PART II
TRADE IN GOODS

CHAPTER 3
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A - Definitions and Scope and Coverage

Article 3.1: 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;

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture, which is part of the WTO Agreement;

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

consumed means:

(a) actually consumed; or
(b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good;

customs duty means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT, or any equivalent provision of a successor agreement to which both Parties are party;
(b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law and consistently with Chapter 7;
(c) fee or other charge in connection with importation commensurate with the cost of services rendered; and
(d) 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;

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;

printed advertising materials means those goods classified in Chapter 49 of the Harmonised System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge; and

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.[1]

Article 3.2: Scope and Coverage

This Chapter shall be applied to the trade in goods between the Parties.

Section B - National Treatment

Article 3.3: National Treatment

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

2. For the purpose of paragraph 1, each Party shall grant to the goods of the other Party a treatment no less favourable than the most favourable treatment granted by that Party to its own like or directly competitive or substitutable goods of national origin.

Section C - Tariffs

Article 3.4: Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty or adopt any customs duty on a good.

[1] An operation or process that is part of the production or assembly of an unfinished good into a finished good is not a repair or alteration of the unfinished good; a component of a good is a good that may be subject to repair or alteration.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Tariff Elimination Schedule set out in Annex 3.4.

3. If at any moment a Party reduces its most-favoured-nation customs duties to non-Parties for one or more goods included in the Agreement, the Parties shall consult to consider adjusting the customs duties applicable to reciprocal trade.

4. Upon request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Tariff Elimination Schedules.

5. The agreement reached pursuant to paragraph 4 regarding the accelerated elimination of customs duties on an originating good shall be put into effect in accordance with Article 18.1 and each Party's applicable legal procedures, and shall prevail over any other duty rate or staging category, determined pursuant to its Tariff Elimination Schedule for the good.

6. Except as otherwise provided in this Agreement, either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 3.4, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

Article 3.5: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission, including exemption from fees as specified in Annex 3.5 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 13,

(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 or demonstration, and

(d) commercial samples and advertising films,

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

2. Except as otherwise provided in this Agreement, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in subparagraph 1(a), (b) or (c), other than the requirement that such a good:

(a) be admitted by a national or resident of the other Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of such a 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 per cent of the charges that would otherwise be owed on entry or final importation, or by another form of

security, releasable on 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 on 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, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in subparagraph 1(d), other than the requirement that such a good:

(a) be admitted solely for the solicitation of orders for goods or services provided from the territory of the other Party or a 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 a period as is reasonably related to the purpose of the temporary admission; and

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

4. Where a good is temporarily admitted duty-free under paragraph 1 and any condition the Party imposes under paragraphs 2 and 3 has not been fulfilled, a Party may impose:

(a) the customs duty and any other charge that would be owed on entry or final importation of the good; and

(b) any applicable criminal, civil or administrative responsibilities that the circumstances may warrant.

5. Subject to Chapters 10 and 11:

(a) each Party shall allow a container used in international traffic, which enters its territory from the territory of the other Party, to exit its territory on any route that is reasonably related to the economic and prompt departure of such a container;

(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes the container to the territory of the other Party.

Article 3.6: Duty-Free Entry of Certain Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible or non-commercial value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

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

Article 3.7: Goods Re-Entered after Repair or Alteration

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported or if it was under a temporary exit from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

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

Article 3.8: Customs Valuation

The Customs Valuation Agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade.

Section D - Non-Tariff Measures

Article 3.9: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT, including its interpretative notes, and to this end, Article XI of GATT and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

2. The Parties understand that the rights and obligations under GATT, 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 the other Party of such a good of that non-Party; or

(b) requiring as a condition of export of such a good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. 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 the other Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3.9.

Article 3.10: Customs User Fees

Customs user fees shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes. They shall be based on specific rates that correspond to the real value of the service rendered.

Article 3.11: Export Taxes

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

Article 3.12: Emergency Clause for Agricultural Goods

1. Notwithstanding Chapter 6 of this Agreement and Article 5 of the Agreement on Agriculture, if, given the particular sensitivity of the agricultural markets, a product originating in a Party is being imported into the other Party in such increased quantities and under such conditions as to cause or threaten to cause serious injury or disturbance in the markets of like or directly competitive products of the other Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. If the conditions set out in paragraph 1 are met, the importing Party may:
   (a) suspend the further reduction of any customs duties on the products concerned provided for under this Chapter; or
   (b) increase the customs duty on the product to a level which does not exceed the lesser of:
      (i) the most-favoured-nation customs duty; or
      (ii) the basic customs duty to which the successive reductions are to be applied, pursuant to its Tariff Elimination Schedule.

3. Before applying the measure as defined under paragraph 2, the Party concerned shall refer the matter to the Commission for a thorough examination of the situation, with a view to seeking

a mutually acceptable solution. If the other Party so requests, the Parties shall hold consultations within the Commission. If no solution is found within 30 days of the request for such consultations, safeguard measures may be applied.

4. Where exceptional circumstances require immediate action, the importing Party may take the measures provided for in paragraph 2 on a transitional basis without complying with the requirements of paragraph 3 for a maximum period of 120 days. Such measures shall not exceed what is strictly necessary to limit or redress the injury or disturbance. The importing Party shall inform the other Party immediately.

5. The measures taken under this Article shall not exceed what is necessary to remedy the difficulties that have arisen. The Party imposing the measure shall preserve the overall level of preferences granted for the agricultural sector. To achieve this objective, the Parties may agree on compensation for the adverse effects of the measure on their trade, including the period during which a transitional measure applied in accordance with paragraph 4 is in place. To this effect, the Parties shall hold consultations to reach a mutually agreed solution. If no agreement is reached within 30 days, the affected exporting Party may, after notification to the Commission, suspend the application of substantially equivalent concessions under this Chapter.

6. For purposes of this Article:
   (a) "serious injury" shall be understood to mean a significant overall impairment in the position of the producers as a whole of the like or directly competitive products operating in a Party; and
   (b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent based on facts and not merely on allegations, conjecture or remote possibility.

Article 3.13: Committee on Trade in Goods

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

2. The Committee shall ensure the effective implementation and administration of this Chapter, Chapter 4, Chapter 5 and Uniform Regulations.

3. The Committee shall have the following functions:
   (a) to review and recommend to the Commission issues relating to market access, including the application of non-tariff measures; and
   (b) to promote trade in goods between the Parties through consultations and studies on matters relating to market access, including the periods established in Annex 3.4, in order to accelerate the tariff elimination process.

