

Mexico may exercise rights with respect to the seabed and subsoil and their natural resources.

PART TWO – TRADE IN GOODS

CHAPTER 3. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A – Definitions, Scope and Coverage

Article 3-01

Definitions

For the 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 a 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 good means a good classified in one of the following chapters, headings or subheadings of the Harmonized System:

(The descriptions are provided for purposes of reference)

Chapters 1 through 24	(other than a fish or fish product)
Subheading 2905.43	Manitol
Subheading 2905.44	Sorbitol
Subheading 2918.14	Citric acid
Subheading 2918.15	Salts and esters of citric acid
Subheading 2936.27	Vitamin C and its derivatives
Heading 33.01	Essential oils
Headings 35.01 to 35.05	Albuminoidal substances, modified starches
Subheading 3809.10	Finishing agents
Subheading 3824.60	Sorbitol, except in subheading 2905.44
Headings 41.01 to 41.03	Hides and skins
heading 43.01	Raw furskins
headings 50.01 to 50.03	Raw silk and silk waste
headings 51.01 to 51.03	Wool and animal hair
headings 52.01 to	Raw cotton, cotton waste and cotton carded or combed

52.03	
heading 53.01	Raw flax
heading 53.02	Raw hemp

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;

export of goods means the export or temporary export of goods;

export subsidies refer to:

- (a) the provision by governments or their agencies of direct subsidies, including payments in kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board;
- (b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;
- (c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;
- (d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;
- (e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments; and
- (f) subsidies on agricultural products contingent on their incorporation in exported products;

first come first served means the mechanism for assigning quotas, in accordance with the administrative procedures established in the Uniform Regulations in this Chapter;

fish and fish products means fish, crustaceans, molluscs and all other aquatic invertebrates, marine mammals and by-products thereof, classified in one of the following chapters, headings or subheadings of the Harmonized System:

(The descriptions are provided for purposes of reference)

Chapter 03	Fish and crustaceans, molluscs and other aquatic invertebrates
Heading 05.07	Ivory, tortoise-shell, marine mammals, horns, antlers, shells, hooves, nails, claws and beaks, and products thereof
Heading 05.08	Coral and similar materials
Heading 05.09	Natural sponges of animal origin
Heading 05.11	Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of chapter 3
Heading 15.04	Fats and oils and their fractions, of fish or marine mammals
Heading 16.03	Extracts and juices other than of meat
Heading 16.04	Prepared or preserved fish
Heading 16.05	Prepared or preserved crustaceans, molluscs and other aquatic invertebrates
Subheading 2301.20	Flours, meals, pellets, of fish

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 Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters that are used to promote, publicize or advertise a good or service and are supplied free of charge;

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

solicitation of orders means the solicitation or drawing up of orders;

temporary admission of goods means temporary admission of goods or temporary importation of goods; and

used vehicle means a “used vehicle” as defined in Annex 3-01.

Article 3-02

Scope and Coverage

This Chapter applies to trade in goods of a Party.

Section B – National Treatment

Article 3-03

National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes, and to this end Article III of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement.
2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a state, treatment no less favourable than the most favourable treatment accorded by such state to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part. “Goods of the Party” includes goods produced in a state of that Party.
3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 3-03.

Section C - Tariffs

Article 3-04

Tariff Elimination

1. Except as provided in Annexes 3-04(3) and 3-04(4), the Parties shall eliminate all customs duties on originating goods on the date of entry into force of this Agreement.
2. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new duty, on a good.
3. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Tariff Reduction Programme in Annex 3-04(3).
4. Notwithstanding paragraphs 1, 2 and 3, a Party may adopt or maintain customs duties in accordance with its rights and duties under the GATT 1994 on the originating goods included in Annex 3-04(4) until such time as the parties agree otherwise in accordance with paragraph 5.

5. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in Annex 3-04(3) or include goods covered in Annex 3-04(4) in their Tariff Reduction Programme. An agreement between the Parties, reached pursuant to Article 17-01(3) (Free Trade Commission) to accelerate the elimination of a customs duty on a good or to include a good in their Tariff Reduction Programmes shall supersede any duty rate or staging category determined pursuant to their Schedules for such good.

6. When this Agreement comes into force, the preferences negotiated or granted between the Parties under the Montevideo Treaty 1980 shall be rescinded.

7. 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 Annexes 3-04(3) or 3-04(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.

8. On written request of either Party, a Party applying or intending to apply measures pursuant to paragraph 7 shall consult to review the administration of those measures.

9. Paragraphs 1, 2 and 3 are not intended to prevent a Party from maintaining or raising a customs duty that may be permitted under a dispute settlement ruling under the WTO Agreement or any other agreement negotiated under the WTO Agreement.

Article 3-05

Customs Valuation Code

The Customs Valuation Code shall govern the customs valuation rules applied by the Parties to their reciprocal trade. The Parties agree that they will not make use in their reciprocal trade of the options and reservations permitted under Article 20 and paragraphs 2, 3 and 4 of Annex III of the Customs Valuation Code.

Article 3-06

Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission, including exemption from fees as specified in Annex 3-06 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 (Temporary Entry for Business Persons);
- (b) equipment for the press or for sound or television broadcasting and cinematographic equipment;

- (c) goods imported for sports purposes and goods intended for display or demonstration; and
- (d) commercial samples and advertising films;

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

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

- (a) be imported 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 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 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 condition the duty-free temporary admission of a good referred to in paragraph 1(d), other than to require that such good:

- (a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of 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 period as is reasonably related to the purpose of the temporary admission; and
 - (e) be imported in no greater quantity than is reasonable for its intended use.
- 4. Where a good is temporarily admitted duty free under paragraph 1 and any condition the Party imposes under paragraph 2 and 3 has not been fulfilled, a Party may impose:
 - (a) the customs duty and any other charge that would be owed on final importation of the good; and
 - (b) any applicable criminal, civil or administrative penalties that the circumstances may warrant.
- 5. Subject to Chapters 9 (Investment) and 10 (Cross-Border Trade in Services):
 - (a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or 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 vehicle or container;
 - (c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and
 - (d) neither Party may require that the vehicle or carrier bringing a container from the territory of the other Party into its territory be the same vehicle or carrier that takes such container to the territory of the other Party.
- 6. For purposes of paragraph 5, "vehicle" means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 3-07

Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials

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

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

Article 3-08

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 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.

