. Canada and the United States shall consult regarding these threshold values, and

ii) Construction: US$6,500,000; and

b) for covered government enterprises, thresholds on procurement between Canada and the United States are as follows

i) goods and services: US$250,000, and

ii) construction: US$8,000,000.

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ANNEX 1010.1

Publications

I. Publications for Notices of Procurement in Accordance with Article 1010 (Invitation to Participate)

Schedule of Canada

1. Government Business Opportunities (GBO).

2. Open Bidding Service, ISM Publishing.

Schedule of Mexico

1. Major daily newspapers of national circulation.

2. Mexico will endeavor to establish a specialized publication for purposes of notices of procurement. When such publication is ready, it will substitute those referred to in paragraph 1.

Schedule of United States

Commerce Business Daily (CBD).

II. Publications for Measures in Accordance with Article 1019 (Provision of Information)

Schedule of Canada

1. Precedential judicial decisions regarding government procurement:
(a) Dominion Law Reports;
(b) Supreme Court Reports;
(c) Federal Court Reports;
(d) National Reporter.

2. Administrative rulings and procedures regarding government

procurement:
(a) Government Business Opportunities; and
(b) Canada Gazette.

3. Laws and regulations: (a) Revised Statutes of Canada; (b) Canada Gazette.

Schedule of Mexico

1. Diario Oficial de la Federaci¢n.

2. Semanario Judicial de la Federaci¢n (for precedential judicial decisions only).

3. Mexico will endeavor to establish a specialized publication for administrative rulings of general application and any procedure, including standard contract clauses.

Schedule of United States

1. All United States laws, regulations, judicial decisions, administrative rulings and procedures regarding government procurement covered by this Chapter are codified in the Defense Federal Acquisition Regulation Supplement (DFARS) and the Federal Acquisition Regulation (FAR), both of which are published as a part of the United States Code of Federal Regulations (CFR). The DFARS and the FAR are published in title 48 of CFR. Copies may be purchased from the Government Printing Office. These regulations are also published in loose-leaf versions that are available by subscription from the Government Printing Office. Changes are provided to subscribers as they are issued.

2. For those who wish to consult original sources, the following published sources are provided:

Material Publication Name

United States Laws U.S. Statutes at Large

Decisions:
- United States Supreme Court U.S. Reports
- Circuit Court of Appeals Federal Reporter - 2nd Series
- District Courts Federal Supplement Reporter
- Court of Claims Court of Claims Reports

Decisions:
- Boards of Contract Appeals Unofficial publication by Commerce Clearing House

Decisions:
-Comptroller General of the Those not officially United States published as decisions of the Comptroller General are published unofficially by Federal Publications, Inc.

NAFTA Chapter Eleven Subchapter A - Investment

Article 1101: Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of another Party;

(b) investments of investors of another Party in the territory of the Party existing at the date of entry into force of this Agreement as well as to investments made or acquired thereafter by such investors; and

(c) with respect to Article 1106, all investments in the territory of the Party existing at the date of entry into force of this Agreement as well as to investments made or acquired thereafter.

2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.

3. This Chapter does not apply to Chapter Fourteen (Financial Services) except to the extent specifically provided therein.

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by such state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party shall:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of another Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of another Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

Article 1104: Non-discriminatory Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103 ("non-discriminatory treatment").

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108 (8) (b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it maintains or adopts relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 shall not apply to existing measures related to subsidies or grants that are inconsistent with Article 1102.

Article 1106: Performance Requirements

1. A Party shall not impose the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its

exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or

(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A requirement that an investment use a technology to meet generally applicable health, safety or environmental standards-related measures, as defined in Article 915, shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102, 1103 and 1104 shall apply to such requirements.

3. A Party shall not condition the receipt or continued receipt of an advantage, in connection with investments in its territory of investors of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(b) to achieve a given level or percentage of domestic content;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory of investors of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirements other than the requirements listed in those paragraphs.

Article 1107: Senior Management and Boards of Directors

1. A Party shall not require that an enterprise of the Party that is an investment of an investor of another Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of the Party that is an investment of an investor of another Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 1108: Reservations and Exceptions

1. Articles 1102, 1103, 1106 and 1107 do not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) a Party at the federal level, as described in its Schedule to Annex I or III,

(ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as described by a Party in its Schedule to Annex I, or

(iii) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1106 and 1107.

2. A Party shall have two years from the date of entry into force of this Agreement to describe in its Schedule to Annex I any existing non-conforming measure maintained by a state or province.

3. A Party shall not be required to describe in its Schedule to Annex I any existing non-conforming measure that is maintained by a local government.

4. To the extent indicated by a Party in its Schedule to Annex II, Articles 1102, 1103, 1106 and 1107 do not apply

to any measure adopted or maintained by a Party with respect to the sectors, subsectors or activities as described therein.

5. Any measure adopted by a Party in a manner consistent with paragraph 4 shall not require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

6. Articles 1102 and 1103 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 1703 (National Treatment) as specifically provided for in that Article.

7. Article 1103 does not apply to treatment accorded by a Party pursuant to agreements or with respect to sectors described in Annex IV.

8. Articles 1102, 1103 and 1107 do not apply to:

(a) procurement of goods or services by a Party or a state enterprise; or

(b) subsidies and grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

9. The provisions of:

(a) Article 1106(1)(a), (b) and (c), and (3)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;

(b) Article 1106(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement of goods or services by a Party or a state enterprise; and

(c) Article 1106(3)(a) and (b) do not apply to requirements imposed by an importing Party related to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 1109: Transfers

1. Each Party shall permit all transfers and international payments ("transfers") relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay. Such transfers include:

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind, and other amounts derived from the investment;

(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 1110; and

(e) payments arising under Subchapter B.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

3. No Party shall require its investors to transfer, or penalize its investors who fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, an investment in the territory of another Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

6. A Party may restrict transfers of returns in kind only in circumstances in which it could otherwise restrict such transfers under this Agreement.

Article 1110: Expropriation and Compensation

1. No Party shall directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and the general principles of treatment provided in Article 1105; and

(d) upon payment of compensation in accordance with paragraphs 2 to 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value (including declared tax value of tangible property) and other criteria, as appropriate to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment thereof.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. Upon payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or the revocation, limitation or creation of intellectual property rights to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater clarity, a non- discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

Article 1111: Special Formalities and Information Requirements

1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws and regulations of the Party, provided that such formalities do not impair the substance of the benefits of any of the provisions in this Chapter.

2. Notwithstanding Articles 1102 and 1103, a Party may require, from an investor of another Party or its investment, routine business information, to be used solely for informational or statistical purposes, concerning that investment in its territory. The Party shall protect such business information as is confidential from disclosure that would prejudice the investor's or the investment's competitive position. Nothing in this paragraph shall preclude a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

Article 1112: Relationship to Other Chapters

1. In the event of any inconsistency between a provision of this Chapter and a provision of another Chapter, the provision of the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of another Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter shall apply to that Party's treatment of the posted bond or financial security.

Article 1113: Denial of Benefits

1. Each Party reserves the right to deny to an investor of another Party that is an enterprise of such Party and to investments of such investor the benefits of this Chapter if investors of a non-Party own or control the enterprise and:

(a) the denying Party does not maintain diplomatic relations with the non-Party; or (b) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), respectively, each Party reserves the right to deny to an investor of another Party that is an enterprise of such Party and to investments of such investors the benefits of this Chapter if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

Article 1114: Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure, otherwise consistent with this Chapter, that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion, or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

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Subchapter B - SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF ANOTHER PARTY

Article 1115: Purpose

This Subchapter establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 1116: Claim by an Investor of a Party on Behalf of Itself

1. An investor of a Party may submit to arbitration under this Subchapter a claim that another Party has breached:

(a) a provision of Subchapter A; or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Subchapter a claim that the other Party has breached:

(a) a provision of Subchapter A; or

(b) Article 1502 (3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A;

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events which gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established pursuant to Article 1125, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Subchapter.

Article 1118: Settlement of a Claim Through Consultation and Negotiation

The disputing parties should first attempt to settle a claim

through consultation or negotiation.

Article 1119: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall give to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

Article 1120: Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Subchapter.

Article 1121: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

(a) the investor consents to arbitration in accordance with the provisions of this Subchapter; and

(b) both the investor and an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, waive their right to initiate or continue before any administrative tribunal or court under the domestic law of any Party any proceedings with respect to the measure of the disputing Party that is alleged to be a breach of Subchapter A of this Chapter, Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises), except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the domestic law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the provisions of this Subchapter; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the domestic law of any Party any proceedings with respect to the measure of the disputing Party that is alleged to be a breach of Subchapter A of this Chapter, Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises), except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the domestic law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be given to the disputing Party, and shall be included in the submission of a claim to arbitration.

Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the provisions of this Subchapter.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration in accordance with the provisions of this Subchapter shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Center) and the Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an

agreement.

Article 1123: Number of Arbitrators and Method of Appointment

Subject to Article 1125, and unless the disputing parties agree otherwise, the Tribunal shall consist of three arbitrators. One arbitrator shall be appointed by each of the disputing parties. The third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

Article 1124: Constitution of Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General of ICSID shall serve as appointing authority for an arbitration under this Subchapter.

2. If a Tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary- General, at the request of either disputing party:

(a) shall appoint the arbitrator or arbitrators not yet appointed in his discretion, except for the presiding arbitrator; and

(b) shall appoint the presiding arbitrator in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the list of presiding arbitrators described in paragraph 4. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint a presiding arbitrator who is not a national of any of the Parties from the ICSID Panel of Arbitrators.

4. As of the date of entry into force of this Agreement, the Parties shall have jointly designated, without regard to nationality, 45 presiding arbitrators meeting the qualifications of the rules referred to in Article 1120 and experienced in international law and investment.

5. Subject to paragraph 8, where a disputing investor submits a claim to arbitration under the ICSID Convention or the Additional Facility Rules, each Party agrees:

(a) to the appointment by the investor of a national of the Party of the investor as an arbitrator; and

(b) to the appointment by the Secretary-General of a national of the Party of the investor as an arbitrator or as a presiding arbitrator.

6. Subject to paragraph 8, a disputing investor described in Article 1116 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the Additional Facility Rules, only on the following conditions:

(a) where the disputing Party appoints a national of the disputing Party as an arbitrator, the investor agrees in writing to the appointment; and

(b) where the Secretary-General appoints a national of the disputing Party as an arbitrator or as a presiding arbitrator, the investor agrees in writing to the appointment.

7. Subject to paragraph 8, a disputing investor described in Article 1117(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the Additional Facility Rules, only on the following conditions:

(a) where the disputing Party appoints a national of the disputing Party as an arbitrator, the investor and the enterprise agree in writing to the appointment; and

(b) where the Secretary-General appoints a national of the disputing Party as an arbitrator or as a presiding arbitrator, the investor and the enterprise agree in writing to the appointment.

8. A disputing party:

(a) in the case of a claim submitted to arbitration under the ICSID Convention, may propose, under Article 57 of the Convention, the disqualification of a member of the Tribunal on account of any fact indicating a manifest lack of the qualities required by paragraph 1 of Article 14 of the Convention; and

(b) in the case of a claim submitted to arbitration under the Additional Facility Rules, may propose, under Article 14 of the Rules, the disqualification of a member of the Tribunal on account of any fact indicating a manifest lack of the qualities required by Article 9 of the Rules.

Article 1125: Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules, and shall conduct its proceedings in accordance with those Rules, except as modified by this Subchapter.

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 1120 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, order that the Tribunal:

(a) shall assume jurisdiction over, and hear and determine together, all or part of the claims; or

(b) shall assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General of ICSID to establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing parties against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. The disputing party shall give to the disputing Party or disputing parties against which the order is sought a copy of the request.

5. Within 60 days of receipt of the request, the Secretary- General of ICSID shall establish a Tribunal consisting of three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster described in paragraph 4 of Article 1124. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint a presiding arbitrator, who is not a national of any of the Parties, from the ICSID Panel of Arbitrators. The Secretary- General shall appoint the two other members from the roster described in paragraph 4 of Article 1124, and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing party that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

(a) the party's name and address;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

7. A disputing party described in paragraph 6 shall give a copy of its request to the parties named in a request made under paragraph 3.

8. A Tribunal established under Article 1120 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. A disputing Party shall give to the Secretariat of the Commission, within 15 days of receipt by the disputing Party, a copy of:

(a) a request for arbitration made under paragraph 1 of Article 36 of the ICSID Convention;

(b) a notice for arbitration made under Article 2 of the Additional Facility Rules; or

(c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

10. A disputing Party shall give to the Secretariat of the Commission a copy of a request made under paragraph 3 of this Article:

(a) within 15 days of receipt of the request, in the case of a request made by a disputing investor;

(b) within 15 days of making the request, in the case of a request made by the disputing Party.

11. A disputing Party shall give to the Secretariat of the Commission a copy of a request made under paragraph 6 of this Article within 15 days of receipt of the request.

12. The Secretariat of the Commission shall maintain a public register consisting of the documents referred to in paragraphs 9, 10 and 11.

Article 1126: Notice

A disputing Party shall deliver to the other Parties:

(a) written notice of a claim that has been submitted to arbitration within 30 days from the date that the claim is submitted; and

(b) copies of all pleading filed in the arbitration.

Article 1127: Participation by a Party

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 1128: Documents

A Party shall be entitled to receive from the disputing Party at the cost of the requesting Party:

(a) a copy of the evidence that has been tendered to the Tribunal; and

(b) a copy of the written argument of the disputing parties.

Article 1129: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party which is a party to the New York Convention, selected in accordance with:

(a) the Additional Facility Rules if the arbitration is under those rules or the ICSID Arbitration Rules; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those rules.

Article 1130: Governing Law

A Tribunal established under this Subchapter shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

Article 1131: Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach of this Chapter is within the scope of an exception set forth in Annex I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on this question. The Commission shall have 60 days to submit its interpretation in writing to the Tribunal.

2. If the Commission submits to the Tribunal an agreed interpretation, the interpretation shall be binding on the Tribunal. If the Commission fails to submit an agreed interpretation or fails to submit an agreed interpretation within such 60 day period, the Tribunal shall decide the issue of interpretation of the exception.

Article 1132: Report from an Expert

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 1133: Interim Measures of Protection

A Tribunal may take such measures as it deems necessary to preserve the respective rights of the disputing parties, or to ensure that the Tribunal's jurisdiction is made fully effective. Such measures may include, but are not limited to, orders to preserve evidence in the possession or control of a disputing party, or to protect the Tribunal's jurisdiction. An interim measure of protection may not include an order of attachment or an order to enjoin the application of the measure alleged to be the breach of Subchapter A of this Chapter, Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises). For purposes of this paragraph, an order includes a recommendation.

Article 1134: Final Award

1. Where a Tribunal makes a final award against a Party, the Tribunal may award only:

(a) monetary damages, and any applicable interest; or

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages, and any applicable interest, in lieu of restitution.

2. Subject to paragraph 1, where a claim is made under paragraph 1 of Article 1117:

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages, and any applicable interest, shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A Tribunal may not order a Party to pay punitive damages.

Article 1135: Finality and Enforcement of Award

1. An award made by a Tribunal is binding on the disputing parties but shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed, and

(b) in the case of a final award under the Additional Facility Rules of ICSID or the UNCITRAL Arbitration Rules:

(i) 3 months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

5. Each Party undertakes to provide for the enforcement in its territory of an award.

6. If a Party fails to abide by or comply with the terms of a final award under this Subchapter, the Commission provided for in Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) shall, upon delivery of a request by any other Party whose investor was party to the investment dispute, establish a panel under Article 2008(1). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by and comply with the terms of the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the defaulting Party abide by or comply with the terms of the final award.

7. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 6.

8. A claim that is submitted to arbitration shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 1136: General

1. Time when a Claim is Submitted to Arbitration: A claim is submitted to arbitration under this Subchapter when:

(a) the notice of registration of the request to institute arbitration proceedings has been dispatched by the Secretary-General of ICSID in accordance with paragraph 3 of Article 36 of the ICSID Convention;

(b) the certificate of registration of the notice for arbitration has been dispatched by the Secretary-General of ICSID in accordance with Article 4 of Schedule C of the Additional Facility Rules; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

2. Receipts under Insurance or Guarantee Contracts: In an arbitration under this Subchapter, a Party shall not assert, as a defense, counterclaim, right of set off or otherwise, that the investor concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Article 1137: Exclusions

1. Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Subchapter or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) to other actions taken by a Party pursuant to Article 2102 (National Security), a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of another Party, or its investment, pursuant to that Article shall not be subject to such provisions.

