

importer in the territory of a Party means an importer located in the territory of a Party and an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

intermediate material means "intermediate material" as defined in Article 415; Marking Rules means "Marking Rules" established under Annex 311;

material means "material" as defined in Article 415;

net cost of a good means "net cost of a good" as defined in Article 415;

preferential tariff treatment means the duty rate applicable to an originating good;

producer means "producer" as defined in Article 415;

production means "production" as defined in Article 415;

transaction value means "transaction value" as defined in Article 415;

Uniform Regulations means "Uniform Regulations" established under Article 511;

used means "used" as defined in Article 415; and

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

## Chapter Six: Energy and Basic Petrochemicals

### Article 601: Principles

1. The Parties confirm their full respect for their Constitutions.
2. The Parties recognize that it is desirable to strengthen the important role that trade in energy and basic petrochemical goods plays in the free trade area and to enhance this role through sustained and gradual liberalization.
3. The Parties recognize the importance of having viable and internationally competitive energy and petrochemical sectors to further their individual national interests.

### Article 602: Scope and Coverage

1. This Chapter applies to measures relating to energy and basic petrochemical goods originating in the territories of the Parties and to measures relating to investment and to the cross-border trade in services associated with such goods, as set forth in this Chapter.
2. For purposes of this Chapter, energy and basic petrochemical goods refer to those goods classified under the Harmonized System as:

- a) subheading 2612.10;
- b) headings 27.01 through 27.06;
- c) subheading 2707.50;
- d) subheading 2707.99 (only with respect to solvent naphtha, rubber extender oils and carbon black feedstocks);
- e) headings 27.08 and 27.09;
- f) heading 27.10 (except for normal paraffin mixtures in the range of C9 to C15);
- g) heading 27.11 (except for ethylene, propylene, butylene and butadiene in purities over 50 percent);
- h) headings 27.12 through 27.16;
- i) subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings);
- j) subheading 2845.10; and
- k) subheading 2901.10 (only with respect to ethane, butanes, pentanes, hexanes, and heptanes).

3. Except as specified in Annex 602.3, energy and petrochemical goods and activities shall be governed by the provisions of this Agreement.

#### Article 603: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties incorporate the provisions of the *General Agreement on Tariffs and Trade* (GATT), with respect to prohibitions or restrictions on trade in energy and basic petrochemical goods. The Parties agree that this language does not incorporate their respective protocols of provisional application to the GATT.

2. The Parties understand that the provisions of the GATT incorporated in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum or maximum export - price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum or maximum import-price requirements.

3. In circumstances where a Party adopts or maintains a restriction on importation from or exportation to a non-Party of an energy or basic petrochemical good, nothing in this Agreement shall be construed to prevent the Party from:

- a) limiting or prohibiting the importation from the territory of any Party of such energy or basic petrochemical good of the nonParty; or

b) requiring as a condition of export of such energy or basic petrochemical good of the Party to the territory of any other Party that the good be consumed within the territory of the other Party.

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

5. Each Party may administer a system of import and export licensing for energy or basic petrochemical goods provided that such system is operated in a manner consistent with the provisions of this Agreement, including paragraph 1 and Article 1502 (Monopolies and State Enterprises).

6. This Article is subject to the reservations set out in Annex 603.6.

#### Article 604: Export Taxes

No Party may adopt or maintain any duty, tax or other charge on the export of any energy or basic petrochemical good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

- a) exports of any such good to the territory of all other Parties; and
- b) any such good when destined for domestic consumption.

#### Article 605: Other Export Measures

Subject to Annex 605, a Party may adopt or maintain a restriction otherwise justified under Articles XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of an energy or basic petrochemical good to the territory of another Party, only if:

- a) the restriction does not reduce the proportion of the total export shipments of the specific energy or basic petrochemical good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;
- b) the Party does not impose a higher price for exports of an energy or basic petrochemical good to that other Party than the price charged for such good when consumed domestically, by means of any measure such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and
- c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific energy or basic petrochemical goods supplied to

that other Party, such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

#### Article 606: Energy Regulatory Measures

1. The Parties recognize that energy regulatory measures are subject to the disciplines of:

- a) national treatment, as provided in Article 301;
- b) import and export restrictions, as provided in Article 603; and
- c) export taxes, as provided in Article 604.

2. Each Party shall seek to ensure that in the application of any energy regulatory measure, energy regulatory bodies within its territory avoid disruption of contractual relationships to the maximum extent practicable, and provide for orderly and equitable implementation appropriate to such measures.