Section D – Non-Tariff Measures

Article 3-09

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 the GATT 1994, including its interpretative notes. To this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement.
2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.
3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:
 - (a) limiting or prohibiting the importation from the territory of the other Party of such good; or
 - (b) requiring as a condition of export of such good 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, on 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 3-09.

Article 3-10

Customs User Fees

Effective 30 June 1999, the Parties shall eliminate all their customs user fees on originating goods, including those established in Annex 3-10. From the time this Agreement comes into force until 30 June 1999, neither Party may increase or establish new customs user fees for originating goods.

Article 3-11

Export Taxes

Except as provided in Annex 3-11, neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.

Article 3-12

International Obligations

A Party, prior to adopting a measure under an inter-governmental agreement on commodities pursuant to Article XX(h) of the GATT 1994, which may affect the trade in commodities between the Parties, shall consult the other Party to prevent the nullification or impairment of a concession granted by that Party under Article 3-04.

Article 3-13

Export Subsidies on Agricultural Goods

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall cooperate in an effort to achieve such an agreement under the framework of the WTO Agreement.

2. Effective 1 January 2003, neither Party shall introduce or maintain any export subsidy on agricultural goods in their reciprocal trade. As of that date, the Parties also renounce the rights conferred under the GATT 1994 to use export subsidies and

the rights with respect to the use of such subsidies in their reciprocal trade that may arise from multilateral negotiations on trade in agriculture under the framework of the WTO Agreement.

3. Notwithstanding paragraph 2, if at the request of the importing Party, the Parties agree to an export subsidy on an agricultural good to the territory of the importing Party, the exporting Party may adopt or maintain such subsidy.

4. Where a Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the other Party, consult with it with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of any such subsidized imports. During the period before 1 January 2003, if the importing Party adopts the agreed-upon measures, the other Party shall refrain from applying, or immediately cease to apply, any export subsidy to exports of such good to the territory of the importing Party.

5. Until 1 January 2003, should a Party introduce, re-introduce or increase a subsidy on the export of an agricultural good, the other Party may increase the rate of duty applicable to such exports up to the level of the most-favoured-nation tariff.

Article 3-14

Domestic Support

With respect to domestic support for agricultural goods, the Parties shall comply with the Agreement on Agriculture, which forms part of the WTO Agreement.

Section E – Automotive Sector

Article 3-15

Automotive Sector

For trade in automotive vehicles, the Parties shall comply with the provisions of Annex 3-15.

Section F - Consultations

Article 3-16

Committee on Trade in Goods

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

2. The Committee shall be established within three months after the date on which this Agreement comes into force. The Committee shall adopt its decisions by mutual agreement.

3. The Committee shall convene on the request of either Party or the Commission to oversee the effective implementation of this Chapter, Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures) and the Uniform Regulations.

4. The Committee shall:

- (a) coordinate activities and oversee the functioning of the Sub-Committees on Non-Agricultural Goods, Agriculture, Rules of Origin and Customs, in accordance with paragraphs 5, 6 and 7 and Articles 4-18 (Sub-Committee on Rules of Origin) and 5-14 (Customs Sub-Committee), for which purpose it may meet with the chairs of those sub-committees;
- (b) request periodic reports from the Sub-Committees on matters in their sphere of competence;
- (c) at the request of either of the Parties, evaluate and recommend proposals for modifications, rectifications or additions to the applicable provisions for better application of paragraph 3;
- (d) propose to the Commission the review of measures in effect in the Parties, necessary for application of the Chapters and Regulations mentioned in paragraph 3; and
- (e) carry out the other tasks agreed on by the Parties or the Commission under this Agreement and other instruments deriving from it.

5. The Parties establish the following Sub-Committees: Non-Agricultural Goods, Agriculture, Rules of Origin and Customs, comprising representatives of each Party. The Sub-Committees shall:

- (a) monitor application of the provisions of this Agreement linked, directly or indirectly, to their spheres of competence;
- (b) recommend to the Committee the adoption of measures to further free trade between the Parties;
- (c) report periodically to the Committee and, when pertinent, to related Sub-Committees, on the agreements reached and the activities performed in exercise of their functions;
- (d) convene at least once a year and whenever so requested by a Party or the Commission;
- (e) consider any matter in their sphere of competence submitted or consulted by a Party, the Committee or another Sub-Committee;

- (f) refer to the Committee any matter on which it has been unable to reach agreement within 60 days after it has begun to examine that matter; and
 - (g) carry out the other tasks referred to it by the Committee under this Agreement and other instruments deriving from it.
6. Notwithstanding paragraph 5, the Sub-Committee on Non-Agricultural Goods shall:
- (a) support technical studies for the application of Article 3-17(5);
 - (b) carry out consultations and studies to include the non-agricultural goods listed in Annex 3-04(4) in the Tariff Reduction Programme;
 - (c) refer to the Committee matters that impede access by non-agricultural goods to the territory of the Parties, particularly relating to the application of non-tariff measures; and
 - (d) conduct studies to define the administrative processes of the quota-allocation mechanism established in Annex 3-15.
7. Notwithstanding paragraph 5, the Sub-Committee on Agriculture shall:
- (a) support technical studies for the application of Article 3-17(5) with respect to agricultural goods;
 - (b) refer to the Committee difficulties in applying the provisions in its sphere of competence that affect trade in agricultural goods;
 - (c) promote trade in agricultural goods through consultations and studies to accelerate the elimination of tariffs on the agricultural goods in Annex 3-04(3) and to include the agricultural goods listed in Annex 3-03(4) in the Tariff Reduction Programme;
 - (d) refer to the Committee matters that impede access by agricultural goods to the territory of the Parties, particularly relating to the application of non-tariff measures; and
 - (e) conduct studies to define the administrative processes of the quota-allocation mechanism established in Annex 3-04(3).