2. The dispute settlement provisions of this Subchapter and of Chapter Twenty shall not apply to the matters described in Annex 1137.2.

Article 1138: Definitions

For purposes of this Chapter:

disputing Party means a Party against which a claim is made under Subchapter B;

disputing party means the disputing investor or the disputing Party;

disputing parties means the disputing investor and the disputing Party;

enterprise means an "enterprise" as defined in Article 201, except that it shall also include a branch;

enterprise of a Party means an enterprise constituted or organized under the laws and regulations of a Party, and a branch;

equity or debt securities includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

G7 Currency means the currency of Canada, Germany, France, Italy, Japan, the United States or the United Kingdom of Great Britain and Northern Ireland;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, March 18, 1965;

ICSID means the International Centre for Settlement of Investment Disputes;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

investment means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise

(i) that is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise,

(i) that is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

(e) an interest in an enterprise that entitles the owner to share in the income or profits;

(f) an interest in an enterprise that entitles the owner to share in the assets on dissolution, other than a debt security or a loan excluded from sub-paragraph (c) or (d);

(g) real estate or other property (tangible and intangible) acquired in the expectation or used for the purpose of economic benefit or other business purposes;

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under:

(i) contracts involving the presence of an investor's property in the territory of the Party (including turnkey or construction contracts, or concessions), or

(ii) contracts where the remuneration depends substantially on the production, revenues or profits of

an enterprise.

But investment does not mean,

(i) claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of one Party to an enterprise in the territory of another Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by sub-paragraph (d), or

(j) any other claims to money,

which do not involve the kinds of interests set out in sub- paragraphs (a) through (h);

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, makes or has made an investment;

investor of a non-Party means an investor other than an investor of a Party, that makes, seeks to make or has made an investment;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

Tribunal means an arbitration tribunal established under Article 1120 or 1125; and

UNCITRAL Arbitration rules means the arbitration rules of the United Nations \Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

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ANNEX 1120.1

Submission of Claims to Arbitration

1. An investor of another Party may not allege that Mexico has breached:

(a) a provision of Subchapter A; or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A,

both in an arbitration under this Subchapter and in proceedings before a Mexican court or administrative tribunal.

2. Where an enterprise of Mexico that is a juridical person that an investor of another Party owns or controls directly or indirectly alleges in proceedings before a Mexican court or administrative tribunal that Mexico has breached:

(a) a provision of Subchapter A; or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A,

the investor may not allege the breach in an arbitration under this Subchapter.

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ANNEX 1137.2

Exclusions from Dispute Settlement

CANADA

A decision by Canada following a review under the Investment Canada Act, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Subchapter B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

MEXICO

A decision by the National Commission on Foreign Investment ("Comisi¢n Nacional de Inversiones Extranjeras") following a review pursuant to Annex I, page I-M-7, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Subchapter B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Article 1201: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of another Party, including measures respecting:

(a) the production, distribution, marketing, sale and delivery of a service;

(b) the purchase, payment or use of a service;

(c) the access to and use of distribution and transportation systems in connection with the provision of a service;

(d) the presence in its territory of a service provider of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

(a) financial services, as defined in Chapter Fourteen (Financial Services);

(b) services associated with energy and basic petrochemical goods to the extent provided in Chapter Six (Energy and Basic Petrochemicals); and

(c) air services, including domestic and international air transportation, whether scheduled or non-scheduled, and related activities in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and

(ii) specialty air services.

3. Nothing in this Chapter shall be construed to:

(a) impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to such access or employment;

(b) impose any obligation or confer any right on a Party with respect to any procurement by a Party or a state enterprise;

(c) impose any obligation or confer any right on a Party with respect to subsidies and grants, including government- supported loans, guarantees and insurance provided by a Party or a state enterprise; or

(d) prevent a Party from providing a service or performing a function, such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care, in a manner that is not inconsistent with this Chapter.

Article 1202: National Treatment

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or province treatment no less favorable than the most favorable treatment accorded, in like circumstances, by such state or province to service providers of the Party of it forms a part.

Article 1203: Most-Favored-Nation Treatment

Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of another Party or of a non- Party.

Article 1204: Non-Discriminatory Treatment

Each Party shall accord to service providers of another Party the better of the treatment required by Articles 1202 and 1203.

Article 1205: Local Presence

A Party shall not require a service provider of another Party to establish or maintain a representative office, branch or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 1206: Reservations

1. Articles 1202, 1203 and 1205 do not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) a Party at the federal level, as described in its Schedule to Annex I,

(ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as described by a Party in its Schedule to Annex I, or

(iii) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1202, 1203 and 1205.

2. A Party shall have two years from the date of entry into force of this Agreement to describe in its Schedule to Annex I any existing non-conforming measure maintained by a state or province.

3. A Party shall not be required to describe in its Schedule to Annex I any existing non-conforming measure that is maintained by a local government.

4. To the extent indicated by a Party in its Schedule to Annex II, Articles 1202, 1203 and 1205 do not apply to any measure adopted or maintained by a Party with respect to the sectors, subsectors or activities described therein.

Article 1207: Quantitative Restrictions

1. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of:

(a) any existing quantitative restrictions maintained by

(i) a Party at the federal level, as described in its Schedule to Annex V, or

(ii) a state or province, as described by a Party in its Schedule to Annex V; and

(b) any quantitative restriction adopted by a Party after the date of entry into force of this Agreement.

2. Each Party shall have one year from the date of entry into force of this Agreement to describe in its Schedule to Annex V any quantitative restriction maintained by a state or province.

3. Each Party shall notify the other Parties of any quantitative restriction that it adopts or amends after the date of entry into force of this Agreement and shall describe any such quantitative restriction in its Schedule to Annex V.

4. A Party shall not be required to describe in its Schedule to Annex V, or to notify, any quantitative restriction adopted or maintained by a local government.

Article 1208: Liberalization of Non-Discriminatory Measures

Each Party shall describe in its Schedule to Annex VI commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures relating to the cross-border provision of a service.

Article 1209: Procedures

The Commission shall establish procedures for:

(a) the notification and description by a Party of

(i) state or provincial measures that it intends to describe in its Schedule to Annex I pursuant to Article 1206(2),

(ii) quantitative restrictions that it intends to describe in it Schedule to Annex V pursuant to Article 1207(2),

(iii) commitments that it intends to describe in its Schedule to Annex VI pursuant to Article 1208,

and

(iv) amendments of measures in accordance with Article 1206(1)(c); and

(b) consultations between Parties with a view to removing any state or provincial measure described by a Party in its Schedule to Annex I after the date of entry into force of this Agreement.

Article 1210: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing and certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

(a) is based on objective and transparent criteria, such as competence and the ability to provide a service;

(b) is not more burdensome than necessary to ensure the quality of a service; and

(c) does not constitute a restriction on the cross-border provision of a service.

2. Notwithstanding Article 1203, a Party shall not be required to extend to a service provider of another Party the benefits of recognition of education, experience, licenses or certifications obtained in another country, whether such recognition was accorded unilaterally or by arrangement or agreement with that other country. The Party according such recognition shall afford any interested Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to negotiate and enter into an agreement or arrangement of comparable effect.

3. Two years after the date of entry into force of this Agreement, a Party shall eliminate any citizenship or permanent residency requirement for the licensing and certification of professional service providers in its territory. Where a Party does not comply with this provision with respect to a particular sector, any other Party may maintain an equivalent requirement or reinstate any such requirement eliminated pursuant to this Article, only in the affected sector, for such period as the non-complying Party retains the requirement.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing and certification of nationals of the other Parties.

5. Each Party shall implement the provisions of Annex 1210.

Article 1211: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that:

(a) such service is being provided by an enterprise owned or controlled by nationals of a non-Party, and

(i) the denying Party does not maintain diplomatic relations with the non-Party, or

(ii) the denying Party has imposed measures against the non-Party that prohibit transactions with such enterprise or that would be violated or circumvented by the activities of such enterprise; and

(b) with respect to the cross-border provision of a transportation service covered by this Chapter, the service is provided using equipment not registered by any Party.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), respectively, a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that such service is being provided by an enterprise of another Party that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

3. The Party denying benefits pursuant to paragraph 1 or 2 shall have the burden of establishing that such action is in accordance with such paragraph.

Article 1212: Sectoral Annex

Each Party shall comply with Annex 1212.

Article 1213: Definitions

1. For purposes of this Chapter, a reference to a federal, state or provincial government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by such government.

2. For purposes of this Chapter:

cross-border trade in services or cross-border provision of a service means the provision of a service:

(a) from the territory of a Party into the territory of another Party;

(b) in the territory of a Party by a person of that Party to a person of another Party; or

(c) by a person of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 1138 (Investment - Definitions), in that territory;

enterprise means "enterprise" as defined in Article 201, except that it shall also include a branch;

enterprise of a Party means an enterprise constituted or organized under the laws and regulations of a Party, including a branch;

professional services means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by measures adopted or maintained by a Party, but does not include services provided by trades-persons and vessel and aircraft crew members;

quantitative restriction means a non-discriminatory measure that imposes limitations on:

(a) the number of service providers, whether in the form of a numerical quota, monopoly or a requirement for an economic needs test or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or the requirement of an economic needs test or by any other quantitative means;

service provider of a Party means a person of a Party that provides a service; and

specialty air services means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance and aerial spraying services.

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ANNEX 1210

Professional Services

Section A - General Provisions

Scope and Coverage

1. This Annex applies to measures adopted or maintained by a Party relating to the licensing and certification of professional service providers.

Processing of Applications for Licenses and Certification

2. Each Party shall ensure that its competent authorities, within a reasonable period after the submission of an application for licensing or certifications by a national of another Party:

(a) where the application is complete, make a determination on the application, and inform the applicant of that determination; or

(b) where the application is not complete, inform the applicant without undue delay of the status of the application and the additional information that is required under its domestic law.

Development of Mutually Acceptable Professional Standards and Criteria

3. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable professional standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

4. Such standards and criteria may be developed with regard to the following matters:

(a) education - accreditation of schools or academic programs where professional service providers obtain formal education;

(b) examinations - qualifying examinations for the purpose of licensing professional service providers, including alternative methods of assessment such as oral examinations and interviews;

(c) experience - length and nature of experience required for a professional service provider to be licensed;

(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards by professional service providers;

(e) professional development and re-certification - continuing education for professional service providers, and ongoing requirements to maintain professional certification;

(f) scope of practice - extent of, or limitations on, field of permissible activities of professional services providers;

(g) territory-specific knowledge - requirements for knowledge by professional service providers of such matters as local laws, regulations, language, geography or climate; and

(h) consumer protection - alternatives to residency, including bonding, professional liability insurance and client restitution funds to provide for the protection of consumers of professional services.

5. Upon receipt of the recommendations of the relevant bodies, the Commission shall review the recommendations within a reasonable period to determine whether they are consistent with this Agreement.

6. Based upon the Commission's review, the Parties shall encourage their respective competent authorities, where appropriate, to adopt those recommendations within a mutually agreed period.

Temporary Licensing

7. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for temporary licensing of professional service providers of another Party.

Review

8. The Commission shall periodically, and at least once every three years, review progress in the implementation of this Annex.

Section B - Foreign Legal Consultants

1. In implementing its commitments regarding foreign legal consultants, set out in its Schedules to Annexes I and VI in accordance with Article 1206 and 1208, each Party shall ensure, subject to its reservations set out in its Schedules to Annexes I and II in accordance with Article 1206, that a foreign legal consultant is permitted to practice or advise on the law of the country in which such consultant is authorized to practice as a lawyer.

Consultations With Relevant Professional Bodies

2. Each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:

(a) the forms of association and partnership between lawyers authorized to practice in its territory and foreign legal consultants;

(b) the development of standards and criteria for the authorization of foreign legal consultants in conformity with Article 1210; and

(c) any other issues related to the provision of foreign legal consultancy services.

3. Each Party shall encourage its relevant professional bodies to meet with the relevant professional bodies designated by each of the other Parties to exchange views regarding the development of joint recommendations on the issues described in paragraph 2 prior to initiation of consultations under that paragraph.

Future Liberalization

4. Each Party shall establish a work program aimed at developing common procedures throughout its territory for the licensing and certification of lawyers licensed in the territory of another Party as foreign legal consultants.

5. With a view to meeting this objective, each Party shall, upon receipt of the recommendations of the relevant professional bodies, encourage its competent authorities to bring applicable measures into conformity with such recommendations.

6. Each Party shall report to the Commission within one year after the date of entry into force of this Agreement, and each year thereafter, on progress achieved in implementing the work program.

7. The Parties shall meet within one year from the date of entry into force of the this Agreement with a view to:

(a) assessing the work that has been done under paragraphs 2 through 6;

(b) as appropriate, amending or removing the remaining

reservations on foreign legal consultancy services; and

(c) determining any future work that might be appropriate relating to foreign legal consultancy services.

Section C - Temporary Licensing of Engineers

1. The Parties shall meet within one year after the date of entry into force of this Agreement to establish a work program to be undertaken by each Party, in conjunction with relevant professional bodies specified by that Party, to provide for the temporary licensing in its territory of engineers licensed in the territory of another Party.

2. With a view to meeting this objective, each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:

(a) the development of procedures for the temporary licensing of engineers licensed in the territory of another Party to permit them to practice their engineering specialties in each jurisdiction in its territory that regulates engineers;

(b) the development of model procedures, in conformity with Article 1210 and Section A of this Annex, for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and

(d) any other issues relating to the temporary licensing of engineers identified by the Party through its consultations with the relevant professional bodies.

3. The relevant professional bodies shall be requested to make recommendations on the matters specified in paragraph 2 to their respective Parties within two years after the date of date of entry into force of this Agreement.

4. Each Party shall encourage its relevant professional bodies to meet at the earliest opportunity with the relevant professional bodies of the other Parties with a view to cooperating in the expeditious development of joint recommendations on matters specified in paragraph 2. The relevant professional bodies shall be encouraged to develop such recommendations within two years after the date of entry into force of this Agreement. Each Party shall request an annual report from its relevant professional bodies on the progress achieved in developing such recommendations.

5. Upon receipt of the recommendations described in paragraphs 3 and 4, the Parties shall review them to ensure their consistency with the provisions of the Agreement and, if consistent, encourage their respective competent authorities to implement such recommendations within one year.

6. Pursuant to paragraph 5 of Section A, within two years after the date of entry into force of this Agreement, the Commission shall review progress made in implementing the objectives set out in this Section.

7. Appendix 1210-C shall apply to engineering specialties.

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ANNEX 1212

Land Transportation

Contact Points for Land Transportation Services

1. Further to Article 1801 (Contact Points), each Party shall designate contact points to provide information relating to land transportation services published by that Party on operating authority, safety requirements, taxation, data and studies and technology, as well as assistance in contacting its relevant government agencies.

Review Process for Land Transportation Services

2. The Commission shall, during the fifth year after the date of entry into force of this Agreement and thereafter during every second year of the period of liberalization for bus and truck transportation set out in the Schedule of each Party to Annex I of this Chapter, receive and consider a report from the Parties that assesses progress respecting such liberalization, including:

(a) the effectiveness of such liberalization;

(b) specific problems for, or unanticipated effects on, each Party's bus and truck transportation industry arising from such liberalization; and

(c) modifications to such period of liberalization.

The Commission shall endeavor to resolve in a mutually satisfactory manner any matter arising from its consideration of such reports.

3. The Parties shall consult, no later than seven years after the date of entry into force of this Agreement, to determine the possibilities for further liberalization commitments.

Appendix 1210 - C

Civil Engineers

Mexico will undertake the commitments of this Section only with respect to civil engineers ("ingenieros civiles").

NAFTA Chapter Thirteen Telecommunications

Article 1301: Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of another Party, including access and use by such persons operating private networks;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of another Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;

(b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private networks from using such networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 1302: Access to and Use of Public Telecommunications
Transport Networks and Services

1. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.