Annex 3.5
Temporary Admission of Goods

The temporary admission of goods from Korea specified in subparagraph 1 of Article 3.5 shall not be subject to the payment of the fees established in Article 106 of the Chilean Customs Ordinance (Ordenanza de Aduanas) contained in Decree with Force of Law 2 of the Ministry of Finance, Official Gazette, July 21, 1998 ("Decreto con Fuerza de Ley 2 del Ministerio de Hacienda, Diario Oficial, 21 de julio de 1998").

Annex 3.9
Import and Export Measures

Chilean Measures

Notwithstanding Article 3.9, Chile may continue or adopt measures related to imports of used vehicles.

CHAPTER 4
RULES OF ORIGIN

Article 4.1: Definitions

For purposes of this Chapter:

adjusted value means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, for purposes of the application of the regional value content formula and the De Minimis, adjusted, if necessary, to exclude the following costs, charges, and expenses from the customs value of the goods under consideration when not already excluded in accordance with the national legislation of a Party: any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

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

good means any merchandise, product, article or material;

goods wholly obtained or produced entirely in the territory of one or both of the Parties means:

(a) mineral goods extracted in the territory of one or both of the Parties;
(b) vegetable goods, as defined in the Harmonised System, grown and harvested in the territory of one or both of the Parties;
(c) live animals born and raised in the territory of one or both of the Parties;
(d) goods obtained from hunting, trapping or fishing in the territory of one or both of the Parties;
(e) products of sea-fishing and other products taken from the sea outside the territory of one or both of the Parties by vessels registered or recorded with a Party and flying its flag;
(f) goods produced on board factory ships from the goods referred to in subparagraph (e), provided such factory ships are registered or recorded with one of the Parties and fly its flag;
(g) 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;
(h) goods taken from outer space, provided that they are obtained by a Party or a person of a Party and not processed in a non-Party;
(i) waste and scrap derived from:
    (i) production in the territory of one or both of the Parties; or
    (ii) used goods collected in the territory of one or both of the Parties, provided that such goods are fit only for the recovery of raw materials; and
(j) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;

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

(a) fuel and energy;
(b) tools, dies and moulds;
(c) spare parts and materials used in the maintenance of equipment and buildings;
(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
(e) gloves, glasses, footwear, clothing, safety equipment and supplies;
(f) equipment, 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;

intermediate material means a material that is self-produced and used in the production of a good, and designated pursuant to Article 4.4;

material means a good that is used in the production of another good, such as a part or an ingredient;

non-originating good or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

packing materials and containers for shipments means goods used to protect a good during its transportation, different from those containers or materials used for its individual sale;

producer means a person who grows, mines, raises, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

production means growing, mining, harvesting, fishing, reproducing and breeding, trapping, hunting, manufacturing, processing or assembling a good;

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

value of materials means:

(a) Except in the case of packing materials and containers for shipments, for purposes of calculating the regional value content of a good, and for purposes of applying the De Minimis rule, the value of a material that is used in the production of a good shall:
    (i) for a material that is imported by the producer of the good, be the adjusted value of the material with respect to that importation;
    (ii) for a material purchased in the territory where the good is produced, the producer's actual cost for the material; and

(iii) for a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the cost or value shall be determined by computing the sum of:
   a. all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and
   b. an amount for profit.

(b) The value of materials may be adjusted as follows:
   (i) for originating materials, if not included under subparagraph (a), the following expenses may be added to the value of the material:
      a. the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;
      b. duties, taxes and customs brokerage fees on the materials paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and
      c. the costs of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.
   (ii) for non-originating materials, if included under subparagraph (a), the following expenses may be deducted from the value of the material:
      a. the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;
      b. duties, taxes and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;
      c. the costs of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and
      d. the costs of originating materials used in the production of the non-originating material in the territory of a Party.

Article 4.2: Originating Goods

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

(a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 4.1;
(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification set out in Annex 4 as a result of production occurring entirely in the territory of one or both of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;

(c) the good is produced entirely in the territory of one or both of the Parties exclusively from originating materials pursuant to this Chapter; or

(d) except for a good provided for in Chapters 61 through 63 of the Harmonised System, the good is produced entirely in the territory of one or both of the Parties but one or more of the non-originating materials that are used in the production of the good do 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 Rule 2(a) of the General Rules for the Interpretation of the Harmonised System, or

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

provided that the regional value content of the good, determined in accordance with Article 4.3, is not less than 45 per cent, where the build-down method is used, or 30 per cent, where the build-up method is used and that the good satisfies all other applicable requirements of this Chapter**.** However, if the applicable rule of Annex 4, where the good is classified, specifies a different amount of regional value-content requirement, then such a requirement shall be applied.

2. For the purpose of this Chapter, the production of a good from non-originating materials that undergo a change in tariff classification and satisfy other requirements pursuant to Annex 4, shall be made entirely in the territory of one or both of the Parties and the regional value content of the good shall be met entirely in the territory of one or both of the Parties.

3. Notwithstanding the requirements of this Article, goods shall not be considered originating if they result exclusively from operations under Article 4.13 carried out in the territory of the Parties, when in those operations non-originating materials are used.

Article 4.3: Regional Value Content

When a regional value content is required to determine if a good is originating, each Party shall provide that the regional value content of a good may be calculated on the basis of one or the other of the following two methods:

Method 1: Build-down method

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

Method 2: Build-up method

$$RVC = \frac{VOM}{AV} \times 100$$

where

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

AV is the adjusted value;

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

VOM is the value of originating materials used by the producer in the production of the good.

Article 4.4: Intermediate Materials

Any self-produced material that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under Article 4.3, provided that where the intermediate material is subject to a regional value-content requirement, no other self-produced material subject to a regional value-content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.

Article 4.5: Accumulation

1. Originating goods or materials from the territory of a Party incorporated to a good in the territory of the other Party shall be considered originating from the territory of the latter Party.

2. For the purpose of establishing that a good is originating, the producer of a good may accumulate one's production with the production in the territory of one or both of the Parties by one or more producers, of materials incorporated in the good, so that the production of those materials is considered as done by that producer, provided that the good complies with the criteria set out in Article 4.2.