Article 3-17

Information and Consultations

1. At the request of one Party, the other Party shall provide information and respond promptly to questions regarding any existing or planned measure related to the application of this Chapter.

2. If, during the Agreement, a Party considers that a measure in the other Party affects the effective application of this Chapter, that party may refer the matter to the Committee.

3. Within 30 days after submission of the request, the Committee may request technical reports from the competent authorities and takes steps to help resolve the matter.

4. If the Committee has met as established in Article 3-16 but fails to reach agreement within the established time or considers that the matter is outside its sphere of competence, either Party may request in writing that the Commission meet as established in Article 17-01 (Free Trade Commission).

5. The Parties undertake within a year after this Agreement comes into force to identify, in terms of tariff item and nomenclature under their respective tariffs, the measures, restrictions or prohibitions on the importation or exportation of goods for reasons of national security, public health, preservation of wildlife, the environment, animal health, standards, labels, international commitments, requirements of public order or any other regulation. The Parties shall update that information and communicate it to the Committee, whenever necessary.

CHAPTER 4: RULES OF ORIGIN

Article 4-01

Definitions

For the purposes of this Chapter:

direct costs and expenses of manufacture means the costs and expenses incurred during a period that are directly related to the good, but different from the cost or value of direct materials and the cost of direct labour;

F.O.B. means free on board, regardless of the mode of transportation, at the point of shipment abroad;

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical, which cannot be differentiated by a simple visual examination;

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

good means any merchandise, product, article or matter;

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

- (a) mineral goods extracted in the territory of one or both Parties;
- (b) vegetable goods harvested in the territory of one or both Parties;
- (c) live animals born and raised in the territory of one or both Parties;
- (d) goods obtained from hunting or fishing in the territory of one or both Parties;
- (e) goods (fish, shellfish and other marine life) taken from the sea 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 that Party and fly its flag;
- (g) goods taken by a Party or a person of a Party from the seabed or marine subsoil outside territorial waters, provided that a Party has rights to exploit such seabed or marine subsoil;
- (h) waste and scrap derived from:
 - (i) production in the territory of one or both Parties; or
 - (ii) used goods collected in the territory of one or both Parties, provided such goods are fit only for the recovery of raw materials; and
- (i) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs (a) through (h), or from their derivatives, at any stage of production;

identical or similar goods means "identical goods" and "similar goods", respectively, as defined in the Customs Valuation Code;

indirect costs and expenses of manufacture means the costs and expenses incurred in a period, other than the direct costs and expenses of manufacture, the cost of direct labour, and the cost or value of direct materials;

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 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 4-07;

location of the producer in relation to a good means the plant that produces such good;

material means a good that is used in the production of another good;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and repacking costs;

originating material means a material that qualifies as originating under this Chapter;

packing materials and containers for shipment means goods used to used to protect a good during transport, other than the packaging and materials for retail sale;

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

production means growing, mining, harvesting, fishing, hunting, manufacturing, processing or assembling a good;

related person means a person related to another person on the basis that:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;

- (d) any person who directly or indirectly owns, controls or holds 25 per cent or more of the outstanding voting stock or shares of each of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family (children, brothers, sisters, grandparents, or spouses);

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

- (a) personnel training, without regard to where performed; and
- (b) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services or other services;

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

- (a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials, exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;
- (b) sales and marketing incentives; consumer, retailer or wholesaler rebates;
- (c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and aftersales service personnel;
- (d) recruiting and training of sales promotion, marketing and aftersales service personnel, and aftersales training of customers' employees, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;

- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing and aftersales service of goods, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;
- (g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;
- (h) rent and depreciation of sales promotion, marketing and aftersales service offices and distribution centres;
- (i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer; and
- (j) payments by the producer to other persons for warranty repairs;

self-produced material means a material that is produced by the producer of a good and used in the production of that good;

shipping and repacking costs means the costs incurred in repacking a good and shipping the good outside the territory where the producer or exporter of the good is located;

total cost means the sum of the following:

- (a) the cost or value of the direct materials used in the production of the good;
- (b) the cost of the direct labour used in production of the good;
- (c) a reasonable amount for direct and indirect costs of manufacturing the good, excluding the following:
 - (i) the costs and expenses of a service provided by the producer of a good to a third party, when the service is not related to the good,
 - (ii) the costs and losses resulting from the sale of part of the company of the producer, which constitutes a discontinued operation,

- (iii) the costs related to the cumulative effect of changes in the application of accounting principles,
- (iv) the costs or losses resulting from the sale of a capital good of the producer,
- (v) the costs and expenses related to Acts of God or force majeure,
- (vi) the earnings obtained by the producer of the good, regardless of whether they were retained by the producer or paid to other persons as dividends and the taxes on those earnings, including the capital gains tax, and
- (vii) the interest costs agreed to by related persons in excess of the interest paid at market rates;

transaction value of a good means the price actually paid or payable for a good with respect to a transaction of the producer of the good, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Code shall be the producer of the good;

transaction value of a material means the price actually paid or payable for a material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good or material is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Code shall be the supplier of the material and the buyer referred to in the Customs Valuation Code shall be the producer of the good; and

used means used or consumed in the production of goods;

Article 4-02

Interpretation and Application

1. For the purposes of this Chapter:
 - (a) the basis for tariff classification is the Harmonized System;
 - (a) the transaction value of a good or material shall be determined on the basis of the principles of the Customs Valuation Code; and
 - (b) all the 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.

2. In applying the Customs Valuation Code under this Chapter to determine the origin of a good:
 - (a) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions; and
 - (b) the provisions of this Chapter shall take precedence over the Customs Valuation Code to the extent of any difference.