2. Subject to paragraphs 6 and 7, each Party shall ensure that such persons are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by such persons;

(c) perform switching, signalling and processing functions; and

(d) use operating protocols of their choice.

3. Each Party shall ensure that:

(a) the pricing of public telecommunications transport services reflects economic costs directly related to providing such services; and

(b) private leased circuits are available on a flat-rate pricing basis.

Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

4. Each Party shall ensure that persons of another Party may use public telecommunications transport networks or

services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.

5. Further to Article 2101 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

6. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks or services.

7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:

(a) a restriction on resale or shared use of such services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where such circuits are used in the provision of public telecommunications transport networks or services; and

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

8. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

Article 1303: Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and

(b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. A Party shall not require a person providing enhanced or value-added services to:

(a) provide those services to the public generally;

(b) cost-justify its rates;

(c) file a tariff;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly to which Article 1305 applies.

Article 1304: Standards-Related Measures

1. Further to Article 904(4) (Unnecessary Obstacles), each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including such measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction; or

(e) ensure users' safety and access to public telecommunications transport networks or services.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for such approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. A Party shall not require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Further to Article 904(3) (Non-Discriminatory Treatment), each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non- discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

7. The Telecommunications Standards Subcommittee established under Article 913(5) (Committee on Standards-Related Measures) shall perform the functions set out in Annex 913-B.

Article 1305: Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of another Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures such as:

(a) accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 1306: Transparency

Further to Article 1802, each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces with such networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network; and

(e) notification, permit, registration or licensing requirements.

Article 1307: Relationship to other Chapters

In the event of any inconsistency between a provision of this Chapter and the provision of another Chapter, the provision of this Chapter shall prevail to the extent of such inconsistency.

Article 1308: Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunications Union and the International Organization for Standardization.

Article 1309: Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Article 1310: Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that a relevant technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration or approval used for such a purpose;

enhanced or value-added services means those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

flat-rate pricing basis means pricing on the basis of a fixed charge per period of time regardless of the amount of usage;

intracorporate communications means telecommunications through which an enterprise communicates:

(a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

private network means a telecommunications transport network that is used exclusively for intracorporate communications;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer- supplied information between two or more points without any end- to-end change in the form or content of the customer's information;

standards-related measure means a "standards-related measure" as defined in Article 915;

telecommunications means the transmission and reception of signals by any electromagnetic means; and

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point. NAFTA Chapter Fourteen Financial Services

Article 1401: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) financial institutions of another Party;

(b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Only Articles 1109 (Transfers), 1110 (Expropriation and Compensation), 1111 (Special Formalities and Information Requirements), 1113 (Denial of Benefits), 1114 (Environmental Measures) and Articles 1115 to 1136 (Settlement of Disputes Between a Party and an Investor of Another Party) of Chapter Eleven (Investment) and Article 1211 (Denial of Benefits) of Chapter Twelve (Cross-Border Trade in Services) shall apply to this Chapter. Article 1802(2) (Publication) shall not apply to this Chapter.

3. In the event of any inconsistency between a provision of this Chapter and any other provision of this Agreement, the former shall prevail to the extent of the inconsistency. This paragraph does not apply to Article 2103 (Taxation).

4. Nothing in this Chapter shall prevent a Party from being the exclusive service provider in its territory with respect to the following:

(a) activities forming part of a public retirement plan or statutory system of social security; and

(b) activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government or of any other public entity.

5. Article 1407 shall not apply to the granting by a Party to a financial service provider of an exclusive right to provide a financial service referred to in paragraph 4(a).

6. Each Party shall comply with Annex 1401.6.

Article 1402: Self-Regulatory Organizations

Where a Party requires financial service providers of another Party to be members of, participate in, or have access to, a self-regulatory organization to provide a financial service in the territory of that Party, the Party shall ensure observance by such organization of this Chapter.

Article 1403: Regulatory Measures

1. Nothing in this Part shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

(a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants or persons to whom a fiduciary duty is owed by a financial service provider or financial institution;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service providers or financial institutions; and

(c) ensuring the integrity and stability of a Party's financial system.

2. Nothing in this Part applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's

obligations under Article 1106 (Performance Requirements), Article 1109 (Transfers) and Article 2104 (Balance of Payments).

Article 1404: Establishment

1. The Parties recognize the principle that financial service providers of a Party should be permitted to establish financial institutions in the territory of another Party in the juridical form determined by the provider.

2. The Parties also recognize the principle that financial service providers of a Party should be permitted to participate widely in the market of another Party through the ability:

(a) to provide in that other Party's territory a range of financial services through separate financial institutions as may be required by that Party;

(b) to expand geographically within that territory; and

(c) to own financial institutions without the application of ownership requirements specific to foreign financial institutions.

3. Each Party shall permit financial service providers of another Party that are not already established in its territory to establish financial institutions in the Party's territory. A Party may:

(a) require such financial service providers to incorporate such financial institutions under its laws; or

(b) impose other terms, conditions and procedures on establishment that are consistent with Article 1407.

4. At such time as the United States liberalizes its existing measures to permit commercial banks of another Party located in its territory to expand throughout significantly all the United States market either through subsidiaries or direct branches, the Parties shall review and assess market access in each Party, subject to Annex 1404.4, with respect to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investor choice as to juridical form of establishment by commercial banks.

5. Each Party shall permit financial institutions of another Party to transfer and process information outside the territory of the Party in electronic or other form as is necessary for the conduct of ordinary business of such institutions.

Article 1405: Cross-Border Trade

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by financial service providers of another Party that is permitted on the date of entry into force of this Agreement, except to the extent set out in Part B of the Party's Schedule to Annex VII.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from financial service providers of another Party located in the territory of that other Party or another Party, provided that the Party is not required, in order to fulfill this obligation, to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may, for this purpose, define "doing business" and "solicitation."

3. Without prejudice to prudential regulation by other means, a Party may require registration of financial service providers of another Party and financial instruments.

4. The Parties shall consult on future liberalization of cross- border trade in financial services, as set out in Annex 1405.4.

Article 1406: New Financial Services

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those that the Party permits its financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which such service may be provided.

2. A Party may require authorization for the provision in its territory of a financial service referred to in paragraph 1. Where such authorization is required, a decision shall be made within a reasonable period of time and may only be refused for prudential reasons.

Article 1407: National Treatment

1. Each Party shall accord to investors of another Party and financial service providers of another Party national treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in financial institutions in its territory.

2. Each Party shall accord to the financial institutions of another Party national treatment.

3. Where a Party permits the cross-border provision of a financial service, it shall accord national treatment to financial service providers of another Party in the provision of such cross-border service.

4. "National treatment" means treatment no less favorable than that accorded by a Party to its own investors, financial service providers and financial institutions in like circumstances.

5. A measure of a Party, whether it accords to financial service providers or financial institutions of another Party different or identical treatment compared to that it accords to its own providers or institutions in like circumstances, shall be deemed to be consistent with paragraph 4, if it accords equal competitive opportunities.

6. A measure accords equal competitive opportunities if it does not disadvantage financial service providers of another Party in their ability to provide financial services as compared with the ability of domestic financial service providers in like circumstances to provide financial services.

7. Differences in market share, profitability or size shall not by themselves constitute denial of equal competitive opportunities, but shall not be precluded from being used as evidence regarding the issue of whether a Party's measure accords equal competitive opportunities.

8. With respect to measures of a province or state, paragraph 4 means:

(a) treatment no less favorable than the most favorable treatment accorded in like circumstances by such province or state to financial service providers of the Party of which it forms a part, including that province or state; or

(b) in the case of a financial service provider of another Party established in another province or state of the Party, treatment no less favorable than it accords in like circumstances to a financial service provider of the Party established in such other province or state.

Article 1408: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, investments of such investors and financial service providers of another Party treatment no less favorable than that it accords to investors, investments of investors and financial service providers of any other Party or non-Party in like circumstances.

2. Each Party may recognize prudential measures of another Party or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the Party concerned or may be accorded unilaterally.

3. A Party recognizing measures by means of an agreement or arrangement referred to in paragraph 2 shall afford adequate opportunity for another Party to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable one under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties. Where a Party accords recognition unilaterally, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

Article 1409: Staffing

1. No Party may require financial institutions of another Party to engage, as top managerial or other essential personnel, individuals of any particular nationality.

2. No Party may require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 1410: Transparency

1. Each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment upon the measure. Such measure shall be provided:

(a) by means of official publication;

(b) in other written form; or

(c) in such other form as permits an interested person to make informed comments on the proposed measure.

2. Each Party shall make available to interested persons the information that applications affecting the provision of financial services must contain.

3. At the request of an applicant, the competent regulatory authority shall provide information concerning the status of an application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make an administrative decision on a completed application of a financial service provider of another Party within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the competent authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

5. Nothing in this Agreement requires a Party to disclose information related to the affairs and accounts of individual customers or any confidential or proprietary information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or prejudice legitimate commercial interests.

6. Each Party shall ensure that inquiry points exist, at the latest 180 days after the date of entry into force of this Agreement, to which all reasonable inquiries from interested persons may be directed regarding any measures of general application taken by that Party with respect to this Chapter. Responses shall be provided in writing as soon as practicable.

Article 1411: Transfers

Without prejudice to other provisions of this Agreement that would permit such actions to be taken, a Party may prevent or limit transfers by a financial service provider or a financial institution to, or for the benefit of, an affiliate of or person related to such provider or institution, through the equitable, non-discriminatory and good faith application of its measures relating to maintenance of the safety and soundness of its financial institutions.

Article 1412: Schedules

1. Articles 1404 through 1409 do not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) a Party at the federal level, as set out in Part A of its Schedule to Annex VII;

(ii) a state or province, as set out by a Party in Part A of its Schedule to Annex VII within the period referred to in that Part; or

(iii) a local government;

(b) the continuation or prompt renewal of any non- conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1404 through 1409.

2. A Party shall set out any non-conforming measure maintained at the state or provincial level in Part A of its Schedule to Annex VII within the periods provided therein.

3. Articles 1404 through 1409 do not apply to any measure adopted or maintained by a Party that is consistent with the terms set out by the Party in Part B of its Schedule to Annex VII.

4. A Party shall describe in Part C of its Schedule to Annex VII any specific commitment it is making to any other Party.

5. For the purposes of Article 1413(2), each Party shall specify in Part D of its Schedule to Annex VII its governmental agency responsible for financial services.

6. A Party shall describe in Part E of its Schedule to Annex VII any terms and conditions that an enterprise of another Party must meet to be considered an enterprise of such other Party for the purposes of restrictions specified in that Part.

7. Any reservation or exception set out by a Party in Annexes I through VI under this Part shall be deemed to constitute reservations or exceptions for purposes of Articles 1404 through 1409.

Article 1413: Consultations

1. Any Party may request consultations with another Party at any time regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to such a request. The results of consultations under this Article shall be reported during the annual meeting of the Committee provided for in Article 1414.

2. Consultations under this Article shall be conducted by officials of the governmental agencies responsible for financial services specified in Part D of each Party's Schedule to Annex VII.

3. A Party may request that regulatory authorities of another Party participate in consultations under this Article to discuss that other Party's measures of general application that may affect the operations of financial service providers in the requesting Party's territory.

4. Such regulatory authorities shall not be required to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial service provider in another Party's territory, it may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Each Party shall comply with Annex 1413.6.

Article 1414: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be the officials referred to in Article 1413(2).

2. Subject to Article 2001(2)(d) (The Free Trade Commission), the Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party;

(c) participate in the dispute settlement procedure pursuant to Article 1416; and

(d) examine technical issues under this Chapter, including interpretation of this Chapter.

3. The Committee shall meet annually to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each annual meeting.

Article 1415: Dispute Settlement

1. Disputes arising under this Chapter shall be resolved in accordance with the procedures of Chapter 20 (Institutional Arrangements and Dispute Settlement Procedures) and this Article.

2. In addition to the roster established under Article 2009 (Roster), the Parties shall establish and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years and may be reappointed.

3. Financial services roster members shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment. Such members shall also meet the qualifications set out in Article 2009(2)(b) and (c).

4. Where a Party alleges that a dispute arises under this Chapter, Article 2011 (Panel Selection) applies to the selection of panelists, except that:

(a) the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3, where the disputing Parties agree;

(b) in any case other than that set out in subparagraph (a)

(i) each disputing Party may select panelists meeting the qualifications of Article 2010(1) (Qualifications of Panelists) or paragraph 3 of this Article, as the Party deems appropriate, and

(ii) if the Party complained against alleges Article 1403 as a defense in the dispute, the chair of the panel must meet the qualifications of paragraph 3 of this Article.

5. Notwithstanding Article 2019(2) (Non-Implementation - Suspension of Benefits), in any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an equivalent effect as the measure or matter complained of has in the financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 1416: Investment Disputes in Financial Services

1. Where an investor of another Party submits a claim under Articles 1116 or 1117 to arbitration under Section B of Chapter Eleven (Settlement of Disputes Between a Party and an Investor of Another Party) against a Party and the disputing Party alleges Article 1403 as a defense, on request of the disputing Party, the Tribunal shall refer the matter to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. The Committee shall decide the issue of whether and to what extent Article 1403 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. If the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of a panel pursuant to Article 2008(1) to decide the issue. The matter shall proceed as a dispute under Article 1415. The panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. If no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days following the expiration of the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

Article 1417: Definitions

For purposes of this Chapter:

cross-border trade in services and cross-border provision of a service means "cross-border trade in services" and "cross-border provision of a service" as defined in Article 1213 (Definitions);

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the laws of the Party in whose territory it is located;

financial institution of another Party means a financial institution in the territory of a Party that is controlled by nationals or enterprises of another Party;

financial service means any service of a financial nature, including insurance, and any service incidental or auxiliary to a service of a financial nature;

financial service provider of another Party means any national or enterprise of a Party that is engaged in the business of providing financial services in the territory of a Party and that is providing or intends to provide financial services through an investment in the territory of another Party or through cross- border provision into the territory of another Party;

investment means "investment" as defined in Article 1138 (Definitions), except that:

(a) where the loan is extended to a financial institution, regardless of the original maturity of the loan, it shall only be an investment to the extent it is treated as regulatory capital; or

(b) where the loan is granted by a financial service provider or a financial institution, the loan shall only be an investment if it is made on a cross-border basis and it has an original maturity of at least three years (other than a loan to a Party or state enterprise thereof);

new financial service means a service of a financial nature, including a service related to an existing service or the manner in which a product is delivered, that is not provided by any financial service provider in the territory of a Party but which is provided a financial service provider in the territory of another Party;

public entity means a Party, a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

service provider of a Party means "service provider of a Party" as defined in Chapter 12 (Cross-Border Trade in Services); and

self-regulatory organization means any non-governmental body including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service providers or financial institutions that are members or participants thereof, or that have access thereto.

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ANNEX 1401.6
Country Specific Commitments

Articles 1702(1) and (2) of the Canada - United States Free Trade Agreement are incorporated into this Agreement and Canada and the United States agree to act in accordance with and be governed by those Articles.

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ANNEX 1404.4
Review of Market Access

The review of market access referred to in Article 1404(4) shall not include the market access limitations specified in Part B of the Schedule of Mexico to Annex VII.

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ANNEX 1405.4
Consultations on Liberalization of Cross-Border Trade

By January 1, 2000, the Parties shall consult on further liberalization of cross-border trade in financial services. Such consultations shall include the possibility of allowing a wider range of insurance services to be provided on a cross-border basis in the territory of each Party. With respect to Mexico, such consultations on cross-border insurance services shall determine whether the limitations on cross-border insurance services specified in Part A of the Schedule of Mexico to Annex VII shall be maintained, modified, or eliminated.

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ANNEX 1413.6
Future Consultations and Arrangements

Section A - Limited Scope Financial Institutions

Three years after the date of entry into force of this Agreement, the Parties shall consult on the aggregate limit on limited scope financial institutions described in paragraph 8 of Part B of the Schedule of Mexico to Annex VII.