Article 4.6: De Minimis

1. A good that does not undergo a change in tariff classification pursuant to Annex 4, shall be considered originating if the value of all non-originating materials used in its production that do not undergo change in tariff classification does not exceed eight per cent of the adjusted value of the good determined pursuant to Article 4.3.

2. Paragraph 1 shall not apply to a non-originating material used in the production of a good provided for in Chapters 1 through 24 of the Harmonized System, unless the non-originating material is provided for in a different subheading from that of the good for which the origin is being determined under this Article.

3. A good provided for in Chapters 50 through 63 of the Harmonized System that does not originate because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo the applicable change in tariff classification set out in Annex 4, shall nonetheless be considered to originate if the total weight of all such fibres or yarns in that component is not more than eight per cent of the total weight of that component.

Article 4.7: Fungible Goods and Materials

1. 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 determination of whether the materials are originating need not be made through the identification of any specific fungible material, but shall be determined on the basis of any of the inventory management methods set out in the Uniform Regulations; and
   (b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination shall be made on the basis of any of the inventory management methods set out in the Uniform Regulations.

2. Once a decision has been taken on the inventory management method, this method shall be used throughout the fiscal year.

Article 4.8: Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good that form part of standard accessories, spare parts or tools of the good, shall be considered as originating if the good originates 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 set out in Annex 4, provided that:
   (a) the accessories, spare parts or tools are not invoiced separately from the good; and
   (b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. 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 originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.9: Indirect Materials

1. An indirect material shall be considered to be an originating material without regard to where it is produced. The value of its materials shall be the costs registered in the accounting records of the producer of the good.

2. The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 4.10: Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified 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 set out in Annex 4, 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 as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.11: Packing Materials and Containers for Shipment

Packing materials and containers in which a 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 set out in Annex 4; and
(b) the good satisfies a regional value-content requirement.

Article 4.12: Transhipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 4.2, if, subsequent to that production, the good outside the territories of the Parties:

(a) undergoes further production or any operation, other than unloading, reloading, crating, packing and repacking or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party; or
(b) does not remain under the control or observation of the customs authority in the territory of the non-Party.

Article 4.13: Non-Qualifying Operations

1. A good shall not be considered to be originating merely by reason of:
   (a) operations or processes that assure the preservation of goods in good conditions for the purpose of transportation or storage;
   (b) operations or processes to facilitate shipment or transportation; or

(c) operations or processes relating to packaging or presentation of the goods for their respective sale.

2. Operations or processes under paragraph 1 shall include, *inter alia*:
   (a) airing, ventilation, drying, refrigeration, freezing;
   (b) cleaning, washing, sieving, shaking, selection, classification or grading, picking out, mixing, cutting;
   (c) peeling, unshelling or unflaking, grain removing, removal of bones, crushing or squeezing, macerating;
   (d) elimination of dust from broken or damaged parts, application of oil, paint for rust treatment or other protecting materials thereof;
   (e) testing or calibrations, division of bulk shipments, assemble into packages, adherent of marks, labels or distinctive signs on the products or packing; packing, unpacking or repackaging;
   (f) dilution with water or with any other aqueous, ionised or salted solution;
   (g) the simple assembly of goods, formation of sets;
   (h) salifying, sweetening;
   (i) slaughter of animals;
   (j) disassembly; and
   (k) the combination of one or more of these operations.

Article 4.14: Interpretation and Application

For purposes of this Chapter:
   (a) the basis for tariff classification in this Chapter is the Harmonised System;
   (b) where applying subparagraph 1(d) of Article 4.2, the determination of whether a heading or subheading under the Harmonised System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonised System;
   (c) in applying the Customs Valuation Agreement for the determination of the origin of a good under this Chapter:
      (i) the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;
      (ii) the provisions of this Chapter shall take precedence over the Customs Valuation Agreement to the extent of any difference; and
      (iii) the definitions in Article 4.1 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and
   (d) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 4.15: Consultations and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter 5.

2. A Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit to the other Party for consideration a proposed modification along with supporting rationale, any studies and any appropriate action that needs to be taken under Chapter 5.

CHAPTER 5
CUSTOMS PROCEDURES

Article 5.1: Definitions

For purposes of this Chapter:

commercial importation means the importation of a good into the territory of a 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 law of a Party for the administration of customs laws and regulations;

determination of origin means a ruling issued as a result of origin verification process establishing that a good qualifies as an originating good in accordance with Chapter 4;

exporter means a person located in the territory of a Party from where a good is exported by such a person and required to maintain records in the territory of that Party regarding exportations of the good, pursuant to Article 5.4.5;

identical goods means "identical goods" as defined in the Customs Valuation Agreement;

importer means a person located in the territory of a Party where a good is imported by such a person and required to maintain records in the territory of that Party regarding importation of the good, pursuant to Article 5.3.4;

material means a “material” as defined in Article 4.1;

preferential tariff treatment means the duty rate applicable to an originating good, pursuant to the Parties’ respective Tariff Elimination Schedules;

producer means a “producer” as defined in Article 4.1;

production means "production" as defined in Article 4.1;

adjusted value means "adjusted value" as defined in Article 4.1;

Uniform Regulations means the "Uniform Regulations" established under Article 5.12;

used means "used" as defined in Article 4.1; and

value means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter 4.

Article 5.2: Certificate and Declaration of Origin

1. The Parties shall establish, by the entry into force of this Agreement, a single form for the Certificate of Origin and a single form for the Declaration of Origin, which may thereafter be revised by agreement between the Parties.

2. The Certificate of Origin, referred to in paragraph 1, shall certify that goods that are exported from the territory of one Party to the territory of the other Party qualify as originating. The Certificate will have a duration of two years from the date on which the Certificate was signed.

3. Each Party shall require that a Certificate of Origin for a good imported into its territory must be completed and signed in the English language, for the purpose of requesting preferential tariff treatment.

4. Each Party shall:
   (a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment on importation of the good into the territory of the other Party;
   (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:
      (i) its knowledge of whether the good qualifies as an originating good;
      (ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or
      (iii) the Declaration of Origin referred to in paragraph 1.

5. The Declaration of Origin referred to in paragraph 1 should be completed and signed by the producers of the good and provided voluntarily to the exporter. The Declaration will have a duration of two years from the date on which it was signed.

6. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter in the territory of the other Party is applicable to a single importation of a good into its own territory.

7. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Certificate of Origin that has been completed and signed prior to that date by the exporter of that good.