Article 4-03

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 4-01;
 - (b) the good is produced entirely in the territory of one or both of the Parties exclusively from originating materials as defined in this Chapter;
 - (c) the good is produced in the territory of one or both of the Parties from non-originating materials that undergo a change in tariff classification and meet other requirements, as set out in Annex 4-03, and the good satisfies all other applicable provisions of this Chapter;
 - (d) the good is produced in the territory of one or both of the Parties from non-originating materials that undergo a change in tariff classification and meet other requirements and the good satisfies the regional value content, as set out in Annex 4-03, and all other applicable provisions of this Chapter;
 - (e) the good is produced in the territory of one of both of the Parties and satisfies the regional value content as specified in Annex 4-03 and all other applicable requirements of this Chapter; or
 - (f) except for a good provided for in Chapters 61 through 63 of the Harmonized 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 of Interpretation of the Harmonized 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 4-04, is not less than 50 per cent where the transaction value method is used, or is not less than 40 per cent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter, unless the applicable rule of Annex 4-03 under which it is classified specifies a different regional value content requirement, in which case that requirement is to be applied.

- 2. For the purposes of this Chapter, a good produced from non-originating materials that undergo a change in tariff classification and satisfy the other requirements set out in Article 4-03 shall have been produced entirely in the territory of one or both Parties and the entire regional value content of the good shall be met in the territory of one or both Parties.

Article 4-04

Regional Value Content

- 1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 4.
- 2. The regional value content of a good may be calculated on the basis of the following transaction value method:

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

where

- RVC is the regional value content, expressed as a percentage;
- TV is the transaction value of the good adjusted to a F.O.B. basis, except as provided in paragraph 3; and
- VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with Article 4-05.

2. For the purposes of paragraph 2, where the producer of the good does not export it directly, the transaction value shall be adjusted to the point at which the purchaser receives the good within the territory where the producer is located.

3. The regional value content of a good may be calculated on the basis of the following net cost method:

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

where

- RVC is the regional value content, expressed as a percentage;
- NC is the net cost of the good; and
- VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with Article 4-05.

5. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 4 where:

- (a) there is no transaction value for the good because it is not for sale;
- (b) the transaction value of the good cannot be determined owing to restrictions on the assignment or use of the good by the buyer with the exception of those that:
 - (i) are imposed or required by the law or the authorities of the Party in which the purchaser of the good is located,

- (ii) limit the geographical territory in which the good can be resold, or
- (iii) do not substantially affect the value of the good;
- (c) the sale or the price depends on a condition or consideration whose value cannot be determined in relation to the good;
- (d) part of the proceeds from the resale of the product or from any subsequent assignment or use of the good by the buyer reverts directly or indirectly to the vendor, unless the necessary adjustment can be made in accordance with Article 8 of the Customs Valuation Code;
- (e) the buyer and the vendor are related persons and the relationship between them influences the price, except as provided in paragraph 2, Article 1, of the Customs Valuation Code;
- (f) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods sold to related persons during the six-month period immediately preceding the month in which the good is sold by the producer exceeds 85 per cent of the producer's total sales of such goods during that period;
- (g) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article 4-08; or
- (h) the good is designated as an intermediate material under Article 4-07 and is subject to a regional value-content requirement.

6. If an exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method set out in paragraph 2 and a Party subsequently notifies the exporter or producer, during the course of a verification pursuant to Chapter 5 (Customs Procedures), that the transaction value of the good, or the value of any material used in the production of the good, is required to be adjusted or is unacceptable under paragraph 5, the exporter or producer may then also calculate the regional value content of the good on the basis of the net cost method set out in paragraph 4.

7. With the exception of the goods covered in Article 4-15, a producer may average the regional value content of one or all of the goods included in the same subheading, that are produced by the same plant or in different plants in the territory of a Party, either taking as the base all the goods produced by the producer or only the goods that are exported to the other Party:

- (a) in the fiscal year or period; or
- (b) in any monthly, bimonthly, quarterly, four-monthly or semiannual period.

8. Article 20-10 (Revocations and Transitory Provisions) shall apply to goods classified in subheadings 8422.40 and 8431.43.

Article 4-05

Value of Materials

1. The value of a material shall:
 - (a) be the transaction value of the material; or
 - (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code.
2. Where not included under paragraph 1 (a) or (b), the value of a material shall include:
 - (a) freight, insurance, packing and all other costs incurred in transporting the material from the port of importation in the territory of the Party where the producer is located, except as provided in paragraph 3;
 - (b) the cost of waste and spoilage resulting from the use of the material in the production of the good, less any costs recovered, provided the recovery does not exceed 30 per cent of the value of the material, determined in accordance with paragraph 1.
3. Where the producer of a good buys a non-originating material in the territory of the Party where the producer is located, the value of the non-originating material shall not include freight, insurance, packing or any other cost incurred in transporting the material from the warehouse of the supplier to the location of the producer.
4. To calculate the regional value content under Article 4-04, the value of the non-originating materials used by the producer in the production of a good shall not include the value of the non-originating materials used by:
 - (a) another producer in the production of an originating material that is purchased and used by the producer of the good in its production; or
 - (b) the producer of the good in the production of a self-manufactured originating material, designated by the producer as an intermediate material in accordance with Article 4-07.

Article 4-06

De Minimis

1. A good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an

applicable change in tariff classification set out in Annex 4-03 is not more than eight per cent of the transaction value of the good, adjusted on the basis of Article 4-04 (2) or (3) as appropriate, or in the cases referred to in Article 4-04 (5), if the value of all non-originating materials is not more than eight per cent of the total cost of the good.

2. If a good mentioned in paragraph 1 is also subject to a regional value content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good and the good must satisfy all other applicable requirements of this Chapter.

3. A good that is subject to a regional value-content requirement established in Annex 4-03 shall not be required to satisfy such requirement if the value of all non-originating materials is not more than eight per cent of the transaction value of the good, adjusted on the basis of Article 4-04 (2) or (3) as appropriate, or in the cases referred to in Article 4-04 (5), if the value of all non-originating materials is not more than eight per cent of the total cost.