Section B - Payments System Protection

1. If the sum of the authorized capital of Foreign Commercial Bank Affiliates (as such term is defined in Part B of the Schedule of Mexico to Annex VII), measured as a percentage of the aggregate capital of all commercial banks in Mexico, reaches 25 percent, then Mexico may request consultations with the other Parties on the potential adverse effects arising from the presence of commercial banks of the other Parties in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation.

2. In considering the potential adverse effects, the Parties shall take into account:

(a) the threat that the Mexican payments system may be controlled by non-Mexican persons;

(b) the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange-rate policy effectively; and

(c) the adequacy of various provisions agreed under this Chapter to protect the Mexican payments system.

3. If no consensus is achieved through consultations, which shall be completed in an expeditious time frame, a panel shall be convened under the procedures of Article 2008 (Request for an Arbitral Panel) of the Agreement to render a non-binding recommendation to the Parties no later than 60 days after the panel is convened.

NAFTA Chapter Fifteen Competition Policy, Monopolies and State Enterprises

Article 1501: Competition Law

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct, and shall take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.

2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.

3. No Party may have recourse to dispute settlement under this Agreement for any matter regarding this Article.

Article 1502: Monopolies and State Enterprises

1. Nothing in this Agreement shall prevent a Party from designating a monopoly.

2. Where a Party intends to designate a monopoly, and the designation may affect the interests of persons of another Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavor to introduce at the time of designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement, in the sense of Annex 2004.

3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement whenever such monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

(b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale;

(c) provides non-discriminatory treatment to investments of investors, to goods, and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiary, or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of another Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.

4. Paragraph 3 shall not apply to the procurement by governmental agencies of a good or service for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or provisions of services for commercial sale.

Article 1503: State Enterprises

1. Nothing in this Agreement shall prevent a Party from maintaining or establishing a state enterprise.

2. Each Party, shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapter Eleven (Investment) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords nondiscriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of another Party.

Article 1504: Working Group on Trade and Competition

The Commission shall establish a Working Group on Trade and Competition, comprising representatives of each Party, to report, and to make recommendations on further work as appropriate, to the Commission within five years after the date of entry into force of the Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area.

Article 1505: Definitions

For purposes of this Chapter:

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

designate means to establish, designate or authorize, or to expand the scope of, a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

discriminatory provision includes treating a parent, subsidiary, or other enterprise with common ownership more favorably than an unaffiliated enterprise, or treating one class of enterprises more favorably than another, in like circumstances;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the federal government of a Party or by another such monopoly;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including any consortium or government agency that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include any entity that has been granted an exclusive intellectual property right solely by reason of such grant;

non-discriminatory treatment means the better of national or most-favored-nation treatment, and

state enterprise means, except as set out in Annex 1505.1, an enterprise owned, or controlled through ownership interests, by a Party.

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ANNEX 1505.1

State Enterprises

For purposes of Article 1503(3), "state enterprise" means, with respect to Canada, a Crown Corporation within the meaning of the Financial Administration Act (Canada) or a Crown corporation within the meaning of any comparable provincial legislation or that is incorporated under other applicable provincial legislation.

NAFTA Chapter Sixteen Temporary Entry for Business Persons

Article 1601: General Principles

Further to Article 102 (Objectives), the provisions of this Chapter reflect the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 1602: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601, and in particular, shall apply expeditiously such measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 1603: Grant of Temporary Entry

1. Each Party shall grant, in accordance with this Chapter, including Annex 1603, temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 1604: Provision of Information

1. Further to Article 1802 (Publication), each Party shall:

(a) provide to the other Parties such materials as will enable them to become acquainted with its measures relating to the provisions of this Chapter; and

(b) not later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territories of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as to enable business persons of the other Parties to become acquainted with them.

2. Subject to Annex 1604.2, each Party shall collect and maintain, and make available to the other Parties in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including that specific to each occupation, profession or activity.

Article 1605: Working Group

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party,

including immigration officials.

2. The Working Group shall meet at least once a year to consider:

(a) the implementation and administration of this Chapter;

(b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Sections B, C, or D of Annex 1603; and

(d) proposed modifications of or additions to this Chapter.

Article 1606: Dispute Settlement

A Party may not initiate proceedings under Article 2007 regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 1602(1) unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted available administrative remedies regarding the particular matter, provided that such remedies shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 1607: Relation to Other Chapters

Except for Chapter One (Objectives), Chapter Two (General Definitions), Chapter Twenty (Institutional Arrangements and Dispute Settlement), Chapter Twenty-Two (Final Provisions) and Articles 1801 through 1804, no provision of any other Chapter shall impose any obligation upon a Party regarding its immigration measures.

Article 1608: Definitions

For purposes of this Chapter:

business person means a citizen of a Party who is engaged in the trade in goods, the provision of services or the conduct of investment activities;

citizen means "citizen" as defined in Annex 1608;

existing means "existing" as defined in Annex 1608; and

temporary entry means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

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ANNEX 1603

Temporary Entry for Business Persons

Section A - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Schedule I, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, upon presentation of:

(a) proof of citizenship of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory. A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. If the Party requires further

proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Schedule I, without requiring that person to obtain an employment authorization, on a basis no less favorable than that provided under the existing provisions of the measure set out in Appendix 1603.A, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. No Party shall:

(a) as a condition for temporary entry under paragraphs 1 or 3, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraphs 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall, at the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.

Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought; or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills,

provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. No Party shall:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry.

Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require that such business person shall have been employed continuously by such enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. No Party shall:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall, at the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.

Section D - Professionals

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Schedule II, if the business person otherwise complies with existing immigration measures applicable to temporary entry, upon presentation of:

(a) proof of citizenship of a Party; and

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. No Party shall:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall, upon the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.

4. Notwithstanding paragraphs 1 and 2, a Party may establish an annual numerical limit, which shall be set out in Schedule III, regarding temporary entry of business persons of another Party seeking to engage in business activities at a professional level in a profession set out in Schedule II, if the Parties concerned have not agreed otherwise prior to the entry into force of this Agreement for such Parties. In establishing such a limit, such Party shall consult with the other Party concerned.

5. A Party establishing a numerical limit pursuant to paragraph 4, unless the Parties concerned agree otherwise:

(a) shall, for each year after the first year after the date of entry into force of this Agreement, consider increasing the numerical limit set out in Schedule III by an amount to be established in consultation with the other Party concerned, taking into account the demand for temporary entry under this Part;

(b) shall not apply its procedures established pursuant to paragraph 1 to the temporary entry of a business person subject to the numerical limit, but may require such business person to comply with its other procedures applicable to the temporary entry of professionals; and

(c) may, in consultation with the other Party concerned, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by such Parties.

6. Nothing in paragraphs 4 or 5 shall be construed so as to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

7. Three years after a Party establishes a numerical limit pursuant to paragraph 4, it shall consult with the other Party concerned with a view to determining a date after which the limit shall cease to apply.

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ANNEX 1604.2

Provision of Information

The obligations under Article 1604(2) shall take effect with respect to Mexico one year after the date of entry into force of this Agreement.

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ANNEX 1608

Country - Specific Definitions

For purposes of this Chapter:

citizen means, with respect to Mexico, a national or a citizen according to the existing provisions of Articles 30 and 34, respectively, of the Mexican Constitution; and

existing means, as between:

(a) Canada and Mexico, and the United States and Mexico, in effect upon the date of entry into force of this Agreement; and

(b) Canada and the United States, in effect on January 1, 1989.

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Appendix 1603.A

Existing Immigration Measures

1. In the case of Canada, the Immigration Act, R.S.C. 1985 c.I- 2, as amended, and subsection 19(1) of the Immigration Regulations, 1978, as amended.

2. In the case of the United States, Section 101(a)(15)(B) of the Immigration and Nationality Act, 1952, as amended.

3. In the case of Mexico, Chapter III of the Ley General de Poblacion, 1974, as amended.

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Schedule I

Research and Design

- Technical, scientific, and statistical researchers conducting independent research, or research for an enterprise located in the territory of another Party.

Growth, Manufacture and Production

- Harvester owner supervising a harvesting crew admitted under applicable law.

- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

Marketing

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise located in the territory of another Party.

- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.

- Buyers purchasing for an enterprise located in the territory of another Party.

Distribution

- Transportation operators transporting goods or passengers to the territory of a Party from the territory of another Party or loading and transporting goods or passengers from the territory of a Party to the territory of another Party, with no loading and delivery within the territory of the Party into which entry is sought of goods located in or passengers boarding in that territory.

- With respect to temporary entry into the territory of the United States, Canadian customs brokers performing brokerage duties relating to the export of goods from the territory of the United States to or through the territory of Canada; with respect to temporary entry into the territory of Canada, United States customs brokers performing brokerage duties relating to the export of goods from the territory of Canada to or through the territory of the United States.

- Customs brokers consulting regarding the facilitation of the import or export of goods.

After-Sales Service

- Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform such services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

- Professionals engaging in a business activity at a professional level in a profession set out in Schedule II.

- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party.

- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.

- Public relations and advertising personnel consulting with business associates, and attending or participating in conventions.

- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in

conventions or conducting a tour that has begun in the territory of another Party.

- Tour bus operators entering the territory of a Party:

(a) with a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party;

(b) to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party; or

(c) with a group of passengers on a bus tour to be unloaded in the territory of the Party into which temporary entry is sought, and returning with no passengers or reloading with such group for transportation to the territory of another Party.

- Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

Definitions

For purposes of this Schedule:

territory of another Party means the territory of a Party other than the territory of the Party into which temporary entry is sought;

tour bus operator means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip; and

transportation operator means a natural person, other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip.
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Schedule II

PROFESSION

Accountant

Architect

Computer Systems Analyst

MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS

Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., C.M.A.

Baccalaureate or Licenciatura Degree; or state/provincial license

Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	
Economist	
Engineer	
Forester	
Graphic Designer	
Hotel Manager	
Industrial Designer	
Interior Designer	
Land Surveyor	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years of experience in claims adjustment, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
Librarian	Baccalaureate or Licenciatura Degree
Management Consultant	Baccalaureate or Licenciatura Degree; or state/provincial license
Mathematician (including Statistician)	Baccalaureate or Licenciatura Degree; or state/provincial license
Range Manager/Range Conservationist	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
Scientific Technician/Technologist	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Social Scientist (including Psychologist, Archeologist, Geographer, Anthropologist, Historian, Criminologist, Sociologist and Political Scientist)	
Technical Publications Writer	
Urban Planner (including Traffic Engineer)	
Vocational Counsellor	

MEDICAL/ALLIED PROFESSIONAL

Dentist

Dietitian
Baccalaureate or Licenciatura Degree

LL.B., J.D., LL.L., B.C.L., or Licenciatura Degree (five years); or membership in a state/provincial bar

M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)

Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement, or professional credential, attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement

Baccalaureate or Licenciatura Degree

D.D.S., D.M.D., Doctor en Odontologia, or Doctor en Cirugia Dental; or state/provincial license

Baccalaureate or Licenciatura Degree; or state/provincial license

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Medical Laboratory Technologist (Canada)/Medical Technologist (United States and Mexico)

Nutritionist

Occupational Therapist

Pharmacist

Physician (teaching or research only)

Physiotherapist/Physical Therapist

Psychologist

Recreational Therapist

Registered Nurse

Veterinarian

Research Assistant
(Working in a post-secondary

Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Baccalaureate or Licenciatura

Degree

Baccalaureate or Licenciatura Degree; or state/provincial license

Baccalaureate or Licenciatura Degree; or state/provincial license

M.D. or Doctor en Medicina; or state/provincial license

Baccalaureate or Licenciatura Degree; or state/provincial license

State/provincial license or
Licenciatura Degree

Baccalaureate or Licenciatura
Degree

State/provincial license or
Licenciatura Degree

D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license

Range Manager/
Range Conservationalist

Research Assistant (Working in a post-secondary educational institution)

Scientific
Technician/Technologist

SCIENTIST

Agriculturist (including
Agronomist)

Animal Breeder

Animal Scientist

Apiculturist

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
Degree

Possession of: (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of such disciplines, or the ability to apply principles of any of such disciplines to basic or applied research

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Astronomer

Biochemist

Biologist

Chemist

Dairy Scientist

Entomologist

Epidemiologist

Geneticist

Geologist

Geochemist

Geophysicist (including Oceanographer in Mexico and the United States)

Horticulturist

Meteorologist

Pharmacologist

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

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Baccalaureate or Licenciatura

Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Pharmacologist

Physicist (including Oceanographer in Canada)

Plant Breeder

Poultry Scientist

Soil Scientist

Zoologist

Social Worker

Sylviculturist (including Forestry Specialist)

TEACHER

College

Seminary

University

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

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Baccalaureate or Licenciatura Degree

	Baccalaureate or Licenciatura Degree
	Baccalaureate or Licenciatura Degree
	Baccalaureate or Licenciatura Degree

Technical Publications Writer	
Urban Planner (including Geographer)	
Vocational Counsellor	
	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
	Baccalaureate or Licenciatura Degree
	Baccalaureate or Licenciatura Degree

Schedule III

United States of America

1. Commencing on the date of entry into force of this Agreement as between the United States and Mexico, the United States shall annually approve as many as 5,500 initial petitions of business persons of Mexico seeking temporary entry under Section D of Annex 1603 to engage in a business activity at a professional level in a profession set out in Schedule II.

2. For purposes of paragraph 1, the United States shall not take into account:

(a) the renewal of a period of temporary entry;

(b) the entry of a spouse or children accompanying or following to join the principal business person;

(c) an admission under Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 1952, as amended, including the worldwide numerical limit established by Section 214(g)(1)(A) of such Act; or

(d) an admission under any other provision of Section 101(a)(15) of such Act relating to the entry of professionals.

3. Paragraphs 4 and 5 of Section D of Annex 1603 shall apply as between the United States and Mexico for no longer than:

(a) the period that such paragraphs or similar provisions may apply as between the United States and any other Party or non-Party; or

(b) 10 years after the date of entry into force of this Agreement as between such Parties,

whichever period is shorter.

NAFTA PART SIX INTELLECTUAL PROPERTY

Chapter Seventeen

Intellectual Property

Article 1701: Nature and Scope of Obligations

1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:

(a) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);

(b) the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);

(c) the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and

(d) the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention).

If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.

3. Paragraph 2 shall apply, except as provided in Annex 1701.3.

Article 1702: More Extensive Protection

A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

Article 1703: National Treatment

1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.

2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:

(a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and

(b) is not applied in a manner that would constitute a disguised restriction on trade.

4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 1704: Control of Abusive or Anticompetitive Practices or Conditions

Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

Article 1705: Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:

(a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and

(b) compilations of data or other material, whether in machine readable or other form, which by

reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:

(a) the importation into the Party's territory of copies of the work made without the right holder's authorization;

(b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

(c) the communication of a work to the public; and

(d) the commercial rental of the original or a copy of a computer program.

Subparagraph (d) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee; and

(b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

7. Each Party shall comply with the requirements set out in Annex 1705.7.

Article 1706: Sound Recordings

1. Each Party shall provide to the producer of a sound recording the right to authorize or prohibit:

(a) the direct or indirect reproduction of the sound recording;

(b) the importation into the Party's territory of copies of the sound recording made without the producer's authorization;

(c) the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and

(d) the commercial rental of the original or a copy of the sound recording, except where expressly otherwise provided in a contract between the producer of the sound recording and the authors of the works fixed therein.

Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.

2. Each Party shall provide a term of protection for sound recordings of at least 50 years from the end of the calendar year in which the fixation was made.

3. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the sound recording and do not unreasonably prejudice the legitimate interests of the right holder.

Article 1707: Protection of Encrypted Program-Carrying Satellite Signals

Within one year from the date of entry into force of this Agreement, each Party shall:

(a) make it a criminal offense to manufacture, import, sell, lease or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) make it a civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any activity prohibited under subparagraph (a).

Each Party shall provide that any civil offense established under subparagraph (b) shall be actionable by any person that holds an interest in the content of such signal.

Article 1708: Trademarks

1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration that a sign be visually perceptible.

2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.

4. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) examination of applications;

(b) notice to be given to an applicant of the reasons for the refusal to register a trademark;

(c) a reasonable opportunity for the applicant to respond to the notice;

(d) publication of each trademark either before or promptly after it is registered; and

(e) a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.