8. Each Party shall make all efforts to establish, according to its domestic legislation, that the Certificate of Origin completed and signed by the exporter is certified by competent governmental authorities or the body empowered by the government.

Article 5.3: Obligations Regarding Importations

1. Each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) make a written declaration, in the importation document established in its legislation, based on a valid Certificate of Origin, that the good qualifies as an originating good;
(b) have the Certificate of Origin in its possession at the time the declaration, referred to in subparagraph (a), is made;
(c) provide, upon request of that Party's customs administration, a copy of the Certificate of Origin; and
(d) promptly make a corrected declaration and pay any duties owing, where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct. When the importer complies with such obligations, the importer shall not be penalised.

2. Each Party shall provide that, when an importer in its territory does not comply with any requirement established in this Chapter, the claimed preferential tariff treatment shall be denied for the imported goods from the territory of the other Party.

3. 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, no later than one year after 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 with preferential tariff treatment, on presentation of:
(a) a written declaration that the good qualified as an originating good at the time of importation;
(b) a copy of the Certificate of Origin; and
(c) such other documentation relating to the importation of the good as that Party may require.

4. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into its territory maintain in that territory, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate of Origin, as the Party may require relating to the importation of the good.

Article 5.4: Obligations Regarding Exportations

1. Each Party shall provide that an exporter in its territory, or a producer in its territory that has provided a copy of a Declaration of Origin to that exporter pursuant to Article 5.2, shall provide a copy of the Certificate or Declaration of Origin to its customs administration upon request.

2. Each Party shall provide that an exporter or a producer in its territory who has completed and signed a Certificate or Declaration of Origin, and who has reason to believe that the Certificate or Declaration of Origin contains information that is not correct, notifies promptly, in writing, its customs administration and all persons, to whom the Certificate or Declaration of Origin was given by the exporter or producer, of any change that could affect the accuracy or validity of the Certificate or Declaration, depending on the case. Upon compliance with such an obligation, neither the exporter nor the producer shall be penalised for presenting an incorrect Certification or Declaration of Origin.

3. Each Party shall provide that the customs administration of the exporting Party notify in writing to the customs administration of the importing Party regarding the notification mentioned in paragraph 2.

4. Each Party shall provide that a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation. Furthermore, each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

5. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Certificate or Declaration of Origin shall maintain in its territory, for five years after the date on which the Certificate or Declaration of Origin was signed or for such a longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

(a) the purchase, cost and value of, and payment for, the good that is exported from its territory;
(b) the purchase, cost and value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory; and
(c) the production of the good in the form in which the good is exported from its territory.

Article 5.5: 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 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 the importation include a statement certifying that the good qualifies as an originating good,
(b) a non-commercial importation of a good whose value does not exceed US$1,000 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 the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5.2 and 5.3.

Article 5.6: Invoicing by a Non-Party Operator

When a good to be traded is invoiced by a non-Party operator, the producer or exporter of the originating Party shall notify, in the field titled "observations" of the respective Certificate of Origin, that the goods subject to declaration shall be invoiced from that non-Party, and shall

notify the name, corporate name and address of the operator that will eventually invoice the operation to its destination.

Article 5.7: Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect such 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 customs and revenue matters.

Article 5.8: Origin Verifications

1. The importing Party may request the exporting Party to provide information regarding the origin of any imported good.

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

(a) written questionnaires and requests for required information to an exporter or a producer in the territory of the other Party;
(b) visits to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article 5.4.5 and observe the facilities used in the production of the good, or to that effect any facilities used in the production of the materials; or
(c) such other procedure as the Parties may agree.

3. The exporter or producer that receives a questionnaire pursuant to subparagraph 2(a) shall answer and return it within a period of 30 days from the date on which it was received. During this period the exporter or producer may, in only one opportunity, request in writing to the importing Party an extension of the original period, not exceeding 30 days.

4. In the case the exporter or producer does not return the questionnaire correctly answered within the given period or its extension, the importing Party may deny preferential tariff treatment.

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

(a) deliver a written notification of its intention to conduct the visit to:
    (i) the exporter or producer whose premises are to be visited;
    (ii) the customs administration of the other Party; and
    (iii) if requested by the other Party, the embassy of the other Party in the territory of the importing Party proposing to conduct the visit; and

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

6. The notification referred to in paragraph 5 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 that is the subject of the verification;
   (e) the names and titles of the officials performing the verification visit; and
   (f) the legal authority for the verification visit.

7. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days after the receipt of notification pursuant to paragraph 5, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

8. Each Party shall provide that, upon receipt of notification pursuant to paragraph 5, such an exporter or a producer may, within 15 days of receiving the 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 agree. However, this may be done in only one opportunity. For this purpose, this extension shall be notified to the customs administration of the importing and exporting Parties.

9. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 8.

10. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to designate two observers to be present during the visit, provided that:
   (a) the observers do not participate in a manner other than as observers; and
   (b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

11. Each Party shall, through its customs administration, where conducting the verification of origin involving a regional value content, De Minimis calculation or any other provision in Chapter 4 to which Generally Accepted Accounting Principles may be relevant, apply such principles as are applicable in the territory of the Party from which the good was exported.

12. After the conclusion of a verification, the customs administration conducting the verification shall provide the exporter or producer whose good is the subject of 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.

13. 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, the Party may withhold preferential tariff treatment to identical goods exported or produced by such a person until that person establishes compliance with Chapter 4.

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

15. A Party shall not apply a determination made under paragraph 14 to an importation made before the effective date of the determination where:

(a) the competent authorities of the other Party has issued an advanced ruling under Article 5.9 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and
(b) the advanced ruling, other ruling or consistent treatment was given prior to notification of the determination.

16. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 14, it shall postpone the effective date of the denial for a period not exceeding 90 days where 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 value applied to such materials by the customs administration of the other Party.

Article 5.9: Advanced Rulings on Determinations of Origin

1. Each Party shall, through its competent authorities, provide for the expeditious issuance of written advanced 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 the other Party, on the basis of the facts and circumstances presented by such an importer, an exporter or a producer of the good, concerning:

(a) whether a good qualifies as an originating good under Chapter 4;
(b) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex 4 as a result of production occurring entirely in the territory of one or both of the Parties;
(c) whether a good satisfies a regional value-content requirement under either the build-down method or the build-up method set out in Chapter 4;
(d) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter 4, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Agreement, for calculating the adjusted value of the good or of the materials used in the production of the good;
(e) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter 4, the appropriate basis or method for reasonably

allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the value of an intermediate material;

(f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article 3.7; or

(g) such other matters as the Parties may agree.