4. Paragraph 1 does not apply to:

- (a) goods provided for in Chapter 50 through 63 of the Harmonized System; or
- (b) a non-originating material used in the production of a good provided for in Chapter 1 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

Article 4-07

Intermediate Materials

1. For the purposes of calculating the regional value content under Article 4-04, the producer of a good may designate as an intermediate material, any self-produced material used in the production of the good, provided such material is an originating good as established in Article 4-03.

2. Where an intermediate material is subject to a regional value content under Annex 4-03, the value shall be calculated on the basis of the net cost method established in Article 4-04 (4).

3. For the purposes of calculating the regional value content of a good, the value of the intermediate material shall be the total cost that can reasonably be assigned to that intermediate material as established in the Uniform Regulations of this Chapter.

4. If a material designated as an intermediate material is subject to a regional value content, no other self-produced material subject to a regional value content used in the production of that intermediate material may be designated by the producer as an intermediate material.

5. Except where two or more producers accumulate their production under Article 4-08, the restriction established in paragraph 4 shall not apply to an intermediate material used by another producer in the production of a material that is subsequently purchased and used in the production of a good by the producer mentioned in paragraph 4.

Article 4-08

Accumulation

1. For the purposes of determining whether a good is an originating good, the producer of a good may choose to accumulate own production with that of one or more producers in the territory of one or both Parties of materials that are incorporated into that good, so that the production of the materials is considered to have been performed by that producer, provided the good complies with the requirements of Article 4-03.

2. In cases in which the accumulated good is subject to a regional value-content requirement, the calculation shall be performed on the basis of the net cost method.

Article 4-09

Fungible Goods and Materials

1. For the purposes of determining whether a good is an originating good when originating and non-originating fungible materials are commingled in the inventory, the origin of the materials may be determined on the basis of any of the inventory management methods set out in the Uniform Regulations.

2. Where originating and non-originating fungible goods are commingled in the inventory and do not undergo any productive process or any other operation in the territory of the Party in which they were commingled, other than unloading, reloading or any other movement necessary to maintain the goods in good condition or ship them to the territory of the other Party, the origin of the good may be determined on the basis of any of the inventory management methods set out in the Uniform Regulations.

3. Once one of the inventory management methods set out in the Uniform Regulations has been selected, it shall be used during the entire fiscal year or period.

Article 4-10

Sets and Assortments

1. Sets and assortments of goods classified as provided in Rule 3 of the General Rules of Interpretation, of the Harmonized System and goods whose description under the nomenclature of the Harmonized System is specifically that of a set or assortment shall qualify as originating, provided that each of the goods in the set or assortment complies with the rule of origin established for each of the goods in this Chapter.
2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating if the value of all the non-originating goods used to form the set or assortment does not exceed eight per cent of the transaction value of the set or assortment, adjusted on the basis of paragraph 2 or 3 of Article 4-04 as applicable or, in the cases referred to in Article 4-04 (5), if the value of all the non-originating goods does not exceed eight per cent of the total value of the set or assortment.
3. The provisions of this Article shall take precedence over the specific rules established in Annex 4-03.

Article 4-11

Indirect Materials

An indirect material shall be considered to be an originating material without regard to where it is produced and the value of such material shall be the cost reported in the accounting records of the producer of the good.

Article 4-12

Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools 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 4-03, provided that:
 - (a) the accessories, spare parts or tools are not invoiced separately from the good, regardless of whether they are listed separately in the invoice; 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.

3. For the purposes of paragraph 2, where the accessories, spare parts or tools are self-produced, the producer may opt to designate them as intermediate materials under Article 4-07.

Article 4-13

Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good in the Harmonized System, 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 4-03.

2. 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.

3. For the purposes of paragraph 2, when the packaging materials and containers are self-produced, the producer may designate them as intermediate materials under Article 4-07.

Article 4-14

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 an applicable change in tariff classification set out in Annex 4-03; and
- (b) the good satisfies a regional value-content requirement.

Article 4-15

Automotive Goods

1. For the purposes of this Article:

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

- (a) motor vehicles in subheading 8701.20, 8702.10. or 8702.90 (vehicles for the transport of 16 or more persons), or subheading

8704.10, 8704.22, 8704.23, 8704.32 or 8704.90 or heading 87.05 or 87.06;

- (b) motor vehicles in subheading 8701.10 or 8701.30 through 8701.90;
- (c) motor vehicles in subheading 8702.10 or 8702.90 (vehicles for the transport of 15 or fewer persons), or subheading 8704.21 or 8704.31; or
- (d) motor vehicles in subheading 8703.21 through 8703.90;

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

model name means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler:

- (a) to differentiate the motor vehicle from other motor vehicles that use the same platform design;
- (b) to associate the motor vehicle with other motor vehicles that use a different platform design; or
- (c) to denote a platform design;

motor vehicle means a good included in heading 87.01, 87.02, 87.03, 87.04, 87.05 or 87.06;

platform means the platform primary load-bearing structural assembly of a motor vehicle determining the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques; and

underbody means the floor pan of a motor vehicle.

2. For purposes of calculating the regional value content of a motor vehicle, the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

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

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

Article 4-16

Non-Qualifying Operations and Practices

A good shall not be considered to be an originating good merely by reason of:

- (a) dilution with water or another substance that does not materially alter the characteristics of the good;
- (b) simple operations for conserving the good during transport or storage, such as airing, refrigeration, removal of damaged parts, drying or the addition of substances;
- (c) dusting, screening, classification, selection, washing, cutting;
- (d) packing, repacking or packaging for retail sale;
- (e) the collection of goods to make series, sets or assortments;
- (f) application of marks, labels or similar distinguishing signs;
- (g) cleaning, including the removal of rust, grease, paint or other coverings; and
- (h) the simple collection of parts and components classified as a good under Rule 2(a) of the General Rules of Interpretation of the Harmonized System. This shall not apply to goods that were already assembled and subsequently disassembled for convenient packing, handling or shipping.