A Party may provide for a reasonable opportunity for interested persons to oppose the registration of a trademark.

5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

6. Article 6bis of the Paris Convention shall apply, with such modifications as are necessary, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.

8. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non-use only after an uninterrupted period of at least two years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize, as valid reasons for non-use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.

9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is

subject to the owner's control, as use of the trademark for purposes of maintaining the registration.

10. No Party shall encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.

11. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs.

12. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.

13. Each Party shall prohibit the registration as a trademark of words, at least in English, French or Spanish, that generically designate goods or services or types of goods or services to which the trademark applies.

14. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bring them into contempt or disrepute.

Article 1709: Patents

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For the purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.

2. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

3. A Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than microorganisms; and

(c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.

Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1:

(a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine; and

(b) as of July 1, 1991, for any other subject matter,

that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.

5. Each Party shall provide that:

(a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and

(b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.

6. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of other persons.

7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.

8. A Party may revoke a patent only when:

(a) grounds exist that would have justified a refusal to

grant the patent; or

(b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.

9. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.

10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the Party's domestic market;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;

(k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur;

(l) the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.

11. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one of the following situations:

(a) the product obtained by the patented process is new; or

(b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

12. Each Party shall provide a term of protection for patents of at least 20 years from the date of filing or 17 years from the date of grant. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

Article 1710: Layout Designs of Semiconductor Integrated

Circuits

1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on 26 May 1989.

2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:

(a) a protected layout design;

(b) an integrated circuit in which a protected layout design is incorporated; or

(c) an article incorporating such an integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design.

3. No Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design or any article that incorporates such an integrated circuit where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.

4. Each Party shall provide that, after the person referred to in paragraph 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.

5. No Party may permit the compulsory licensing of layout designs of integrated circuits. 6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of:

(a) filing of the application for registration; or

(b) the first commercial exploitation of the layout design, wherever in the world it occurs.

7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.

8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.

9. This Article shall apply, except as provided in Annex 1710.9.

Article 1711: Trade Secrets

1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:

(a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;

(b) the information has actual or potential commercial value because it is secret; and

(c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.

3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.

4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses, or conditions that dilute the value of the trade secrets.

5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the

date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

7. Where a Party relies upon a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

Article 1712: Geographical Indications

1. Each Party shall provide, in respect of geographical indications, the legal means for interested persons to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a territory, region or locality other than the true place of origin, in a manner that misleads the public as to the geographical origin of the good;

(b) any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party shall, on its own initiative if its domestic law so permits or at the request of an interested person, refuse to register, or invalidate the registration of, a trademark containing or consisting of a geographical indication with respect to goods that do not originate in the indicated territory, region or locality, if use of the indication in the trademark for such goods is of such a nature as to mislead the public as to the geographical origin of the good.

3. Each Party shall also apply paragraphs 1 and 2 to a geographical indication that, although correctly indicating the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, region or locality.

4. Nothing in this Article shall require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, either:

(a) for at least 10 years, or

(b) in good faith, before the date of signature of this Agreement.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, either:

(a) before the date of application of these provisions in that Party, or

(b) before the geographical indication is protected in its Party of origin,

no Party may adopt any measure to implement this Article that prejudices eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.

7. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion, or such name is used in such a manner as to mislead the public.

9. Nothing in this Chapter shall require a Party to protect a geographical indication that is not protected, or has fallen into disuse, in the Party of origin.

Article 1713: Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that:

(a) designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and

(b) such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.

3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making or selling articles bearing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

4. A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of other persons.

5. Each Party shall provide a term of protection for industrial designs of at least 10 years.

Article 1714: Enforcement of Intellectual Property Rights: General Provisions

1. Each Party shall ensure that enforcement procedures, as specified in this Article and Articles 1715 through 1718, are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies to deter further infringements. Such enforcement procedures shall be applied so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against abuse of the procedures.

2. Each Party shall ensure that its procedures for the enforcement of intellectual property rights are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable time-limits or unwarranted delays.

3. Each Party shall provide that decisions on the merits of a case in judicial and administrative enforcement proceedings shall:

(a) preferably be in writing and preferably state the reasons on which the decisions are based;

(b) be made available at least to the parties in a proceeding without undue delay; and

(c) be based only on evidence in respect of which such parties were offered the opportunity to be heard.

4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, no Party shall be required to provide for judicial review of acquittals in criminal cases.

5. Nothing in this Article and in Articles 1715 through 1718 shall require a Party to establish a judicial system for the enforcement of intellectual property rights distinct from that Party's system for the enforcement of laws in general.

6. For the purposes of Articles 1715 through 1718, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 1715: Specific Procedural and Remedial Aspects of Civil and Administrative Procedures

1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right covered by this Chapter. Each Party shall provide that:

(a) defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims;

(b) parties in a proceeding are allowed to be represented by independent legal counsel;

(c) the procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances;

(d) all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and

(e) the procedures include a means to identify and protect confidential information.

2. Each Party shall provide that its judicial authorities shall have the authority:

(a) where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information;

(b) where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party's control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;

(c) to order a party in a proceeding to desist from an infringement, including to prevent the date of entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, which order shall be enforceable at least immediately after customs clearance of such goods;

(d) to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement where the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity;

(e) to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and

(f) to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.

3. With respect to the authority referred to in subparagraph 2(c), no Party shall be obliged to provide such authority in respect of protected subject matter that is acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing in that subject matter would entail the infringement of an intellectual property right.

4. With respect to the authority referred to in subparagraph 2(d), a Party may, at least with respect to copyrighted works and sound recordings, authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not know or had no reasonable grounds to know that it was engaged in an infringing activity.

5. Each Party shall provide that, in order to create an effective deterrent to infringement, its judicial authorities shall have the authority to order that:

(a) goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed; and

(b) materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

In considering whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of other persons. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

6. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.

7. Notwithstanding the other provisions of Articles 1714 through 1718, where a Party is sued with respect to an infringement of an intellectual property right as a result of its use of that right or use on its behalf, that Party may limit the remedies available against it to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.

8. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1716: Provisional Measures

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right, and in particular to prevent the date of entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including

measures to prevent the entry of imported goods at least immediately after customs clearance; and

(b) to preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:

(a) the applicant is the right holder;

(b) the applicant's right is being infringed or such infringement is imminent; and

(c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

Each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall provide that its competent authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.

4. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

5. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte basis:

(a) a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;

(b) a defendant shall, upon request, have those measures reviewed by that Party's judicial authorities, for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.

6. Without prejudice to paragraph 5, each Party shall provide that, upon the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:

(a) within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or

(b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

7. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1717: Criminal Procedures and Penalties

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.

2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.

3. A Party may provide criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.

Article 1718: Enforcement of Intellectual Property Rights at the Border

1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take

place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.

2. Each Party shall require any applicant who initiates procedures under paragraph 1 to provide adequate evidence:

(a) to satisfy that Party's competent authorities that, under the domestic laws of the country of importation, there is prima facie an infringement of its intellectual property right; and

(b) to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration.

The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

3. Each Party shall provide that its competent authorities shall have the authority to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

4. Each Party shall provide that, where pursuant to an application under procedures adopted pursuant to this Article, its customs administration suspends the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority, and the period provided for in paragraphs 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.

5. Each Party shall provide that its customs administration shall promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.

6. Each Party shall provide that its customs administration shall release goods from suspension if within a period not exceeding ten working days after the applicant under paragraph 1 has been served notice of the suspension:

(a) the customs administration has not been informed that a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or

(b) a competent authority has taken provisional measures prolonging the suspension,

provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.

7. Each Party shall provide that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether the measures shall be modified, revoked or confirmed.

8. Notwithstanding paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of Article 1716(6) shall apply.

9. Each Party shall provide that its competent authorities shall have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraph 6.

10. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate its claims. Each Party shall also provide that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

11. Where a Party requires its competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as are

necessary, set out in paragraphs 6 through 8; and

(c) the Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 1715(5). In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

13. A Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments that are not repetitive.

14. This Article shall apply, except as provided in Annex 1718.14.

Article 1719: Cooperation and Technical Assistance

1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include, but not be limited to, the training of personnel.

2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties of contact points in its federal government and shall exchange information concerning trade in infringing goods.

Article 1720: Protection of Existing Subject Matter

1. Other than the provisions of Article 1705(7), this Agreement does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions of this Agreement for the Party in question.

2. Except as otherwise provided for in this Agreement, each Party shall apply this Agreement to all subject matter existing on the date of application of the relevant provisions of this Agreement for the Party in question, and which is protected in a Party on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter. In respect of this paragraph and paragraphs 3 and 4, a Party's obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention and with respect to the rights of producers of sound recordings in existing sound recordings shall be determined solely under Article 18 of that Convention, as made applicable under this Agreement.

3. Except as required under Article 1705(7), and notwithstanding paragraph 2, a Party shall not be required to restore protection to subject matter that, on the date of application of the relevant provisions of this Agreement for the Party in question, has fallen into the public domain in its territory.

4. Any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced or in respect of which a significant investment was made, before the date of ratification of this Agreement by that Party, any Party may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of the Agreement for that Party. In such cases, the Party shall, however, at least provide for payment of equitable remuneration.

5. No Party shall be obliged to apply the provisions of Article 1705(2)(d) or Article 1706(1)(d) with respect to originals or copies purchased prior to the date of application of the relevant provisions of this Agreement for that Party.

6. No Party shall be required to apply Article 1709(10), or the requirement in Article 1709(7) that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the text of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection that are pending on the date of application of the relevant provisions of this Agreement for the Party in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

Article 1721: Definitions

For purposes of this Agreement:

confidential information includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law;

encrypted program-carrying satellite signal means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a program carried in that signal;

geographical indication means any indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

in a manner contrary to honest commercial practices means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by other persons who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;

intellectual property rights refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;

nationals of another Party means, in respect of the relevant intellectual property right, persons who would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Geneva Convention (1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), the UPOV Convention (1978), the UPOV Convention (1991) or the Treaty on Intellectual Property in Respect of Integrated Circuits, as if each Party were a party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "nationals of another Party" shall be understood to be at least individuals who are citizens or permanent residents of that Party and also includes any other natural person referred to in Annex 201.1;

public includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1)(ii) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and

secondary uses of sound recordings means the use directly for broadcasting or for any other public communication of a sound recording.

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ANNEX 1701.3

Intellectual Property Conventions

1. Mexico shall:

(a) make every effort to comply with the substantive provisions of the 1978 or 1991 UPOV Convention as soon as possible and shall do so no later than two years after the date of signature of this Agreement; and

(b) accept from the date of entry into force of this Agreement, applications from plant breeders for varieties in all plant genera and species and grant protection, in accordance with such substantive provisions, promptly after complying with subparagraph (a).

2. Notwithstanding Article 1701(2)(b), this Agreement confers no rights and imposes no obligations on the United States with respect to Article 6bis of the Berne Convention, or the rights derived from that Article.

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ANNEX 1705.7

Copyright

The United States shall provide protection to motion pictures produced in another Party's territory that have been declared to be in the public domain pursuant to 17 U.S.C. section 405. This obligation shall apply to the extent that it is consistent with the Constitution of the United States, and is subject to budgetary considerations.

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ANNEX 1710.9

Layout Designs

Mexico shall make every effort to implement the requirements of Article 1710 as soon as possible, and shall do so no later than four years after the date of entry into force of this Agreement.

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ANNEX 1718.14

Enforcement of Intellectual Property Rights

Mexico shall make every effort to comply with the requirements of Article 1718 as soon as possible, and shall do so in any event no later than three years after the date of signature of this Agreement.

Article 1801: Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. Upon the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 1802: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement shall be promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide a reasonable opportunity for comment by interested persons and Parties on such proposed measures.

Article 1803: Notification and Provision of Information

1. Each Party shall, to the maximum extent possible, notify any other Party with an interest in the matter of any proposed or actual measure that it considers might materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement.

2. Upon request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not previously notified.

3. Notification and provision of information shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 1804: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 1802 to particular persons, goods or services of another Party in specific cases that:

(a) whenever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 1805: Review and Appeal

1. Each Party shall adopt or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, such offices or authorities with respect to the administrative action at issue.

Article 1806: Definitions

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct rather than

adjudicating with respect to a particular act or practice, but, does not include a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Party in a specific case.

NAFTA Chapter Nineteen Review and Dispute Settlement in Antidumping and Countervailing Duty Matters

Article 1901: General Provisions

1. The provisions of Article 1904 shall apply only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of another Party.

2. For the purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.

3. With the exception of Article 2203 (Entry into Force), no provision of any other chapter of this Agreement shall be construed as imposing obligations on the Parties with respect to the Parties' antidumping law or countervailing duty law.

Article 1902: Retention of Domestic Antidumping Law and Countervailing Duty Law

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice and judicial precedents.

2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:

(a) such amendment shall apply to goods from another Party only if the amending statute specifies that it applies to the Parties to this Agreement;

(b) the amending Party notifies any Party to which the amendment applies in writing of the amending statute as far in advance as possible of the date of enactment of such statute;

(c) following notification, the amending Party, upon request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and

(d) such amendment, as applicable to another Party, is not inconsistent with:

(i) the General Agreement on Tariffs and Trade (GATT), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Antidumping Code) or the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), or successor agreements to which all the original signatories to this Agreement are party, or

(ii) the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade among the Parties to this Agreement while maintaining effective and fair disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives and the practices of the Parties.

Article 1903: Review of Statutory Amendments

1. A Party to which an amendment of another Party's antidumping or countervailing duty statute applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:

(a) the amendment does not conform to the provisions of Article 1902(2)(d)(i) or (ii); or

(b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of Article 1902(2)(d)(i) or (ii).

Such declaratory opinion shall have force or effect only as provided in this Article.

2. The panel shall conduct its review in accordance with the procedures of Annex 1903.2.

3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:

(a) the two Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation with respect to the statute of the amending Party;

(b) if corrective legislation is not enacted within nine months from the end of the 90-day consultation period referred to in subparagraph (a) and no other mutually satisfactory solution has been reached, the Party that requested the panel may

(i) take comparable legislative or equivalent executive action, or

(ii) terminate this Agreement with regard to the amending Party upon 60-day written notice to that Party.

Article 1904: Review of Final Antidumping and Countervailing Determinations

1. As provided in this Article, the Parties shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.

2. An involved Party may request that a panel review, based upon the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of a Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into this Agreement.

3. The panel shall apply the standard of review described in Article 1909 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

4. A request for a panel shall be made in writing to the other involved Party within 30 days following the date of publication of the final determination in question in the official journal of the importing Party. In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice. Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall begin to establish a panel at that time. Failure to request a panel within the time specified in this paragraph shall preclude review by a panel.

5. An involved Party on its own initiative may request review of a final determination by a panel and shall, upon request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review.

6. The panel shall conduct its review in accordance with the procedures established by the Parties pursuant to paragraph 14. Where both involved Parties request a panel to review a final determination, a single panel shall review that determination.

7. The competent investigating authority that issued the final determination in question shall have the right to appear and be represented by counsel before the panel. Each Party shall provide that other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the factual and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it.

9. The decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel.

10. This Agreement shall not affect:

(a) the judicial review procedures of any Party; or

(b) cases appealed under those procedures,

with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if an involved Party requests a panel with respect to that determination within the time limits set forth in this Article. No Party shall provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. The provisions of this Article shall not apply where:

(a) neither involved Party seeks panel review of a final determination;

(b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or

(c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the date of entry into force of this Agreement.

13. Where within a reasonable time after the panel decision is issued, an involved Party alleges that:

(a) (i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

(ii) the panel seriously departed from a fundamental rule of procedure, or

(iii) the panel manifestly exceeded its powers, authority or jurisdiction set forth in this Article, for example by failing to apply the appropriate standard of review, and

(b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process,

that Party may avail itself of the extraordinary challenge procedure set out in Annex 1904.13.