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

3. Each Party shall provide that its competent authorities:

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

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

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

4. Subject to paragraph 6, each Party shall apply an advanced ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such a later date as may be specified in the ruling.

5. Each Party shall provide to any person requesting an advanced ruling the same treatment, including the same interpretation and application of the provisions of Chapter 4 regarding a determination of origin, as it provided to any other person to whom it issued an advanced ruling, provided that the facts and circumstances are identical in all material respects.

6. The issuing Party may modify or revoke an advanced ruling:

(a) if the ruling is based on an error:

(i) of fact;

(ii) in the tariff classification of a good or a material that is the subject of the ruling;

(iii) in the application of a regional value-content requirement under Chapter 4; or

(iv) in the application of the rules for determining whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article 3.7;

(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 or Chapter 4;

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

(d) to conform with a modification of Chapter 3, Chapter 4, this Chapter or the Uniform Regulations; or

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

7. Each Party shall provide that any modification or revocation of an advanced ruling is effective on the date on which the modification or revocation is issued, or on such a 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 advanced ruling was issued has not acted in accordance with its terms and conditions.

8. Notwithstanding paragraph 7, 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 advanced ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

9. Each Party shall provide that where its competent authorities examines the regional value content of a good for which it has issued an advanced ruling pursuant to subparagraphs 1(d), (e) and (f), it shall evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advanced ruling;
(b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advanced ruling is based; and
(c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

10. Each Party shall provide that where its competent authority determines that any requirement in paragraph 9 has not been satisfied, it may modify or revoke the advanced ruling as the circumstances may warrant.

11. Each Party shall provide that, where the person to whom an advanced ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, and where the competent authority of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties.

12. Each Party shall provide that where it issues an advanced ruling to a person that has misrepresented or omitted material facts or circumstances on which such a ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply such measures as the circumstances may warrant.

13. The Parties shall provide that the person to whom the advanced ruling was issued may use it only while the material facts or circumstances that were the basis of its issuance are still present. In this case, the person to whom the advanced ruling was issued may present the necessary information for the issuing authority to proceed pursuant to paragraph 6.

14. A good that is subject to an origin verification process or any instance of review or appeal in the territory of one of the Parties may not undergo an advanced ruling.

Article 5.10: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advanced 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 the subject of a determination of origin pursuant to Article 5.8.12; or

(b) who has received an advanced ruling pursuant to Article 5.9.

2. 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.

Article 5.11: Penalties

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

2. Nothing in Articles 5.3.1(d), 5.3.2, 5.4.2, 5.8.4, 5.8.7 or 5.8.9 shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Article 5.12: Uniform Regulations

1. The Parties shall establish and implement, through their respective laws or regulations, by the date of entry into force of this Agreement, or at any time thereafter upon agreement of the Parties, the Uniform Regulations regarding the interpretation, application and administration of Chapter 3, Chapter 4, this Chapter and other matters as may be agreed by the Parties.

2. As of the entry into force of the Uniform Regulations, 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.

Article 5.13: Cooperation

1. Each Party shall notify the other Party 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 5.8, once the instances of review and appeal pursuant to Article 5.10 have been exhausted;

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

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

(ii) consistent treatment given by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the value 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; and

(d) an advanced ruling, or a ruling modifying or revoking an advanced ruling, pursuant to Article 5.9.

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 agreement or other customs-related agreement to which they are party;

(b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonisation of documentation used in trade, the standardisation of data elements, the acceptance of an international data syntax and the exchange of information;

(c) to the extent practicable, in the storage and transmission of customs-related documentation;

(d) in the origin verification process of a good, for which the customs administration of the importing Party may request the other Party's customs administration to cooperate in this process of verification in its own territory;

(e) to search for a certain mechanism with the purpose of detecting and preventing the illicit shipment of goods arriving from one of the Parties or from a non-Party; and

(f) to jointly organise training programmes in customs related issues, which should include training for customs officials as well as users that directly participate in customs procedures.

Article 5.14: Review

In the second year from the date of entry into force of this Agreement, the Parties shall examine and revise, if deemed necessary by the Parties, the system regarding the Certificate or Declaration of Origin under this Chapter.

CHAPTER 6
SAFEGUARD MEASURES

Article 6.1: Safeguard Measures

1. Both Parties maintain their rights and obligations under Article XIX of GATT and the Agreement on Safeguards, which is part of the WTO.

2. Actions taken pursuant to Article XIX of GATT and Agreement on Safeguards shall not be subject to Chapter 19 of this Agreement.

CHAPTER 7
ANTI-DUMPING AND COUNTERVAILING DUTY MATTERS

Article 7.1: Anti-Dumping and Countervailing Duty Matters

1. The Parties maintain their rights and obligations under Article VI of GATT, the Agreement on Implementation of Article VI of GATT ("Agreement on Antidumping") and the Agreement on Subsidies and Countervailing Measures, which are part of the WTO Agreement.

2. Antidumping actions taken pursuant to Article VI of GATT and the Agreement on Antidumping, or countervailing actions taken pursuant to Article VI of GATT and the Agreement on Subsidies and Countervailing Measures shall not be subject to Chapter 19 of this Agreement.

CHAPTER 8
SANITARY AND PHYTOSANITARY MEASURES

Article 8.1: Definitions

For purposes of this Chapter, the definitions and terms established under the following shall be applied:

(a) Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement (SPS Agreement);
(b) Office International des Epizooties (OIE);
(c) International Plant Protection Convention (IPPC); and
(d) Codex Alimentarius Commission (CODEX).

Article 8.2: General Provisions

1. This Chapter applies to all sanitary and phytosanitary measures, which may, directly or indirectly, affect trade between the Parties.

2. The Parties shall, through mutual cooperation, facilitate agricultural, fishing and forest trade without such trade posing a sanitary or phytosanitary risk, and agree to prevent the introduction or spread of pests or diseases, and to enhance plant and animal health and food safety.

3. The framework of rules and disciplines that guide the adoption and enforcement of the sanitary and phytosanitary measures included in this Chapter is deemed to be consistent with the SPS Agreement.

4. Any other sanitary or phytosanitary matter which is not described in this Chapter shall be dealt with in accordance with the SPS Agreement.