2. Any activity or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter shall not confer origin.

3. The provisions of this Article shall take precedence over the specific rules established in Annex 4-03.

Article 4-17

Transshipment and Direct Shipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 4-03 if, subsequent to that production:

- (a) the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party;
- (b) the good does not remain under the control or supervision of the customs authority in the territory of a non-party country.

Article 4-18

Sub-Committee on Rules of Origin

1. Notwithstanding Article 3-16(5) (Committee of Trade in Goods), the Sub-Committee on Rules of Origin shall have the following functions:

- (a) cooperate in applying this Chapter in accordance with Chapter 5 (Customs Procedures);
- (b) on the request of a Party, consider duly-substantiated proposals to modify the rules of origin to reflect changes in production processes or other aspects related to the determination of origin of a good;
- (c) propose to the Committee on Trade in Goods modifications and additions to this Chapter, the Uniform Regulations and to matters in its sphere of competence;
- (d) conduct technical studies to fulfil the objective established in Article 20-09 (Cooperation on Rules of Origin); and
- (e) determine, where appropriate, the influence of interest costs incurred by a producer of one Party on the production of a good, in order to avoid undue use of such costs in determining the origin of that good.

2. Paragraph 1 shall not be construed to prevent a Party from issuing a determination of origin or an advance ruling or from taking such other action as it considers necessary.

CHAPTER 5 – CUSTOMS PROCEDURES

Article 5-01

Definitions

1. For the 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 determination as to whether a good qualifies as an originating good in accordance with Chapter 4 (Rules of Origin);

exporter means an exporter located in the territory of a Party from which the good is exported, required under this Chapter to maintain the records in the territory of that Party referred to in Article 5-06(a);

identical goods means “identical goods” as defined in the Customs Valuation Code;

importer means an importer located in the territory of a Party to which the good is imported, required under this Chapter to maintain the records in the territory of that Party referred to in Article 5-06(b);

preferential tariff treatment means the duty rate applicable to an originating good in accordance with the Tariff Reduction Programme;

producer means a “producer” as defined in Article 4-01 (Definitions), located in the territory of a Party, required maintain the records in the territory of that Party referred to in Article 5-06(a); and

value means the value of a good or material for the purposes of calculating customs tariffs or the application of Chapter 4 (Rules of Origin).

2. Unless otherwise specified in this Article, this Chapter includes the definitions established in Chapter 4 (Rules of Origin).

Article 5-02

Declaration and Certification of Origin

1. For the purposes of this Chapter, on the date on which this Agreement comes into force, the Parties shall prepare a single form for the Certificate of Origin and a single form for the declaration of origin, which may be modified by mutual agreement.

2. The Certificate of Origin referred to in paragraph 1 shall serve to certify that a good exported from the territory of one Party to the territory of the other Party qualifies as an originating good. The certificate shall remain valid for up to two years after it is signed.
3. Each Party shall require its exporters to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment.
4. Each Party shall require that:
 - (a) where an exporter 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;
 - (b) the declaration of origin applicable to the good to be exported shall be completed and signed by the producer of the good and given voluntarily to the exporter. The statement shall remain valid for up to two years after it is signed.
5. 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) a single importation of one or more goods; or
 - (b) multiple importations of identical goods within a specified period, not exceeding 12 months, set out in the certificate by the exporter.

Article 5-03

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 statement, based on a valid Certificate of Origin, that the good qualifies as an originating good;
 - (b) have the certificate in its possession at the time the statement is made;

- (c) provide, on the request of that Party's customs administration, a copy of the certificate; and
- (d) promptly make a corrected statement and pay any duties owing where the importer has reason to believe that a certificate on which a statement was based contains information that is not correct. If the importer complies with the above obligation, it shall not be subject to penalties.

2. Each Party shall provide that when an importer in its territory fails to comply with any of the requirements established in this Chapter it shall be denied the preferential tariff treatment claimed for the good imported into 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 preferential tariff treatment, on presentation of:

- (a) a written statement 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.

Article 5-04

Obligations Regarding Exportations

1. Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin, shall provide a copy of the certificate or declaration to its customs administration on request.

2. Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin, and that has reason to believe that the certificate contains information that is not correct, shall promptly notify in writing all persons to whom the certificate or declaration was given of any change that could affect the accuracy or validity of the certificate or declaration and its customs administration. In such cases, the exporter or producer shall not be subject to penalties for having presented an incorrect certificate or declaration.

3. Each Party shall provide that a false certification or statement 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. 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.

4. The customs administration of the exporting Party shall inform the customs administration of the importing Party in writing of the notification referred to in paragraph 2.

Article 5-05

Exceptions

Provided that an importation does not form part of two or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5-02 and 5-03, the Parties shall not require a Certificate of Origin in the following cases:

- (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 by the importer or exporter 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.

Article 5-06

Accounting Records

Each Party shall provide that:

- (a) an exporter or a producer in its territory that completes and signs a certificate or declaration of origin shall maintain, for a minimum of five years after the date on which the certificate or declaration was signed, all records and documents relating to the origin of a good, including records and documents associated with:
 - (i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory,
 - (ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and

- (iii) the production of the good in the form in which the good is exported from its territory; and
- (b) an importer claiming preferential tariff treatment for a good imported into the Party's territory from the territory of the other Party shall maintain, for a minimum of five years after the date of importation of the good, the Certificate of Origin and all documentation relating to the importation of the good, as the importing Party may require.

Article 5-07

Origin Verifications

1. The importing Party may request information from the exporting Party on the origin of a good.

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

- (a) written questionnaires to exporters or producers 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 and documents accrediting compliance with the rules of origin in accordance with Article 5-06 (a) and observe the facilities used in the production of the materials; or
- (c) such other procedure as the Parties may agree.