#### Article 607: National Security Measures

Subject to Annex 607, no Party may adopt or maintain a measure restricting imports of an energy or basic petrochemical good from, or exports of an energy or basic petrochemical good to, another Party under Article XXI of the GATT or under Article 2102 (National Security), except to the extent necessary to:

- a) supply a military establishment of a Party or enable fulfillment of a critical defense contract of a Party;
- b) respond to a situation of armed conflict involving the Party taking the measure;
- c) implement national policies or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- d) respond to direct threats of disruption in the supply of nuclear materials for defense purposes.

#### Article 608: Miscellaneous Provisions

1. The Parties agree to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.

2. Annex 608.2 applies only to the Parties specified in that Annex with respect to other agreements relating to trade in energy goods.

#### Article 609: Definitions

For purposes of this Chapter:

consumed means transformed so as to qualify under the rules of origin set out in Chapter Four (Rules of Origin), or actually consumed;

cross-border trade in services means "crossborder trade in services" as defined in Article 1213 (Cross-Border Trade in Services Definitions);

energy regulatory measure means any measure by federal or sub-federal entities that directly affects the transportation, transmission or distribution, purchase or sale, of an energy or basic petrochemical good;

enterprise means "enterprise" as defined in Article 1139 (Investment-Definitions);

enterprise of a Party means "enterprise of a Party" as defined in Article 1139;

facility for independent power production means a facility that is used for the generation of electric energy exclusively for sale to an electric utility for further resale;

first hand sale refers to the first commercial transaction affecting the good in question;

investment means investment as defined in Article 1139;

restriction means any limitation, whether made effective through quotas, licenses, permits, minimum or maximum price requirements or any other means;

total export shipments means the total shipments from total supply to users located in the territory of the other Party; and

total supply means shipments to domestic users and foreign users from:

- a) domestic production;
- b) domestic inventory; and
- c) other imports, as appropriate.

## Annex 602.3

### Reservations and Special Provisions

#### *Reservations*

1. The Mexican State reserves to itself the following strategic activities, including investment in such activities and the provision of services in such activities:

- a) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production of artificial gas, basic petrochemicals and their feedstocks and pipelines;

b) foreign trade; transportation, storage and distribution, up to and including the first hand sales of the following goods:

(i) crude oil,

(ii) natural and artificial gas,

(iii) goods covered by this Chapter obtained from the refining or processing of crude oil and natural gas, and

(iv) basic petrochemicals;

c) the supply of electricity as a public service in Mexico, including, except as provided in paragraph 5, the generation, transmission, transformation, distribution and sale of electricity; and

d) exploration, exploitation and processing of radioactive minerals, the nuclear fuel cycle, the generation of nuclear energy, the transportation and storage of nuclear waste, the use and reprocessing of nuclear fuel and the regulation of their applications for other purposes and the production of heavy water.

In the event of an inconsistency between this paragraph and another provision of this Agreement, this paragraph shall prevail to the extent of that inconsistency.

2. Pursuant to Article 1101(2), (Investment-Scope and Coverage), private investment is not permitted in the activities listed in paragraph 1. Chapter Twelve (CrossBorder Trade in Services) shall only apply to activities involving the provision of services covered in paragraph 1 when Mexico permits a contract to be granted in respect of such activities and only to the extent of that contract.

#### *Trade in Natural Gas and Basic Petrochemicals*

3. Where end-users and suppliers of natural gas or basic petrochemical goods consider that cross-border trade in such goods may be in their interests, each Party shall permit such end-users and suppliers, and any state enterprise of that Party as may be required under its domestic law, to negotiate supply contracts.

Each Party shall leave the modalities of the implementation of any such contract to the endusers, suppliers, and any state enterprise of the Party as may be required under its domestic law, which may take the form of individual contracts between the state enterprise and each of the other entities. Such contracts may be subject to regulatory approval.

#### *Performance Clauses*

4. Each Party shall allow its state enterprises to negotiate performance clauses in their service contracts.

### *Activities and Investment in Electricity Generation Facilities*

#### 5. a) Production for Own Use

An enterprise of another Party may acquire, establish, and/or operate an electrical generating facility in Mexico to meet the enterprise's own supply needs. Electricity generated in excess of such needs must be sold to the Federal Electricity Commission (Comisión Federal de Electricidad) (CFE) and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

#### b) Co-generation

An enterprise of another Party may acquire, establish, and/or operate a co-generation facility in Mexico that generates electricity using heat, steam or other energy sources associated with an industrial process. Owners of the industrial facility need not be the owners of the co-generating facility. Electricity generated in excess of the industrial facility's supply requirements must be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

#### c) Independent Power Production

An enterprise of another Party may acquire, establish, and/or operate an electricity generating facility for independent power production (IPP) in Mexico. Electricity generated by such a facility for sale in Mexico shall be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise. Where an IPP located in Mexico and an electric utility of another Party consider that cross-border trade in electricity may be in their interests, each relevant Party shall permit these entities and CFE to negotiate terms and conditions of power purchase and power sale contracts. The modalities of implementing such supply contracts are left to the end users, suppliers and CFE and may take the form of individual contracts between CFE and each of the other entities. Each relevant Party shall determine whether such contracts are subject to regulatory approval.