Article 8.3: Rights of the Parties

The Parties may, in accordance with the SPS Agreement:

(a) adopt, maintain or apply any sanitary or phytosanitary measure whenever it is necessary for the protection of human, animal or plant life or health in their territories in accordance with this Chapter; and
(b) apply their sanitary or phytosanitary measures to the extent necessary to achieve an appropriate level of protection.

Article 8.4: Obligations of the Parties

Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies:

(a) is neither applied in a manner that constitutes a disguised restriction on trade, nor has the purpose or the effect of creating unnecessary obstacles to trade between the Parties;
(b) is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in Article 5.7 of the SPS Agreement; and
(c) does not arbitrarily or unjustifiably discriminate between its goods and similar goods of the other Party, or between goods of the other Party and similar goods of any other country, where identical or similar conditions exist.

Article 8.5: International Standards and Harmonization

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall base its sanitary and phytosanitary measures on relevant international standards, guidelines or recommendations, where they exist, with a view to seeking harmonization.

2. Notwithstanding paragraph 1, the Parties may adopt a sanitary or phytosanitary measure offering a level of protection other than the level that would be achieved through a measure based on an international standard, guideline or recommendation, including a more stringent measure than the foregoing, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection the Party determines to be appropriate in accordance with the relevant provisions of Article 5 of the SPS Agreement.

3. For purposes of achieving a higher degree of harmonization, the Parties shall, to the greatest extent possible, cooperate in the development of international standards, guidelines and recommendations to all aspects of sanitary and phytosanitary measures, and follow the standards, guidelines and recommendations set by the following organizations:
(a) on plant health issues, the IPPC;
(b) on animal health issues, the OIE; and
(c) on food safety issues, the CODEX.

4. For matters not covered by the international organizations listed in paragraph 3, the Parties may consider, as agreed by the Parties, the standards, guidelines and recommendations of other relevant international organizations of which both Parties are members.

Article 8.6: Equivalence

1. Each Party shall accept the sanitary and phytosanitary measures of the other Party as equivalent, even if these measures differ from its own measures, if the exporting Party objectively demonstrates to the other Party that its measures achieve the other Party's appropriate level of sanitary or phytosanitary protection.

2. For purposes of ensuring that sanitary and phytosanitary measures of the exporting Party consistently meet the importing Party's requirements, the exporting Party shall, upon request, provide the importing Party with reasonable access to its territory for the verification of its systems or procedures of inspection, testing and other relevant procedures.

Article 8.7: Risk Assessment and Determination of Appropriate Sanitary and Phytosanitary Level of Protection

1. The Parties shall ensure that their sanitary and phytosanitary measures are, as appropriate to the circumstances, based on an assessment of the risks to human, animal or plant life or health, taking into account relevant risk assessment guidelines and techniques developed by the relevant international organizations.

2. The Parties shall, in assessing risks and determining a sanitary or phytosanitary measure, take into account available scientific evidence and other factors, such as:

(a) the prevalence of pests or diseases;
(b) the existence of pest- or disease-free areas;
(c) the relevant ecological and environmental conditions;
(d) the effectiveness of eradication or control programs;
(e) the structure and organization of sanitary and phytosanitary services; and
(f) the control, monitoring, diagnosis and other procedures ensuring the safety of the product.

3. In assessing risks to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of protection from such risks, the Parties shall take into account the following relevant economic factors:

(a) the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease;
(b) the cost of control or eradication in the territory of the importing Party; and
(c) the relative cost-effectiveness of alternative approaches to limiting risks.

4. The Parties shall, in establishing their appropriate levels of protection, take into account the objective of minimizing negative trade effects and shall, with the purpose of achieving consistency in the application of such levels of protection, avoid arbitrary or unjustifiable distinctions that may result in discrimination or constitute a disguised restriction on the trade between the Parties.

5. Where a Party determines that available scientific information is insufficient, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including information from relevant international organizations and from sanitary or phytosanitary measures of the other Party and any other countries. The Party shall, once it has the information sufficient to complete the assessment, complete its assessment and, where appropriate, review the provisional sanitary or phytosanitary measure within a reasonable period of time.

Article 8.8: Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties shall adapt its sanitary or phytosanitary measures relating to animal or plant pest or disease to the sanitary or phytosanitary characteristics of the area of origin and destination of the goods. When assessing the characteristics of an area, the Parties shall take into

account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines, which may be developed by the relevant international organizations.

2. The Parties shall recognize, in particular according to relevant international standards, the concepts of pest- or disease-free areas or areas of low pest or disease prevalence. When determining such areas, the Parties shall consider factors, such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in that area.

3. The Party declaring that an area in its territory is free from or low prevalence of a specific pest or disease shall provide the necessary evidence thereof in order to demonstrate such a condition objectively and to the satisfaction of the other Party, and give assurances that the area shall remain as such based on protection measures adopted by the authorities responsible for sanitary and phytosanitary services.

4. The Party interested in obtaining the recognition of a pest- or disease-free area or areas of low pest or disease prevalence shall make the request, and provide the relevant scientific and technical information to the other Party. For this purpose, the requesting Party shall provide reasonable access to its territory to the other Party for inspection, testing and other relevant procedures.

5. If the request for recognition is rejected, the rejecting Party shall provide the technical reasons for its decision in writing.

Article 8.9: Control, Inspection and Approval Procedures

1. The Parties shall, in accordance with this Chapter, apply the provisions in Annex C of the SPS Agreement in relation to control, inspection or approval procedures, including systems for approving the use of additives or for establishing levels of tolerance for contaminants in food, beverages or feedstuffs.

2. The importing Party may verify whether the imported animals, plants and other related products are consistently in compliance with its sanitary and phytosanitary requirements. The Parties shall facilitate proceedings for such verification.

Article 8.10: Transparency

1. Each Party shall notify through its competent authorities, modification of a sanitary or phytosanitary measure and provide the related information in accordance with the provisions in Annex B of the SPS Agreement.

2. In addition, to ensure the protection of human, animal or plant life or health in the other Party, each Party shall notify:

(a) changes or modifications to sanitary and phytosanitary measures having a significant effect on trade between the Parties, at least 60 days before the effective date of the new provision, to allow for observations from the other Party. The 60-day period shall not apply to emergency situations, as established in Annex B of the SPS Agreement;
(b) changes occurring in the animal health field, such as the appearance of exotic diseases and those in List A of the OIE, within 24 hours following their provisional diagnosis;
(c) changes occurring in the phytosanitary field, such as the appearance of a quarantine pest and spread of a pest under official control, within 24 hours following verification of the pest;
(d) food control emergency situations where there is a clearly identified risk of serious adverse health effects associated with the consumption of certain food, within 24 hours of the identification of the risk; and
(e) discoveries of epidemiological importance and significant changes related to diseases and pests not included in subparagraphs 2(b) and (c) that may affect trade between the Parties, within a maximum period of ten days following the verification of such diseases and pests.