3. Prior to conducting a verification visit pursuant to paragraph (2)(b), the importing Party shall, through its customs administration, deliver a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer whose premises are to be visited, to the customs administration of the Party in whose territory the visit is to be conducted and, if requested by the latter, to the embassy of the other Party in the territory of the importing Party. The customs administration of the importing Party shall obtain the written consent of the exporter or producer whose premises are to be visited.

4. The notification referred to in paragraph 3 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, identification and titles of the officials performing the verification visit; and
- (f) the legal authority for the verification visit.

5. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 3, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

6. Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 3, the customs administration may, within 15 days of receipt of 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.

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

8. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit to designate two observers to be present during the visit, provided that the observers do not participate in a manner other than as observers. The failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

9. Each Party shall, through its customs administration, where conducting a verification of origin involving a regional value content, de minimis calculation or any other provision in Chapter 4 (Rules of Origin) 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.

10. After the verification visit, the customs administration 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.

11. Where a verification by a Party establishes that an exporter or a producer has made a false or unsupported certification or declaration on more than one occasion that a good imported into its territory qualifies as an originating good, the importing Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter 4 (Rules of Origin).

12. Each Party shall provide that where its customs administration determines that a 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 Party from whose territory the good was exported, the importing Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.

13. A Party shall not apply a determination made under paragraph 12 to an importation made before the effective date of the determination where:

- (a) the customs administration of the exporting Party has issued an advance ruling under Article 5-09 or any other ruling on the tariff classification or on the value of such materials, on which a person is entitled to rely; and
- (b) such rulings were given prior to notification of the verification of origin.

Article 5-08

Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the person providing the information.
2. The confidential information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin and of customs and revenue matters, as appropriate.

Article 5-09

Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory. The advance rulings shall be issued by the customs administration of the territory of the importing Party 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 them, concerning:
 - (a) whether a good qualifies as an originating good under Chapter 4 (Rules of Origin);
 - (b) whether non-originating materials used in the production of a good undergo a change in tariff classification set out in Annex 4-03 (Specific Rules of Origin);
 - (c) whether a good satisfies a regional value-content established in Chapter 4 (Rules of Origin);

- (d) whether the method applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good for which an advance ruling is requested is suitable for determining whether the good complies with the regional value content under Chapter 4 (Rules of Origin);
 - (e) whether the method applied by an exporter or a producer in the territory of the other Party for reasonably allocating costs, in accordance with the methods set out in the Uniform Regulations for calculating the net cost of the good or the value of an intermediate material, is suitable for determining whether the good complies with the regional value content under the Chapter referred to;
 - (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 3-08 (Goods Re-Entered after Repair or Alteration); and
 - (g) such other matters as the Parties may agree.
2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including:
- (a) the information reasonably required to process an application for a ruling;
 - (b) the authority of its customs administration, at any time during the course of an evaluation of an application, to request supplemental information from the person requesting the ruling;
 - (c) the obligation of its customs administration to issue an advance ruling, after it has obtained all necessary information from the person requesting an advance ruling; and
 - (d) the obligation of its customs administration to provide a full explanation of the reasons for the advance ruling.
3. Each Party shall apply an advance ruling to importations into its territory beginning on the date of its issuance or such later date as may be specified in the ruling, unless the advance ruling is modified or revoked under paragraph 5.
4. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter 4 (Rules of Origin) regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.
5. An advanced ruling may be modified or revoked in the following cases:

- (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 (Rules of Origin), 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 3-08 (Goods Re-Entered after Repair or Alteration);
- (b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 (National Treatment and Market Access for Goods) or Chapter 4 (Rules of Origin);
- (c) if there is a change in the material facts or circumstances on which the ruling is based;
- (d) to conform with a modification of Chapter 3 (National Treatment and Market Access for Goods), Chapter 4 (Rules of Origin), this Chapter or the Uniform Regulations; or
- (e) to conform with an administrative or judicial decision or a change in the domestic law of the Party that issued the advance ruling.

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

7. Each Party shall provide that where its customs administration examines the regional value content of a good for which it has issued an advance ruling, it shall evaluate whether:

- (a) the exporter or producer has complied with the terms and conditions of the advance ruling;
- (b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advance ruling is based; and

- (c) the data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

8. Each Party shall provide that where its customs administration determines that any requirement in paragraph 7 has not been satisfied, the customs administration may modify or revoke the advance ruling as the circumstances may warrant.

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

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

11. The Parties shall provide that the person to whom an advance ruling has been issued shall only use it for as long as the facts or circumstances on which the ruling is based continue. Should they no longer apply, the person to whom the advance ruling was issued may present information to enable the administration that issued the ruling to proceed under paragraph 5.

12. No good subject to a verification of origin or to a review or appeal body in the territory of either of the Parties shall be the subject of an advance ruling.

Article 5-10

Penalties

1. Each Party shall establish or maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.
2. Nothing in Article 5-03(1)(d), 5-03(2), 5-04(2) or 5-07(7) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Article 5-11

Review and Appeal

1. Each Party shall grant the same rights of review and appeal of determinations of origin and advance rulings as it provides to its importers to exporters or producers in the other Party:

- (a) who complete and sign a certificate or declaration of origin for a good that has been the subject of a determination of origin pursuant to Article 5-07(10); or
- (b) who has received an advance ruling pursuant to Article 5-09.

2. The rights referred to in paragraph 1 shall include access to at least one level of administrative review independent of the official or office responsible for the determination or advance ruling under review, and access to a judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review, in accordance with its domestic law.

Article 5-12

Uniform Regulations

1. The Parties shall establish, and implement through their respective laws and regulations by the date of entry into force of this Agreement, and at any time thereafter, upon express agreement of the Parties, Uniform Regulations regarding the interpretation, application and administration of Chapter 3 (National Treatment and Market Access for Goods), Chapter 4 (Rules of Origin) and other matters as may be agreed by the Parties.
2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

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 5-07, after the avenues for review and appeal mentioned in Article 5-11 have been exhausted;
 - (b) a determination of origin that the Party considers to be contrary to 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 net cost of a good, that is the subject of a determination of origin;
 - (c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and

(d) an advance ruling, or a ruling modifying an advance ruling, pursuant to Article 5-09.