14. To implement the provisions of this Article, the Parties shall adopt rules of procedure by January 1, 1994. Such rules shall be based, where appropriate, upon judicial rules of appellate procedure, and shall include rules concerning: the content and service of requests for panels; a requirement that the competent investigating authority transmit to the panel the administrative record of the proceeding; the protection of business proprietary, government classified, and other privileged information (including sanctions against persons participating before panels for improper release of such information); participation by private persons; limitations on panel review to errors alleged by the Parties or private persons; filing and service; computation and extensions of time; the form and content of briefs and other papers; pre- and post-hearing conferences; motions; oral argument; requests for rehearing; and voluntary terminations of panel reviews. The rules shall be designed to result in final decisions within 315 days of the date on which a request for a panel is made, and shall allow:

(a) 30 days for the filing of the complaint;

(b) 30 days for designation or certification of the administrative record and its filing with the panel;

(c) 60 days for the complainant to file its brief;

(d) 60 days for the respondent to file its brief;

(e) 15 days for the filing of reply briefs;

(f) 15 to 30 days for the panel to convene and hear oral argument; and

(g) 90 days for the panel to issue its written decision.

15. In order to achieve the objectives of this Article, the Parties shall, with respect to goods of the other Parties, amend their antidumping and countervailing duty statutes and regulations, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws. In particular, without limiting the generality of the foregoing:

(a) each Party shall amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;

(b) each Party shall amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;

(c) each Party shall amend its statutes or regulations to ensure that

(i) domestic procedures for judicial review of a final determination may not be commenced until the

time for requesting a panel under paragraph 4 has expired, and

(ii) as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties concerned and to other persons entitled to commence such review procedures of the same final determination no later than 10 days prior to the latest date on which a panel may be requested; and

(d) Each Party shall make the further amendments set forth in Annex 1904.15(d).

Article 1905: Safeguarding the Panel Review System

1. Where a Party alleges that the application of another Party's domestic law,

(a) has prevented the establishment of a panel requested by the complaining Party;

(b) has prevented a panel requested by the complaining Party from rendering a final decision;

(c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or

(d) has resulted in a failure to provide opportunity for review of a final determination by a court or panel of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the investigating authorities' determination and whether the investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911,

that Party may request in writing consultations with the other Party regarding the allegations. The consultations shall begin within 15 days of the date of the request.

2. If the matter has not been resolved within 45 days of the request for consultations or such other period as the consulting Parties may agree, the complaining Party may request the establishment of a special committee.

3. Unless otherwise agreed by the disputing Parties, the special committee shall be established within 15 days of a request and perform its functions in a manner consistent with the provisions of this Chapter.

4. The roster for special committees shall be that established pursuant to Annex 1904.13.1.

5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 1904.13.1.

6. The Parties shall establish rules of procedure in accordance with the principles set out in Annex 1905.7.

7. If the special committee makes an affirmative finding in respect of one of the grounds specified in paragraph 1, the complaining Party and the Party complained against shall begin consultations within 10 days, and shall seek to achieve a mutually satisfactory solution within 60 days of the issuance of the committee's report.

8. If, within the 60-day period, the Parties are unable to reach a mutually satisfactory solution to the matter, or the Party complained against has not demonstrated to the satisfaction of the special committee that it has corrected the problem or problems with respect to which the committee has made an affirmative finding, the complaining Party may:

(a) suspend the operation of Article 1904 with respect to the Party complained against; or

(b) suspend the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

9. In the event that a complaining Party suspends the operation of Article 1904 with respect to the Party complained against, the latter Party may reciprocally suspend the operation of Article 1904. If either Party decides to suspend the operation of Article 1904, it shall provide written notice of such suspension to the other Party.

10. The special committee may reconvene at any time, at the request of the Party complained against, to determine:

(a) whether the suspension of benefits by the complaining Party pursuant to subparagraph 8(b) is manifestly excessive; or

(b) whether the Party complained against has corrected the problem or problems with respect to which the committee has made an affirmative finding.

The special committee shall, within 45 days of the request, present a report to both Parties containing its determination. Where the special committee determines that the Party complained against has corrected the problem or problems, any suspension effected by the complaining Party or the Party complained against, or both, pursuant to paragraphs 8 or 9 shall be terminated.

11. If the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, then effective as of the day following the date of issuance of the special committee's decision:

(a) binational panel or extraordinary challenge committee review under Article 1904 shall be stayed

(i) with respect to review of any final determination of the complaining Party requested by the Party complained against, if such review was requested after the date on which consultations were requested pursuant to paragraph 1 of this Article and in no case later than 150 days prior to an affirmative finding by the special committee, or

(ii) with respect to review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party; and

(b) the time for requesting panel or committee review under Article 1904 shall be tolled.

12. If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), the panel or committee review stayed under paragraph 11(a) shall be terminated and the challenge to the final determination shall be irrevocably referred to the appropriate domestic court for decision, as provided below:

(a) with respect to review of any final determination of the complaining Party requested by the Party complained against, at the request of either Party, or of a party to the panel review under Article 1904; or

(b) with respect to review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party, or of a party of the complaining Party that is a party to the panel review under Article 1904.

If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), any time period tolled under Paragraph 11(b) of this Article shall resume.

If such suspension does not become effective, panel or committee review stayed under paragraph 11(a), and any time period tolled under paragraph 8(b), shall resume.

Article 1906: Prospective Application

The provisions of this Chapter shall apply only prospectively to:

(a) final determinations of a competent investigating authority made after the date of entry into force of this Agreement; and

(b) with respect to declaratory opinions under Article 1903, amendments to antidumping or countervailing duty statutes enacted after the date of entry into force of this Agreement.

Article 1907: Consultations

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Chapter and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Chapter are carried out expeditiously.

2. The Parties further agree to consult on:

(a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and

(b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.

3. The competent investigating authorities of the Parties shall consult annually or on the request of any Party and may submit reports to the Commission, if appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of anti-dumping and countervailing duty laws to:

(a) publish notice of initiation of investigations in the importing country's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the product at issue;

(b) provide notice of the times for submissions of information and for decisions that the competent investigating authorities are expressly required by statute or regulations to make;

(c) provide explicit written notice and instructions as to the information required from interested parties, including foreign interests, and reasonable time to

respond to requests for information;

(d) accord reasonable access to information

(i) "reasonable access" in this context means access during the course of the investigation, to the extent practicable, so as to permit an opportunity to present facts and arguments as set forth in paragraph (e); when it is not practicable to provide access to information during the investigation in such time as to permit an opportunity to present facts and arguments, reasonable access shall mean in time to permit the adversely affected party to make an informed decision as to whether to seek judicial or panel review,

(ii) "access to information" in this context means access to representatives determined by the competent investigating authority to be qualified to have access to information received by that competent investigating authority, including access to confidential (business proprietary) information, but does not include information of such high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner or which is required to be kept confidential in accordance with domestic legislation of a Party; any privileges arising under domestic law of the importing Party relating to communications between the competent investigating authorities and a lawyer in the employ of, or providing advice to, those authorities may be maintained;

(e) provide the opportunity for interested parties, including foreign interests, to present facts and arguments, to the extent time permits, including an opportunity to comment on the preliminary determination of dumping or of subsidization;

(f) protect confidential (business proprietary) information, received by the competent investigating authority, to ensure that there is no disclosure except to representatives determined by the competent investigating authorities to be qualified;

(g) prepare administrative records, including recommendations of official advisory bodies that may be required to be kept, and any record of ex parte meetings that may be required to be kept;

(h) provide disclosure of relevant information upon which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties, including foreign interests. Such information shall include an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of subsidy;

(i) provide a statement of reasons concerning the final determination of dumping or subsidization; and

(j) provide a statement of reasons for final determinations concerning material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

Inclusion of an item in paragraphs (a) through (j) is not intended to serve as guidance to a binational panel reviewing a final antidumping or countervailing duty determination pursuant to Article 1904 in determining whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party.

Article 1908: Special Secretariat Provisions

1. The Parties shall establish a section within the Secretariat established pursuant to Article 2002 to facilitate the operation of this Chapter and the work of panels or committees that may be convened pursuant to this Chapter.

2. The secretaries of the Secretariat established pursuant to Article 2002 shall act jointly to service all meetings of panels or committees established pursuant to this Chapter. The secretary of the Party in which a panel or committee proceeding is held shall prepare a record thereof and shall preserve an authentic copy of the same in the permanent offices. Such secretary shall upon request provide to the secretary of any other Party a copy of such portion of the record as is requested, except that only public portions of the record shall be provided to the secretary of the Party that is not an involved Party.

3. Each secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Chapter and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the file number for briefs and other papers relating to such request.

4. Each secretary shall forward to the secretary of the other involved Party copies of all official letters, documents or other papers received or filed with the Secretariat office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 1. The secretary of an involved Party shall provide upon request to the secretary of the Party that is not an involved Party in the proceeding a copy of such public documents as are requested.

5. The remuneration of panelists or committee members, their travel and lodging expenses, and all general expenses of the panels or committees shall be borne equally by the involved Parties. Each panelist or committee member shall keep a record and render a final account of the person's time and expenses, and the panel or

committee shall keep a record and render a final account of all general expenses. The Commission shall establish amounts of remuneration and expenses that will be paid to the panelists and committee members.

Article 1909: Code of Conduct

The Parties shall, by the date of entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903, 1904 and 1905.

Article 1910: Miscellaneous

Upon request, the competent investigating authority of a Party shall provide the other Party or Parties with copies of all public information submitted to it for the purposes of an investigation with respect to goods of that other Party or Parties.

Article 1911: Definitions

For purposes of this Chapter:

administrative record means, unless otherwise agreed by the Parties and the other persons appearing before a panel:

(a) all documentary or other information presented to or obtained by the competent investigating authority in the course of the administrative proceeding, including any governmental memoranda pertaining to the case, and including any record of ex parte meetings as may be required to be kept;

(b) a copy of the final determination of the competent investigating authority, including reasons for the determination;

(c) all transcripts or records of conferences or hearings before the competent investigating authority; and

(d) all notices published in the official journal of the importing party in connection with the administrative proceeding;

antidumping statute as referred to in Articles 1902 and 1903 means "antidumping statute" as defined in Annex 1911;

competent investigating authority means "competent investigating authority" of a Party, as defined in Annex 1911;

countervailing duty statute as referred to in Articles 1902 and 1903 means "countervailing duty statute" as defined in Annex 1911;

domestic law for the purposes of Article 1905(1) means a Party's constitution, statutes, regulations and judicial decisions to the extent they are relevant to the antidumping and countervailing duty laws;

final determination means "final determination" as defined in Annex 1911;

foreign interests includes exporters or producers of the Party whose goods are the subject of the proceeding or, in the case of a countervailing duty proceeding, the government of the Party whose goods are the subject of the proceeding;

general legal principles includes principles such as standing, due process, rules of statutory construction, mootness and exhaustion of administrative remedies;

importing Party means the Party that issued the final determination;

involved Party means:

(a) the importing Party; or

(b) a Party whose goods are the subject of the final determination;

remand means a referral back for a determination not inconsistent with the panel or committee decision; and

standard of review means the standards set out in Annex 1911, as may be amended from time to time by a Party.

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ANNEX 1901.2

Establishment of Binational Panels

1. Prior to the date of entry into force of this Agreement, the Parties shall develop a roster of individuals to serve as panelists in disputes under this Chapter. The roster shall include sitting or retired judges to the fullest extent practicable. The Parties shall consult in developing the roster, which shall include at least 75 candidates. Each Party

shall select at least 25 candidates, and all candidates shall be citizens of Canada, the United States or Mexico. Candidates shall be of good character, high standing and repute, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Candidates shall not be affiliated with a Party, and in no event shall a candidate take instructions from a Party. Judges shall not be considered to be affiliated with a Party. The Parties shall maintain the roster, and may amend it, when necessary, after consultations.

2. A majority of the panelists on each panel shall be lawyers in good standing. Within 30 days of a request for a panel, each involved Party shall appoint two panelists, in consultation with the other involved Party. The involved Parties normally shall appoint panelists from the roster. If a panelist is not selected from the roster, the panelist shall be chosen in accordance with and be subject to the criteria of paragraph 1. Each involved Party shall have the right to exercise four peremptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel up to four candidates proposed by the other involved Party. Peremptory challenges and the selection of alternative panelists shall occur within 45 days of the request for the panel. If an involved Party fails to appoint its members to a panel within 30 days or if a panelist is struck and no alternative panelist is selected within 45 days, such panelist shall be selected by lot on the 31st or 46th day, as the case may be, from that Party's candidates on the roster.

3. Within 55 days of the request for a panel, the involved Parties shall agree on the selection of a fifth panelist. If the involved Parties are unable to agree, they shall decide by lot which of them shall select, by the 61st day, the fifth panelist from the roster, excluding candidates eliminated by peremptory challenges.

4. Upon appointment of the fifth panelist, the panelists shall promptly appoint a chairman from among the lawyers on the panel by majority vote of the panelists. If there is no majority vote, the chairman shall be appointed by lot from among the lawyers on the panel.

5. Decisions of the panel shall be by majority vote and based upon the votes of all members of the panel. The panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of panelists.

6. Panelists shall be subject to the code of conduct established pursuant to Article 1909. If an involved Party believes that a panelist is in violation of the code of conduct, the involved Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures of this Annex.

7. When a panel is convened pursuant to Article 1904 each panelist shall be required to sign:

(a) an application for protective order for information supplied by the United States or its persons covering business proprietary and other privileged information;

(b) an undertaking for information supplied by Canada or its persons covering confidential, personal, business proprietary and other privileged information; or

(c) an undertaking for information supplied by Mexico or its persons covering confidential, business proprietary, and other privileged information.

8. Upon a panelist's acceptance of the obligations and terms of an application for protective order or disclosure undertaking, the importing Party shall grant access to the information covered by such order or disclosure undertaking. Each Party shall establish appropriate sanctions for violations of protective orders or disclosure undertakings issued by or given to any Party. Each Party shall enforce such sanctions with respect to any person within its jurisdiction. Failure by a panelist to sign a protective order or disclosure undertaking shall result in disqualification of the panelist.

9. If a panelist becomes unable to fulfill panel duties or is disqualified, proceedings of the panel shall be suspended pending the selection of a substitute panelist in accordance with the procedures of this Annex.

10. Subject to the code of conduct established pursuant to Article 1909, and provided that it does not interfere with the performance of the duties of such panelist, a panelist may engage in other business during the term of the panel.

11. While acting as a panelist, a panelist may not appear as counsel before another panel.

12. With the exception of violations of protective orders or disclosure undertakings, signed pursuant to paragraph 7, panelists shall be immune from suit and legal process relating to acts performed by them in their official capacity.

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ANNEX 19O3.2

Panel Procedures Under Article 1903

1. The panel shall establish its own rules of procedure unless the Parties otherwise agree prior to the establishment of that panel. The procedures shall ensure a right to at least one hearing before the panel, as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential, unless the two Parties otherwise agree. The panel shall base its decisions solely upon the arguments and submissions of the two Parties.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after its chairman is appointed, present to the two Parties an initial written declaratory opinion containing findings of fact and its determination pursuant to Article 1903.

3. If the findings of the panel are affirmative, the panel may include in its report its recommendations as to the means by which the amending statute could be brought into conformity with the provisions of Article 1902(2)(d). In determining what, if any, recommendations are appropriate, the panel shall consider the extent to which the amending statute affects interests under this Agreement. Individual panelists may provide separate opinions on matters not unanimously agreed. The initial opinion of the panel shall become the final declaratory opinion, unless a Party to the dispute requests a reconsideration of the initial opinion pursuant to paragraph 4.

4. Within 14 days of the issuance of the initial declaratory opinion, a Party to the dispute disagreeing in whole or in part with the opinion may present a written statement of its objections and the reasons for those objections to the panel. In such event, the panel shall request the views of both Parties and shall reconsider its initial opinion. The panel shall conduct any further examination that it deems appropriate, and shall issue a final written opinion, together with dissenting or concurring views of individual panelists, within 30 days of the request for reconsideration.

5. Unless the Parties to the dispute otherwise agree, the final declaratory opinion of the panel shall be made public, along with any separate opinions of individual panelists and any written views that either Party may wish to be published.