Article 8.11: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures ("Committee"), comprising representatives of each Party, who are responsible for sanitary and phytosanitary issues in the fields of animal and plant health, food safety and trade.

2. The Committee shall be set up not later than 30 days after the entry into force of this Agreement.

3. The Committee shall carry out the functions necessary to implement the provisions of this Chapter, including, but not limited to:
(a) coordinating the application of the provisions of this Chapter;
(b) facilitating consultations on specific matters related to sanitary or phytosanitary measures;
(c) establishing and determining the scope and mandate of the sub-committees;
(d) promoting technical cooperation between the Parties, including cooperation in the development, adoption and enforcement of sanitary and phytosanitary measures; and
(e) monitoring the compliance with the provisions of this Chapter.

4. The Committee shall establish, if the need arises and the Parties so agree, the following sub-committees: Sub-Committees on Animal Health, Plant Protection and Food Safety. The members of these sub-committees shall be designated by the relevant authorities in their respective fields.

5. The sub-committees shall carry out the following functions, including, but not limited to:
(a) preparing terms of reference for their activities within the scope of their competence and informing results thereof to the Committee;

(b) concluding specific agreements on matters of interest, involving higher technical-operating details, to be submitted to the Committee; and
(c) establishing expeditious information exchange mechanisms to deal with consultations between the Parties.

6. The Committee shall meet once every two years, except as otherwise agreed. If an additional meeting is requested by a Party, it will be held in the territory of the other Party. The sub-committees shall meet, upon request of a Party. The meetings may also be held by telephone, video conference or other means, upon the agreement of both Parties.

7. The Committee shall report annually to the Commission on the implementation of this Chapter.

Article 8.12: Technical Consultations

1. A Party may initiate consultations with the other Party if uncertainty arises with regard to the application or interpretation of the content of a sanitary or phytosanitary measure under this Chapter.

2. Where a Party requests consultations and so notifies the Committee, the Committee shall facilitate consultations, and may refer the matter at issue to an *ad hoc* working group or another forum, for providing non-binding technical assistance or recommendations to the Parties.

3. A Party asserting that the interpretation or application of a sanitary or phytosanitary measure of the other Party is inconsistent with the provisions of this Chapter shall bear the burden to prove such inconsistency.

4. Where the Parties, pursuant to this Article, have carried out consultations without reaching satisfactory results, such consultations, if so agreed by the Parties, shall constitute consultations under Article 19.4.

CHAPTER 9
STANDARDS-RELATED MEASURES

Article 9.1: Definitions

For purposes of this Chapter:

authorization procedure means any registration, notification or other mandatory administrative procedure granting authorization for a good to be produced, marketed or used for a stated purpose or under stated conditions;

conformity assessment procedure means any procedure used, directly or indirectly, to determine compliance with the provisions on technical regulations or standards. This includes, *inter alia*, sampling procedures, testing and inspection, evaluation, verification and assurance of conformity, registration, accreditation and approval either separately or in combination;

international standard means a standards-related measure, or any other guideline 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 WTO Agreement, including the International Organization for Standardization, the International Electrotechnical Commission, the Codex Alimentarius Commission, the World Health Organization, the Food and Agriculture Organization of the United Nations, the International Telecommunication Union, and any other body that the Parties designate;

legitimate objective is to guarantee national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment and any other objective that shall be determined by the Standards-Related Measures Committee;

make compatible means to bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical or modified to fulfill the same purpose, or have the effect of permitting that goods are used in place of one another or fulfill the same purpose;

standard means a document, approved by a recognized body, that provides for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking and labelling requirements applicable to a good, process or production method;

standardizing body means a body having recognized activities in standardization;

standards-related measures means a standard, technical regulation or conformity assessment procedure; and

technical regulation means a document which lays down the product characteristics or their related processes and production 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 applicable to a product, process, or production method.

Article 9.2: General Provision

The Parties shall apply the provisions set forth in this Chapter in addition to the provisions established by the WTO Agreement.

Article 9.3: Scope and Coverage

1. This Chapter applies to standards-related measures of the Parties that may, directly or indirectly, affect the trade of goods between the Parties and to measures of the Parties relating to such measures.

2. Provisions included in this Chapter shall not apply to sanitary and phytosanitary measures governed by Chapter 8. Technical specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Chapter but are addressed in Chapter 15.

Article 9.4: Basic Rights and Obligations

Right to Take Standards-Related Measures

1. Each Party may prepare, adopt, apply or maintain any standards-related measure to ensure that each Party is able to pursue its legitimate objectives, as well as measures ensuring enforcement and compliance with these standardizing measures, including approval procedures.

Extent of Obligation

2. Each Party shall comply with the applicable provisions of this Chapter and adopt the appropriate measures to ensure its observance, as well as those measures of non-governmental standardizing bodies duly accredited in its territory.

3. Each Party shall, in respect of its standards-related measures, accord to goods of the other Party:

(a) national treatment; and

(b) treatment no less favorable than the most favorable treatment that the Party accords to similar goods of any other non-Party.

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 unnecessary obstacles to trade between the Parties. To that end, standards-related measures shall not be more trade restrictive than necessary to achieve a legitimate objective, taking account of the risks that non-fulfillment would create. An unnecessary obstacle to trade shall not be deemed to be created where:

(a) the demonstrable purpose of the measure is to achieve a legitimate objective;
(b) the measure complies with an international standard; and
(c) the measure does not operate to exclude goods of the other Party that meet that legitimate objective.

Use of International Standards

5. Each Party shall use, as a basis for its own standards-related measures, the relevant international standards in force or whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives.

Article 9.5: Compatibility

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter and the WTO Agreement, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. The Parties shall, to the greatest extent practicable, work to make compatible their respective standards-related measures, 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 granted to either Party under this Chapter, and taking into account international standardization activities so as to facilitate the trade of a good between the Parties.