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 harmonization of documentation used in trade, the standardization 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) to the extent practicable, in the verification of origin of a good, for which purpose the customs administration of the importing Party may request the customs administration of the other Party to carry out determined operations or measures for that purpose in its territory and to issue the respective reports; and
- (e) in seeking mechanisms for the detection and prevention of unlawful transshipments of goods from a non-Party.

Article 5-14

Customs Sub-Committee

1. Notwithstanding Article 3-16 (Committee on Trade in Goods), The Customs Sub-Committee shall have the following functions:

- (a) endeavour to agree on:
 - (i) tariff classification and valuation matters relating to determinations of origin,
 - (ii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,
 - (iii) the revisions to the certificate or declaration of origin mentioned in Article 5-02,

- (iv) the interpretation, application and uniform administration of Article 3-06 (Temporary Admission of Goods), 3-07 (Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials) and 3-08 (Goods Re-Entered after Repair or Alteration), Chapter 4 (Rules of Origin), this Chapter and the Uniform Regulations, and
 - (v) any other customs-related matter arising under this Agreement;
- (b) propose to the Committee on Trade in Goods modifications or additions to Chapter 4 (Rules of Origin), this Chapter, the Uniform Regulations and customs-related matters in its sphere of competence; and
- (c) examine proposals for administrative or operational modifications in customs-related matters that could affect trade flows between the Parties.

2. Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling or from taking such other action as it considers necessary, pending a resolution of a matter submitted to this Sub-Committee for consideration.

CHAPTER 6 – EMERGENCY ACTION

Article 6-01

Definitions

For the purposes of this Chapter:

Agreement on Safeguards means the Agreement on Safeguards of the WTO Agreement;

competent investigating authority means “competent investigating authority” as defined in Annex 6-01;

contribute importantly means an important cause, but not necessarily the most important cause;

critical circumstances means circumstances where delay would cause damage that would be difficult to repair;

domestic industry means the producers as a whole of the like or directly competitive good operating in the territory of a Party;

emergency action does not include any emergency action pursuant to a proceeding instituted prior to the entry into force of this Agreement;

serious injury, threat of and causal relationship means that the provisions in that regard established in the Agreement on Safeguards will be applied;

surge means a significant increase in imports over the trend for a recent representative base period; and

transition period means the period during which a good is in the process of tariff elimination.

Article 6-02

Bilateral Emergency Actions

1. Subject to paragraphs 2 through 4, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of the other Party in such increased quantities, in relation to domestic production, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury or threat thereof:

- (a) suspend the further reduction of any rate of duty provided for under this Agreement on the good;
- (b) increase the rate of duty on the good to a level not to exceed the lesser of
 - (i) the most-favoured-nation applied rate of duty in effect at the time the action is taken, and
 - (ii) the most favoured nation applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

- (a) a Party shall, without delay, deliver to the other Party written notice of the institution of a proceeding that could result in emergency action against a good originating in the territory of the other Party;
- (b) any such action shall be initiated no later than one calendar year after the date of institution of the proceeding;
- (c) no action may be maintained
 - (i) for a period exceeding one year, or

- (ii) beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;
- (d) no action may be taken by a Party against any particular good originating in the territory of the other Party more than once during the transition period; and
- (e) on the termination of the action, the rate of duty shall be the rate that, according to the Party's Schedule to Annex 3-04(3) (Tariff Reduction Programme) for the staged elimination of the tariff, would have been in effect one year after the initiation of the action, and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action
 - (i) the rate of duty shall conform to the applicable rate set out in its Schedule to Annex 3-04(3), or
 - (ii) the tariff shall be eliminated in equal annual stages ending on the date set out in its Schedule to Annex 3-04(3) (Tariff Reduction Programme).

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the other Party.

4. The Party taking an action under this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.

Article 6-03

Global Emergency Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards, except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX of the GATT 1994 and the Agreement on Safeguards shall exclude imports of a good from the other Party from the action unless:

- (a) imports from the other Party account for a substantial share of total imports; and

- (b) imports from the other Party contribute importantly to the serious injury, or threat thereof, caused by total imports.
- 2. In determining whether:
 - (a) imports from the other Party account for a substantial share of total imports, those imports normally shall not be considered to be substantial if that Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and
 - (b) imports from the other Party contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the total import share of the other Party, and the level and change in the level of imports of the other Party. Imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of such imports during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.
- 3. A Party taking such action, from which a good from the other Party is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good in the action in the event that the competent investigating authority determines that a surge in imports of such good undermines the effectiveness of the action.
- 4. A Party shall, without delay, deliver written notice to the other Party of the institution of a proceeding that may result in emergency action under paragraph 1 or 3.
- 5. Neither Party may impose restrictions on a good in an action under paragraph 1 or 3:
 - (a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the other Party, as far in advance of taking the action as practicable; and
 - (b) that would have the effect of reducing imports of such good from the other Party below the trend of imports of the good over a recent representative base period with allowance for reasonable growth.
- 6. A Party taking global emergency action pursuant to this Article against goods originating in the other Party shall limit that action solely and exclusively to tariff measures.
- 7. The measures mentioned in paragraph 6 shall consist of increasing the rate of duty on the originating good to a level not to exceed the lesser of:

- (a) the most-favoured-nation applied rate of duty in effect at the time the action is taken; and
- (b) the most favoured nation applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

8. The Party taking an action pursuant to this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action.

9. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 6-04

Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.
2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings shall be provided with the necessary resources to enable it to fulfil its duties.
3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex 6-04.

Article 6-05

Dispute Settlement in Emergency Action Matters

Neither Party may request the establishment of an arbitral panel under Article 18-06 (Request for an Arbitral Panel) regarding any emergency action that has simply been proposed.