6. Unless the Parties to the dispute otherwise agree, meetings and hearings of the panel shall take place at the office of the amending Party's Section of the Secretariat. ANNEX 1904.13

Extraordinary Challenge Procedure

1. The involved Parties shall establish an extraordinary challenge committee, composed of three members, within 15 days of a request pursuant to Article 1904(13). The members shall be selected from a 15-person roster comprised of judges or former judges of a federal judicial court of the United States or a judicial court of superior jurisdiction of Canada, or a Federal Judicial Court of Mexico. Each Party shall name five persons to this roster. Each involved Party shall select one member from this roster and the involved Partie's shall decide by lot which of them shell select the third member from the roster.

2. The Parties shall establish by the date of entry into force of the Agreement rules of procedure for committees. The rules shall provide for a decision of a committee within 90 days of its establishment.

3. Committee decisions shall be binding on the Parties with respect to the particular matter between the Parties that was before the panel. After examination of the legal and factual analysis underlying the findings and conclusions of the panel's decision in order to determine whether one of the grounds set out in Article 1904(13) has been established, and upon finding that one of those grounds has been established, the committee shall vacate the original panel decision or remand it to the original panel for action not inconsistent with the committee's decision; if the grounds are not established, it shall deny the challenge and, therefore, the original panel decision shall stand affirmed. If the original decision is vacated, a new panel shall be established pursuant to Annex 1901.2.

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ANNEX 1904.15(d)

Amendments to Domestic Laws

Part A - Schedule of Canada

1. Canada shall amend sections 56 and 58 of the Special Import Measures Act, as amended, to allow the United States or Mexico or a United States or a Mexican manufacturer, producer, or exporter, without regard to payment of duties, to make a written request for a re-determination; and section 59 to require the Deputy Minister to make a ruling on a request for a redetermination within one year of a request to a designated officer or other customs officer;

2. Canada shall amend section 18.3(1) of the Federal Court Act, as amended, to render that section inapplicable to the United States and to Mexico; and shall provide in its statutes or regulations that persons (including producers of goods subject to an investigation) have standing to ask Canada to request a panel review where such persons would be entitled to commence domestic procedures for judicial review if the final determination were reviewable by the Federal Court pursuant to section 18.1(4);

3. Canada shall amend the Special Import Measures Act, as amended, and any other relevant provisions of law, to provide that the following actions of the Deputy Minister shall be deemed for the purposes of this Article to be final determinations subject to judicial review:

(a) a determination by the Deputy Minister pursuant to section 41;

(b) a re-determination by the Deputy Minister pursuant to section 59; and

(c) a review by the Deputy Minister of an undertaking

pursuant to section 53(1).

4. Canada shall amend Part II of the Special Import Measures Act, as amended, to provide for binational panel review respecting goods of the Mexico and the United States;

5. Canada shall amend Part II of the Special Import Measures Act, as amended, to provide for definitions related to this Agreement, as may be required;

6. Canada shall amend Part II the Special Import Measures Act, as amended, to permit the governments of Mexico and the United States to request binational panel review of final determinations;

7. Canada shall amend Part II of Special Import Measures Act, as amended, to provide for the establishment of panels requested to review final determinations in respect of goods of Mexico and goods of the United States;

8. Canada shall amend Part II of Special Import Measures Act, as amended, to provide for the conduct of review of a final determination in accordance with Chapter XX of this Agreement;

9. Canada shall amend Part II of the Special Import Measures Act, as amended, to provide for request and conduct of an extraordinary challenge proceeding in accordance with Article 1904 of this Agreement;

10. Canada shall amend Part II of the Special Import Measures Act, as amended, to provide for a code of conduct, immunity, disclosure undertakings respecting confidential information and remuneration for members of panels established pursuant to this Agreement; and

11. Canada shall make such amendments as are necessary to establish a Canadian Secretariat for this Agreement and generally to facilitate the operation of Chapter 19 of this Agreement.

Part B - Schedule of Mexico

Mexico shall amend its antidumping and countervailing duty statutes and regulations, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws, to provide the following:

1. elimination of the possibility of imposing duties within the five day period after the acceptance of a petition; substitution of the term Resoluci¢n de Inicio for Resoluci¢n Provisional and the term Resoluci¢n Provisional for Resoluci¢n que revisa a la Resoluci¢n Provisional;

2. full participation in the administrative process for interested parties, including foreign interests, as well as the right to administrative appeal and judicial review of final determinations of investigations, reviews, product coverage or other final decisions affecting them;

3. elimination of the possibility of imposing provisional duties before the issuance of a preliminary determination;

4. the right to immediate access to review of final determinations by binational panels, to interested parties, including foreign interests, without the need to exhaust first the administrative appeal;

5. explicit and adequate timetables for determinations of the competent investigating authority and for the submission of questionnaires, evidence and comments by interested parties, including foreign interests, as well as an opportunity for them to present facts and arguments in support of their positions prior to any final determination, to the extent time permits, including an opportunity to be adequately informed in a timely manner of and to comment on all aspects of preliminary determinations of dumping or subsidization;

6. written notice to interested parties, including foreign interests, of any of the actions or resolutions rendered by the competent investigating authority, including initiation of an administrative review as well as its conclusion;

7. disclosure meetings by the competent investigating authority with interested parties, including foreign interests, in investigations and reviews, within seven calendar days after the date of publication in the Diario Oficial de la Federacion of preliminary and final determinations, to explain the margins of dumping and the amount of subsidies calculations and to provide them with copies of sample calculations and, if used, computer programs;

8. timely access by eligible counsel of interested parties, including foreign interests, during the course of the proceeding (including disclosure meetings) and on appeal, either before a national tribunal or a panel, to all information contained in the administrative record of the proceeding, including confidential information, excepting proprietary information of such a high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner as well as government classified information, subject to an undertaking for confidentiality that strictly forbids use of the information for personal benefit and its disclosure to persons who are not authorized to receive such information; and for sanctions that are specific to violations of undertakings in proceedings before national tribunals or panels;

9. timely access by interested parties, including foreign interests, during the course of the proceeding, to all non-confidential information contained in the administrative record and access to such information by interested parties or their representatives in any proceeding after 90 days following the issuance of the final determination;

10. a mechanism requiring that any person submitting documents to the competent investigating authority shall simultaneously serve on interested persons, including foreign interests, any submissions after the complaint;

11. preparation of summaries of ex parte meetings held between the competent investigating authority and any interested party and the inclusion in the administrative record of such summaries, which shall be made available to

parties to the proceeding; if such summaries contain business proprietary information, such documents must be disclosed to a party's representative under an undertaking to ensure confidentiality;

12. maintenance by the competent investigating authority of an administrative record as defined in this Chapter and a requirement that the final determination be based solely on the administrative record;

13. informing interested parties, including foreign interests, in writing of all data and information the administering authority requires them to submit for the investigation, review, product coverage proceeding, or other antidumping and countervailing duty proceedings;

14. the right to an annual individual review on request by the interested parties, including foreign interests, through which they can obtain their own dumping margin or countervailing duty rate, or can change the margin or rate they received in the investigation or a previous review, reserving to the competent investigating authority the ability to initiate a review, at any time, on its own motion and requiring that the competent investigating authority issue a notice of initiation within a reasonable period of time after the request;

15. application of determinations issued as a result of judicial, administrative, or panel review, to the extent they are relevant to interested parties, including foreign interests, in addition to the plaintiff, so that all interested parties will benefit;

16. issuance of binding decisions by the competent investigating authority if an interested party, including a foreign interest, seeks clarification outside the context of an antidumping or countervailing duty investigation or review as to whether a particular product is covered by an antidumping or countervailing duty order;

17. a detailed statement of reasons and legal basis concerning final determinations in a manner sufficient to permit interested parties, including foreign interests, to make an informed decision as to whether to seek judicial or panel review, including an explanation of methodological or policy issues raised in the calculation of dumping or subsidization;

18. written notice to interested parties, including foreign interests, and publication in the Diario Oficial de la Federacion of initiation of investigations setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the product at issue;

19. documentation in writing of all advisory bodies' decisions or recommendations, including the basis for the decision, and release of such written decision to parties to the proceeding; all decisions or recommendations of any advisory body shall be placed in the administrative record and made available to parties to the proceeding; and

20. a standard of review to be applied by binational panels as defined in Article 1911.

Part C - Schedule of the United States

1. The United States shall amend section 301 of the Customs Courts Act of 1980, as amended, and any other relevant provisions of law, to eliminate the authority to issue declaratory judgments in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian or Mexican merchandise;

2. The United States shall amend section 405(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to provide that the interagency group established under section 242 of the Trade Expansion Act of 1962 shall prepare a list of individuals qualified to serve as members of binational panels, extraordinary challenge committees, and special committees convened under chapter 19 of this Agreement;

3. The United States shall amend section 405(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to provide that panelists selected to serve on panels or committees convened pursuant to chapter XX of this Agreement, and individuals designated to assist such appointed individuals, shall not be considered employees of the United States;

4. The United States shall amend section 405(c) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to provide that panelists selected to serve on panels or committees convened pursuant to chapter XX of this Agreement, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members, except with respect to the violation of protective orders described in section 777f(d)(3) of the Tariff Act of 1930;

5. The United States shall amend section 405(d) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to establish a United States Secretariat to facilitate, inter alia, the operation of chapter XX of this Agreement and the work of the binational panels, extraordinary challenge committees, and special committees convened under that chapter;

6. The United States shall amend section 407 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to provide on that an extraordinary challenge committee convened pursuant to chapter XX of this Agreement shall have authority to obtain information in the event of an allegation that a member of a binational panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct, and for the committee to summon the attendance of witnesses, order the taking of depositions, and obtain the assistance of any district or territorial court of the United States in aid of the committee's investigation;

7. The United States shall amend section 408 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. section 2112 note, to provide that, in the case of a final determination of a competent investigating authority of Mexico, as well as Canada, the filing with the United States Secretary of a request for binational panel review by a person described in Article 1904.5 of this Agreement shall be deemed, upon receipt of the request by the Secretary, to be a request for binational panel review within the meaning of Article 1904.4 of that Agreement;

8. The United States shall amend section 516A of the Tariff Act of 1930 to provide that judicial review of antidumping or countervailing duty cases regarding Mexican, as well as Canadian, merchandise shall not be commenced in the Court of International Trade if binational panel review is requested;

9. The United States shall amend section 516A(a) of the Tariff Act of 1930 to provide that the time limits for commencing an action in the Court of International Trade with regard to antidumping or countervailing duty proceedings involving Mexican or Canadian merchandise shall not begin to run until the 31st day after the date of publication in the Federal Register of notice of the final determination or the antidumping duty order;

10. The United States shall amend section 516A(g) of the Tariff Act of 1930 to provide, in accordance with the terms of this Agreement, for binational panel review of antidumping and countervailing duty cases involving Mexican or Canadian merchandise. Such amendment shall provide that if binational panel review is requested such review will be exclusive;

11. The United States shall amend section 516A(g) of the Tariff Act of 1930 to provide that the competent investigating authority shall, within the period specified by any panel formed to review a final determination regarding Mexican or Canadian merchandise, take action not inconsistent with the decision of the panel or committee;

12. The United States shall amend section 777 of the Tariff Act of 1930 to provide for the disclosure to authorized persons under protective order of proprietary information in the administrative record if binational panel review of a final determination regarding Mexican or Canadian merchandise is requested; and

13. The United States shall amend section 777 of the Tariff Act of 1930 to provide for the imposition of sanctions on any person who the competent investigating authority finds to have violated a protective order issued by the competent investigating authority of the United States or disclosure undertakings entered into with an authorized agency of Mexico or with a competent investigating authority of Canada to protect proprietary material during binational panel review.

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ANNEX 1905.7

Special Committee Procedures

1. The Parties shall establish rules of procedure by the date of entry into force of this Agreement in accordance with the following principles:

(a) the procedures shall assure a right to at least one hearing before the special committee as well as the opportunity to provide initial and rebuttal written submissions;

(b) the procedures shall assure that the special committee shall prepare an initial report typically within 60 days of the appointment of the last member, and shall afford the Parties 14 days to comment on that report prior to issuing a final report 30 days after presentation of the initial report;

(c) the special committee's hearings, deliberations, and initial report, and all written submissions to and communications with the special committee shall be confidential;

(d) unless the parties to the dispute otherwise agree, the decision of the special committee shall be published 10 days after it is transmitted to the disputing Parties, along with any separate opinions of individual members and any written views that either Party may wish to be published; and

(e) unless the Parties to the dispute otherwise agree, meetings and hearings of the special committee shall take place at the office of the section of the Secretariat of the Party complained against.

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ANNEX 1911

Country-Specific Definitions

For purposes of this Chapter:

antidumping statute means:

(a) in the case of Canada, the relevant provisions of the Special Import Measures Act, as amended, and any successor statutes;

(b) in the case of the United States, the relevant

provisions of Title VII of the Tariff Act of 1930, as amended, and any successor statutes;

(c) in the case of Mexico, the relevant provisions of the Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior Implementing Article 131 of the Constitution of the United Mexican States, as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations.

competent investigating authority means:

(a) in the case of Canada;

(i) the Canadian International Trade Tribunal, or its successor, or

(ii) the Deputy Minister of National Revenue for Customs and Excise as defined in the Special Import Measures Act, or the Deputy Minister's successor;

(b) in the case of the United States;

(i) the International Trade Administration of the United States Department of Commerce, or its successor, or

(ii) the United States International Trade Commission, or its successor; and

(c) in the case of Mexico, the designated authority within the Secretar¡a de Comercio y Fomento Industrial, or its successor.

countervailing duty statute means:

(a) in the case of Canada, the relevant provisions of the Special Import Measures Act, as amended, and any successor statutes;

(b) in the case of the United States, section 303 and the relevant provisions of Title VII of the Tariff Act of 1930, as amended, and any successor statutes;

(c) in the case of Mexico, the relevant provisions of the Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior, as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations.

final determination means:

(a) in the case of Canada,

(i) an order or finding of the Canadian International Trade Tribunal under subsection 43(1) of the Special Import Measures Act,

(ii) an order by the Canadian International Trade Tribunal under subsection 76(4) of the Special Import Measures Act, continuing an order or finding made under subsection 43(1) of the Act with or without amendment,

(iii) a determination by the Deputy Minister of National Revenue for Customs and Excise pursuant to section 41 of the Special Import Measures Act,

(iv) a re-determination by the Deputy Minister pursuant to section 59 of the Special Import Measures Act,

(v) a decision by the Canadian International Trade Tribunal pursuant to subsection 76(3) of the Special Import Measures Act not to initiate a review,

(vi) a reconsideration by the Canadian International Trade Tribunal pursuant to subsection 91(3) of the Special Import Measures Act, and

(vii) a review by the Deputy Minister of an undertaking pursuant to section 53(1) of the Special Import Measures Act;

(b) in the case of the United States,

(i) a final affirmative determination by the International Trade Administration of the United States Department of Commerce or by the United

States International Trade Commission under section 705 or 735 of the Tariff Act of 1930, as amended, including any negative part of such a determination,

(ii) a final negative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the Tariff Act of 1930, as amended, including any affirmative part of such a determination,

(iii) a final determination, other than a determination in (iv), under section 751 of the Tariff Act of 1930, as amended,

(iv) a determination by the United States International Trade Commission under section 751(b) of the Tariff Act of 1930, as amended, not to review a determination based upon changed circumstances, and

(v) a final determination by the International Trade Administration of the United States Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order; and

(c) in the case of the Mexico,

(i) a final resolution regarding anti-dumping or countervailing duties investigations by the Secretar¡a de Comercio y Fomento Industrial, pursuant to Article 13 of the Ley Reglamentaria del Art¡culo 131 de la Constituci¢n Pol¡tica de los Estados Unidos Mexicanos en Materia de Comercio Exterior, as amended,

(ii) a final resolution regarding an annual administrative review of anti-dumping or countervailing duties by the Secretar¡a de Comercio y Fomento Industrial, as described in Article 1904.15(q)(xiv), and

(iii) a final resolution by the Secretaria de Comercio y Fomento Industrial as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping or countervailing duty resolution.

standard of review means:

(a) in the case of Canada, the grounds set forth in section 18.1(4) of the Federal Court Act with respect to all final determinations;

(b) in the case of the United States,

(i) the standard set forth in section 516A(b)(l)(B) of the Tariff Act of 1930, as amended, with the exception of a determination referred to in (ii), and

(ii) the standard set forth in section 516A(b)(l)(A) of the Tariff Act of 1930, as amended, with respect to a determination by the United States International Trade Commission not to initiate a review pursuant to section 751(b) of the Tariff Act of 1930, as amended; and

(c) in the case of the Mexico, the standard set forth in Article 238 of the C¢digo Fiscal de la Federaci¢n, or any successor statutes, based solely on the administrative record.