3. A Party shall, upon request of the other Party, seek, as far as possible and through appropriate measures, to promote the compatibility of a specific standard-related measure that is maintained in its territory with the standards-related measures maintained in the territory of the other Party.

4. A Party shall, upon request in writing from the other Party explicitly stating its reasons for the request, consider favorably the possibility of accepting standards-related measures of the other Party as equivalent to its own, even if they differ from its own, provided that, in cooperation with that Party, it is convinced that such measures comply adequately with the legitimate objectives of its own measures.

5. A Party shall provide to the other Party, upon request, its reasons in writing for not accepting standards-related measures as equivalent under paragraph 4.

Article 9.6: Conformity Assessment Procedures

1. Conformity assessment procedures of the Parties shall be prepared, adopted and applied in a manner that provides access to similar goods of the territory of the other Party on terms no less favorable than those granted to similar goods of the Party or any other country in a comparable position.

2. Each Party shall, with respect to its conformity assessment procedures, ensure that:
   (a) such procedures are initiated and completed as expeditiously as possible and in a non-discriminatory order;
   (b) the normal processing period for each one of such procedures is published or the estimated processing period is communicated to the applicant upon request;
   (c) the competent body or authority:
      (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 assessment in a precise and complete manner, so that the applicant may take any necessary corrective action;
      (iii) even if the application is deficient, proceeds as far as practicable with the conformity assessment if so requested by the applicant; and
      (iv) informs the applicant, on request, of the status of the application and the reasons for any delay;
   (d) it limits the information the applicant is required to supply to what is necessary to conduct the conformity assessment procedure and to determine appropriate fees;
   (e) the confidential nature of information arising from, or supplied in connection with such procedures for a good of the other Party is respected in the same manner as the treatment accorded to a good of that Party, so as to protect legitimate commercial interests;
   (f) any fee it imposes for conducting the conformity assessment procedure of a good of the other Party is no higher than is equitable in relation to any such fee imposed for like goods of that Party, taking into account communication, transportation and other related costs derived from the different locations of the facilities of the applicant and those of the conformity assessment body;
   (g) the location of facilities at which conformity assessment procedures and sampling selection procedures are conducted does not cause unnecessary inconvenience to the applicant or its agents;
   (h) whenever the specifications for a good are modified subsequent to a determination that the good conforms to the applicable technical regulation or standard, the conformity assessment procedure of the modified good is limited to what is necessary to determine that the good continues to conform to the technical regulation or standard; and
   (i) there is a procedure in place to review complaints concerning the operation of a conformity assessment procedure and that corrective action is taken when a complaint is justified.

3. Each Party shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures.

4. Each Party shall, wherever possible, accept the results of the conformity assessment procedures conducted in the territory of the other Party, provided that the procedure offers a satisfactory assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory, the results of which it accepts, and that the relevant good complies with the applicable technical regulation or standard adopted or maintained in that Party's territory.

5. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 4, and in order to enhance confidence in the permanent reliability of each one of the conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards through means such as accreditation.

6. Recognizing that it should be to the mutual advantage of the Parties, each Party shall accredit, approve, or otherwise recognize conformity assessment bodies in the territory of the other Party, on terms no less favorable than those accorded to conformity assessment bodies in its territory.

Article 9.7: Authorization Procedures

Each Party shall apply, with such modifications as may be necessary, the relevant provisions of Article 9.6.2, to its authorization procedures.

Article 9.8: Transparency

1. Each Party shall keep a list of its standards-related measures and make them available to the other Party, upon request, and ensure that where full copies of documents are requested by the other Party or by interested persons of the other Party, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

2. Where a Party allows non-governmental persons in its territory to participate in the process of preparation of standards-related measures, it shall also allow non-governmental persons from the territory of the other Party to participate. In such participation, non-governmental persons from the territory of the other Party shall be allowed to express their opinions and comments on the preparation of the standards-related measure.

Article 9.9: Limitations on the Provision of Information

Nothing in this Chapter shall be construed to require a Party to furnish any information the disclosure of which they consider is contrary to its essential security interests.

Article 9.10: Committee on Standards-Related Measures

1. The Parties hereby establish the Committee on Standards-Related Measures, comprising representatives of each Party, pursuant to Annex 9.10.

2. The Committee's functions shall include:
   (a) monitoring the implementation, enforcement and administration of this Chapter;
   (b) considering any specific matter relating to the standards-related and metrology-related measures of the other Party or any other related measures, whenever a Party has any doubts on the interpretation or application of this Chapter, including the provision of non-mandatory technical advice and recommendations;
   (c) facilitating the process by which the Parties make compatible their standards-related and metrology-related measures;
   (d) providing a forum for the Parties to consult on issues relating to standards-related and metrology-related measures;
   (e) fostering technical cooperation activities between the Parties;
   (f) enhancing cooperation on the development and strengthening of standardization systems, technical regulations, conformity assessment procedures and metrology systems of the Parties;
   (g) reporting annually to the Commission on the implementation of this Chapter;
   (h) facilitating the process of negotiating agreements for mutual recognition between the Parties; and
   (i) establishing sub-committees as deemed necessary and determining the scope of action and mandate of such sub-committees.

3. The Committee shall meet as mutually agreed but not less than once a year. The meetings may also be held by telephone, video conference or other means, upon the agreement of the Parties.

Article 9.11: Technical Cooperation

1. Each Party shall, upon request of the other Party, provide:
   (a) information and technical assistance on mutually agreed terms and conditions to enhance the standards-related measures of that Party, as well as its activities, processes and systems in this matter; and
   (b) information on its technical cooperation programs linked to standards-related measures in specific areas of interest.

2. Each Party shall encourage standardizing bodies in its territory to cooperate with the standardizing bodies in the territories of the other Party, as appropriate, in standardizing activities, such as through membership in international standardizing bodies.

3. Each Party shall, to the fullest extent practicable, inform the other Party of the international agreements or programs it has executed on standards-related measures.

Annex 9.10
Members of the Standards-Related Measures Committee

1. For purposes of Article 9.10, members of the Committee will be representatives from:
   (a) in the case of Chile, the Ministerio de Economía, through the Departamento de Comercio Exterior, or its successor; and
   (b) in the case of Korea, the Ministry of Commerce, Industry and Energy, through a department responsible for standards-related measures, or its successor.

2. Each member shall invite, as it deems necessary or upon request of the other Party, other relevant government organizations responsible for standards-related measures, to participate in the Committee.