### Annex 603.6

#### Exception to Article 603

For only those goods listed below, Mexico may restrict the granting of import and export licenses for the sole purpose of reserving foreign trade in these goods to itself.

#### 2707.50

Other aromatic hydrocarbon mixtures of which 65 percent or more by volume (including losses) distills at 250 °C by the ASTM D 86 method.

#### 2707.99

Rubber extender oils, solvent naphtha and carbon black feedstocks only.

#### 2709

Petroleum oils and oils obtained from bituminous minerals, crude.

#### 2710

Aviation gasoline; gasoline and motor fuel blending stocks (except aviation gasoline) and reformates when used as motor fuel blending stocks; kerosene; gas oil and diesel oil; petroleum ether; fuel oil; paraffinic oils other than for lubricating purposes; pentanes; carbon black feedstocks; hexanes; heptanes and naphthas.

2711

Petroleum gases and other gaseous hydrocarbons other than: ethylene, propylene, butylene and butadiene, in purities over 50 percent.

2712.90

Only paraffin wax containing by weight more than 0.75 percent of oil, in bulk (Mexico classifies these goods under HS 2712.90.02) and only when imported to be used for further refining.

2713.11

Petroleum coke not calcined.

2713.20

Petroleum bitumen (except when used for road surfacing purposes under HS 2713.20.01).

2713.90

Other residues of petroleum oils or of oils obtained from bituminous minerals.

2714

Bitumen and asphalt, natural; bituminous or oil shale and tar sands, asphaltites and asphaltic rocks (except when used for road surfacing purposes under HS 2714.90.01).

2901.10

Ethane, butanes, pentanes, hexanes, and heptanes only.

## Annex 605

### Exception to Article 605

Notwithstanding any other provision of this Chapter, the provisions of Article 605 shall not apply as between the other Parties and Mexico.

## Annex 607

### National Security

1. Article 607 shall impose no obligations and confer no rights on Mexico.
2. Article 2102 (National Security) shall apply as between Mexico and the other Parties.

## Annex 608.2

### Other Agreements

1. Canada and the United States shall act in accordance with the terms of Annexes 902.5 and 905.2 of the *Canada United States Free Trade Agreement*, which are hereby incorporated into and made a part of this Agreement for such purpose. This paragraph shall impose no obligations and confer no rights on Mexico.

2. Canada and the United States intend no inconsistency between this Chapter and the *Agreement on an International Energy Program (IEP)*. In the event of any inconsistency between



the IEP and this Chapter, the IEP shall prevail as between Canada and the United States to the extent of that inconsistency.

## Chapter Seven: Agriculture and Sanitary and Phytosanitary Measures

### Section A - Agriculture

#### Article 701: Scope and Coverage

1. This Section applies to measures adopted or maintained by a Party relating to agricultural trade.

2. In the event of any inconsistency between this Section and another provision of this Agreement, this Section shall prevail to the extent of the inconsistency.

#### Article 702: International Obligations

1. Annex 702.1 applies to the Parties specified in that Annex with respect to agricultural trade under certain agreements between them.

2. Prior to adopting pursuant to an intergovernmental commodity agreement, a measure that may affect trade in an agricultural good between the Parties, the Party proposing to adopt the measure shall consult with the other Parties with a view to avoiding nullification or impairment of a concession granted by that Party in its Schedule to Annex 302.2.

3. Annex 702.3 applies to the Parties specified in that Annex with respect to measures adopted or maintained pursuant to an intergovernmental coffee agreement.

#### Article 703: Market Access

1. The Parties shall work together to improve access to their respective markets through the reduction or elimination of import barriers to trade between them in agricultural goods.

#### *Customs Duties, Quantitative Restrictions, and Agricultural Grading and Marketing Standards*

2. Annex 703.2 applies to the Parties specified in that Annex with respect to customs duties and quantitative restrictions, trade in sugar and syrup goods, and agricultural grading and marketing standards.

#### *Special Safeguard Provisions*

3. Each Party may, in accordance with its Schedule to Annex 302.2, adopt or maintain a special safeguard in the form of a tariff rate quota on an agricultural good listed in its Section of Annex 703.3. Notwithstanding Article 302.2, a Party may not apply an over-quota tariff rate under a special safeguard that exceeds the lesser of:

a) the most-favored-nation (MFN) rate as of July 1, 1991; and