NAFTA Chapter Twenty Institutional Arrangements and Dispute Settlement Procedures

Subchapter A - Institutions

Article 2001: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee its further elaboration;

(c) resolve disputes that may arise regarding its interpretation or application;

(d) supervise the work of all committees and working groups established under this Agreement, referred to in Annex 2001.2; and

(e) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;

(b) seek the advice of non-governmental persons or groups; and

(c) take such other action in the exercise of its functions as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise agree.

5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired successively by each Party.

Article 2002: The Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.

2. Each Party shall:

(a) establish a permanent office of its Section;

(b) be responsible for

(i) the operation and costs of its Section, and

(ii) the remuneration and payment of expenses of panelists and members of committees and scientific review boards established under this Agreement, as set out in Annex 2002.2;

(c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and

(d) notify the Commission of the location of its Section's office.

3. The Secretariat shall:

(a) provide assistance to the Commission;

(b) provide administrative assistance to:

(i) panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908, and

(ii) panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and

(c) as the Commission may direct:

(i) support the work of other committees and groups established under this Agreement, and

(ii) otherwise facilitate the operation of this Agreement.

Subchapter B - Dispute Settlement

Article 2003: Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 2004: Recourse to Dispute Settlement Procedures

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004.

Article 2005: GATT Dispute Settlement

1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.

2. Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its intention. If a third Party wishes to have recourse to dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.

3. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article 104 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

4. In any dispute referred to in paragraph 1 that arises under Subchapter Seven-B (Sanitary and Phytosanitary Measures) or Chapter Nine (Standards-Related Measures).

(a) concerning a measure adopted or maintained by a Party to protect its human, animal, or plant life or health, or to protect its environment; and

(b) that raises factual issues concerning the environment, health, safety or conservation, including directly related scientific matters,

where the responding Party requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

5. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 or 4 to the other Parties and to its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3 or 4, the responding Party shall deliver its request no later than 15 days thereafter. Upon receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 2007.

6. Once dispute settlement procedures have been initiated under Article 2007 or dispute settlement proceedings have been initiated under the GATT, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3 or 4.

7. For purposes of this Article, dispute settlement proceedings under the GATT are deemed to be initiated by a Party's request for a panel, such as under Article XXIII:2 of the General Agreement on Tariffs and Trade 1947, or for a committee investigation, such as under Article 20.1 of the Customs Valuation Code.

Consultations

Article 2006: Consultations

1. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.

3. Unless the Commission otherwise provides in its rules and procedures established under Article 2001(4), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to its Section of the Secretariat.

4. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) seek to avoid any resolution that adversely affects the interests under this Agreement of any other Party.

Initiation of Procedures

Article 2007: Commission - Good Offices, Conciliation and Mediation

1. If the consulting Parties fail to resolve a matter pursuant to Article 2006 within:

(a) 30 days of delivery of a request for consultations;

(b) 45 days of delivery of such request if any other Party has subsequently requested or has participated in consultations regarding the same matter;

(c) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods; or

(d) such other period as they may agree,

any such Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission where:

(a) it has initiated dispute settlement proceedings under the GATT regarding any matter subject to Article 2005(3) or (4), and has received a request pursuant to Articles 2005(5) for recourse to dispute settlement procedures under this Chapter; or

(b) consultations have been held pursuant to Article 513 (Working Group on Rules of Origin), Article 765 (Sanitary and Phytosanitary Measures - Technical Consultations) and Article 914 (Standards-Related Measures - Technical Consultations).

3. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Parties and to its Section of the Secretariat.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly.

5. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures; or

(c) make recommendations,

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

6. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

Panel Proceedings

Article 2008: Request for an Arbitral Panel

1. If the Commission has convened pursuant to Article 2007(4), and the matter has not been resolved within:

(a) 30 days thereafter;

(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 2007(6); or

(c) such other period as the consulting Parties may agree,

any consulting Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.

2. Upon delivery of the request, the Commission shall establish an arbitral panel.

3. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party, on delivery of written notice of its intention to participate to the disputing Parties and its Section of the Secretariat. Such notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.

4. If such Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:

(a) a dispute settlement procedure under this Agreement; or

(b) a dispute settlement proceeding in the GATT on grounds that are substantially equivalent to those available to that Party under this Agreement,

regarding the same matter in the absence of a significant change in economic or commercial circumstances.

5. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 2009: Roster

1. The Parties shall establish and maintain a roster of up to 30 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, any Party; and

(c) comply with a code of conduct to be established by the Commission.

Article 2010: Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 2009(2).

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 2007(5).

Article 2011: Panel Selection

1. Where there are two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.

(d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.

(c) Within 15 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.

(d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 2012: Rules of Procedure

1. The Commission shall establish Model Rules of Procedure, in accordance with the following principles:

(a) The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions.

(b) The panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

> "To examine, in the light of the relevant provisions of the NAFTA, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article 2016(2)."

4. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

5. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 2004, the terms of reference shall so indicate.

Article 2013: Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and to its Section of the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel and to receive written submissions of the disputing Parties.

Article 2014: Role of Experts

At the request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

Article 2015: Scientific Review Boards

1. At the request of a disputing Party or, unless the disputing Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing Party in a proceeding, subject to such terms and conditions as such Parties may agree.

2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the disputing Parties and the scientific bodies set out in the Model Rules of Procedure established pursuant to Article 2012(1).

3. The participating Parties shall be provided:

> (a) advance notice of, and an opportunity to provide comments to the panel on, the proposed factual issues to be referred to the board; and
>
> (b) a copy of the board's report and an opportunity to provide comments on the report to the panel.

4. The panel shall take the board's report and any comments by the Parties thereon into account in the preparation of its report.

Article 2016: Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 2014 or 2015.

2. Unless the disputing Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article 2012(1) may provide, present to the disputing Parties an initial report containing:

> (a) findings of fact, including any findings pursuant to a request under Article 2012(5);
>
> (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004, or any other determination requested in the terms of reference; and
>
> (c) its recommendations, if any, for resolution of the dispute.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A disputing Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or at the request of any disputing Party, may:

(a) request the views of any participating Party;

(b) reconsider its report; and

(c) make any further examination that it considers appropriate.

Article 2017: Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

3. The disputing Parties shall transmit to the Commission the final report of the panel, including any report of a scientific review board established under Article 2015, as well as any written views that a disputing Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.

4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

Implementation of Panel Reports

Article 2018: Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.

2. Whenever possible, such resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex 2004 or, failing such a resolution, compensation.

Article 2019: Non-Implementation - Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 2004 and the Party complained against has not reached agreement with any complaining Party on a mutually satisfactory resolution pursuant to Article 2018(1) within 30 days of receiving the final report, such complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1:

(a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment by the non-complying Party in the sense of Annex 2004; and

(b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. On the written request of any disputing Party delivered to the other Parties and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.

4. The panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panelist is selected or such other period as the disputing Parties may agree.

Subchapter C - Domestic Proceedings
and Private Commercial Dispute Settlement

Article 2020: Referrals of Matters from Judicial or
Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 2021: Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with this Agreement.

Article 2022: Alternative Dispute Resolution of Commercial Disputes

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.

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ANNEX 2001.2

Committees and Working Groups

A. Committees:

1. Committee on Trade in Goods (Article 317)

2. Committee on Trade in Worn Clothing (Annex 300-B, Section 9.1)

3. Committee on Agricultural Trade (Article 708)

4. Committee on Sanitary and Phytosanitary Measures (Article 764)

5. Committee on Standards-Related Measures (Article 913)

(a) Land Transportation Services Standards Subcommittee (Article 913(5))

(b) Telecommunications Standards Subcommittee (Article 913(5))

(c) Automotive Standards Council (Article 913(5))

(d) Subcommittee on Labelling of Textile and Apparel Goods (Article 913(5))

6. Committee on NAFTA Small Business (Article 1021)

7. Financial Services Committee (Article 1414)

8. Advisory Committee on Private Commercial Disputes (Article 2022)

B. Working Groups:

1. Working Group on Rules of Origin (Article 513)

(a) Customs Subgroup (Article 513(5))

2. Working Group on Agricultural Subsidies (Article 706(6))

3. Mexican-American Working Group (Article 704(3), Section I)

4. Mexican-Canadian Working Group (Article 704(3), Section II)

5. Working Group on Trade and Competition (Article 1504)

6. Temporary Entry Working Group (Article 1605)

C. Other Committees and Working Groups established under this Agreement

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ANNEX 2002.2

Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to the panelists, committee members and members of scientific review boards.

2 The remuneration of panelists or committee members and their assistants, members of scientific review boards, their travel and lodging expenses, and all general expenses of panels, committees or scientific review boards shall be borne equally by:

(a) in the case of panels or committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), the involved Parties, as they are defined in Article 1911; or

(b) in the case of panels and scientific review boards established under this Chapter, the disputing Parties.

3. Each panelist shall keep a record and render a final account of the person's time and expenses, and the panel, committee or scientific review board shall keep a record and render a final account of all general expenses.

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ANNEX 2004

Nullification and Impairment

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

(a) Part Two (Trade in Goods), except for those provisions of Annex 300-A (Automotive Sector) or Chapter Six (Energy) relating to investment,

(b) Part Three (Technical Barriers to Trade),

(c) Chapter Twelve (Cross-Border Trade in Services), or

(d) Part Six (Intellectual Property),

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke:

(a) paragraph (1)(a) or (b), to the extent that the benefit arises from any cross-border trade in services provision of Part Two, or

(b) paragraph (1)(c) or (d),

with respect to any measure subject to an exception under Article 2101 (General Exceptions).

NAFTA PART NINE OTHER PROVISIONS
Chapter Twenty-One

Exceptions

Article 2101: General Exceptions

1. For purposes of:

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, and

(b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services,

GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement. The Parties understand that the measures

referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services,

(b) Part Three (Technical Barriers to Trade), to the extent that a provision of that Part applies to services,

(c) Chapter Twelve (Cross-Border Trade in Services), and

(d) Chapter Thirteen (Telecommunications),

shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection, or

3. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in Article 1106(1)(b) or (c) or (3)(a) or (b) (Performance Requirements) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) necessary for the conservation of living or non-living exhaustible natural resources.

Article 2102: National Security

1. Subject to Articles 607 (Energy) and 1018 (Government Procurement), nothing in this Agreement shall be construed:

(a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2103: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any such convention, the provisions of that convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article 301 (Market Access - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT, and

(b) Article 315 (Market Access - Export Taxes) and Article 604 (Energy - Export Taxes),

shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 1202 (Cross-Border Trade in Services - National Treatment) and Article 1407 (Financial Services - National Treatment) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations, and to those taxation measures set out in Annex 2103.4 that relate to the purchase or consumption of particular services, and

(b) Articles 1102 and 1103 (Investment - National Treatment and MFN), Articles 1202 and 1203 (Cross-Border Trade in Services - National Treatment and MFN) and Articles 1407 and 1408 (Financial Services - National Treatment and MFN) and shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations and those taxes listed in Annex 2103.4,

except that nothing in those Articles shall apply

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention,

(d) to a non-conforming provision of any existing taxation measure,

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure,

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles,

(g) to any new taxation measure aimed at ensuring the equitable and effective imposition or collection of taxes and that does not arbitrarily discriminate between persons, goods or services of the Parties or arbitrarily nullify or impair benefits accorded under those Articles, in the sense of Annex 2004, or

(h) to the measures set out in Annex 2103.4.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties, Article 1106(3), (4), (5) and (6) (Performance Requirements) shall apply to taxation measures.

6. Article 1110 (Expropriation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 1116 or 1117, where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex 2104.6 at the time that it gives notice under Article 1119. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months after such referral, the investor may submit its claim to arbitration under Article 1120.

Article 2104: Balance of Payments

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures that restrict international transactions or related international transfers and payments ("transfers") where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are:

(a) consistent with paragraphs 4 through 8 when imposed on cross-border trade in financial services; or

(b) consistent with paragraphs 2 through 6 when imposed on any other transaction or transfer.

2. Restrictions imposed on transactions or transfers other than cross-border trade in financial services shall:

(a) when imposed on payments for current international transactions, be consistent with Article VIII(3) of the Articles of Agreement of the International Monetary Fund ("IMF");

(b) when imposed on international capital transactions, be consistent with Article VI of the Articles of Agreement of the IMF and imposed only in conjunction with measures imposed on current international transactions under paragraphs 2(a) and 4(a); and

(c) when imposed on transfers covered by Article 1109 (Investment - Transfers) and transfers related to trade in goods, be made in a freely usable currency at a market rate of exchange such that the payments and transfers are not substantially impeded.

3. No Party may adopt or maintain measures such as tariff surcharges, quotas or licenses under this Article.

4. As soon as practicable after imposing a restriction under this Article, the Party imposing the restriction shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF; and

(b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties and receive endorsement of such measures by the IMF.

5. Each Party shall ensure that any measure that it adopts or maintains under this Article shall:

(a) avoid unnecessary damage to the commercial, economic and financial interests of another Party;

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the situation improves;

(d) be consistent with any economic adjustment measures endorsed by the IMF under paragraph 4(b) and consistent with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment and most-favored-nation treatment basis.

6. A Party may adopt or maintain a measure under this Article that gives priority to services which are more essential to its economic program, provided that, except as specifically approved under an IMF-endorsed adjustment program in effect under paragraph 4, no such measure is imposed for the purpose of protecting a specific industry or sector.

7. A Party imposing a restriction on cross-border trade in financial services shall:

(a) not impose more than one measure on any given transaction and its related transfer, except as specifically approved under an IMF-endorsed adjustment program;

(b) promptly notify the other Parties; and

(c) consult promptly with the other Parties to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements

(i) the nature and extent of the balance of payments and external financial difficulties of the Party,

(ii) the external economic and trading environment of the Party, and

(iii) alternative corrective measures that may be available.

8. In consultations under paragraph 7(c), the Parties shall:

(a) consider if measures adopted under this Article comply with paragraph 5, in particular subparagraph 5(c); and

(b) accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the IMF of the balance of payments and external financial situation of the Party adopting the measures.

Article 2105: Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to laws protecting personal privacy.

Article 2106: Cultural Industries

Annex 2106 applies to cultural industries.

Article 2107: Definitions

For purposes of this Chapter:

cultural industries means any person engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radio communication in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

international capital transactions means "international capital transactions" as defined under the Articles of Agreement of the IMF;

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the IMF;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures do not include:

(a) a "customs duty" as defined in Article 319; or

(b) the measures listed in exceptions (b), (c), (d) and (e) of that definition.

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ANNEX 2103.4

Specific Taxation Measures

1. Article 2103(4)(a) (Taxation) shall apply to an asset tax under the Asset Tax Law ("Ley del Impuesto al Activo") of Mexico.

2. Article 2103(4)(a) and (b) shall not apply to any excise tax on insurance premiums adopted by Mexico to the extent that such tax would, if levied by Canada or the United States, be covered by Article 2103(4)(d), (e) or (f).

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ANNEX 2104.6

Competent Authorities

1. The competent authority for Canada is the Assistant Deputy Minister for Tax Policy, Department of Finance.

2. The competent authority for Mexico is the Deputy Minister of Revenue of the Ministry of Finance and Public Credit. (Secretaria de Hacienda y Credito Publico)

3. The competent authority for the United States is the Assistant Secretary of the Treasury (Tax Policy), U.S. Department of the Treasury.

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ANNEX 2106

Cultural Industries

Notwithstanding any other provision of this Agreement, as between the United States and Canada, any measure adopted or maintained with respect to cultural industries, except as specifically provided in Article 302 (Market Access - Tariff Elimination), and any measure of equivalent commercial effect taken in response, shall be governed exclusively in accordance with the terms of the Canada - United States Free Trade Agreement. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States.

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