

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter VIII Tariffs and Non-Tariff Measures

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Section A General Aspects

[Article 1. Definitions]

[1.1. For the purposes of this Chapter:]

[**advertising films** means [recorded visual media, with or without soundtrack, that essentially are made up of images that show the nature or functioning of goods or services being sold or leased by a person established or resident in the territory of one of the Parties, provided that the films are suitable to be shown to potential clients, but not for broadcast to the general public. They are to be imported in packets that contain no more than one copy of each film and that are not part of a larger consignment;]]

[**carrier medium** means any physical object capable of storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but is not limited to, an optical medium, a floppy disk, or a magnetic tape;]

[[**commercial samples [of negligible] [or] [without commercial] value** means [commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar (US \$1), or the equivalent amount in the currency of another Party, or so], [[those that are] marked, broken, perforated, or [otherwise treated that they are unsuitable for sale or for use except as commercial samples;] [that have been treated in a way that disqualifies them from being sold or from any use other than as samples;]]]

[**consular transactions** means requirements that goods of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas approval for commercial invoices, certificates of origin, manifests, shipper's export declarations, or any other customs documentation required on, or in connection with, importation;]

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

[**customs duty**] means [the duties that would be applicable to a good that is imported to be used in the customs territory of one of the Parties if the good were not exported to the territory of the other Party;][a tax, duty, or levy on imports and charges of any kind] [any customs or import duty and a charge of any kind] [imposed in connection with the importation of a good, including any form of surtax, surcharge or markup in connection with such importation, except;

- a) any charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, [or any equivalent provision in a successor agreement to which the Parties are signatories] [in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- b) any antidumping or countervailing duty that is applied pursuant to a Party's domestic law; and

- c) any fee or other charge in connection with importation commensurate with the cost of services rendered.], [and
- d) any premium offered or collected on imported goods under all systems of tendering, for the administration of quantitative import restrictions or tariff rate quotas or preferential tariff-rate quotas;]]

[deferral or suspension of tariffs programs means [the measures that govern foreign trade zones, free trade zones, temporary importation under bond, temporary import for re-export, bonded warehouses, inward processing programs and other export processing programs, among others;]]

[digital product means computer programs, text, video, images, sound recordings and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically. Digital products do not include digitized representations of financial instruments;]]

[duty-free means free of customs duties;]]

[fungible goods means [goods that are interchangeable in accordance with the definition in Chapter XX “Rules of Origin”];]]

[goods imported for sports purposes means [sports equipment for use in competitions, sports events or training in the territory of the Party to which it is imported;]]

[goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;]]

[goods used for display or demonstrations means [goods used for exhibitions or demonstrations, including their component parts, ancillary apparatus, and accessories;]]

[identical or similar goods means [those that are completely equal, including their physical characteristics, quality, and commercial standing, as well as goods that, although they are not completely equal, have similar characteristics and composition, which allow them to fulfill the same function and be commercially interchangeable;]]

[import licensing means administrative procedures requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;]]

[material means [a material in accordance with the definition in Chapter XX “Rules of Origin”];]]

[performance requirement means a requirement that:

- a) a given level or percentage of goods or services be exported;
- b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods or services;

- c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods or services;
- d) a person benefiting from a waiver of customs duties or an import license produce goods or provide services in the territory of the Party granting the waiver of customs duties or the import license; or
- e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;]

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

[remanufactured goods means goods that have been cleaned, tested, and examined for wear, fitted as necessary with replacement component parts, retested and repackaged such that they function in the manner originally intended;]

[repair or alteration means those that do not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good. For the purposes of this definition, it shall be understood that an operation or process which forms part of the production or assembly of an unfinished good, in order to convert it into a finished good, does not constitute the repair or alteration of the unfinished good; a component of a good is a good that can be subject to repair or modification;] and

[rum means an alcoholic beverage that is obtained solely from the alcoholic fermentation and distillation of the juices from the sugar cane, sugar cane or cane molasses, aged for a minimum of one year, and complying with all organoleptic characteristics and other requirements established in the laws, regulations, and technical rules or any other legal norm of the country party in which it is marketed.]

Article 2. Scope of application

[2.1. Except as otherwise provided in this Agreement,] This Chapter applies to trade in [originating] goods [between the Parties][of a Party].

[Article 3. Relationship with bilateral and subregional trade agreements

3.1. None of the provisions of this Chapter modifies or alters in any way concessions accorded in relation to customs duties and non-tariff measures in the framework of other trade agreements entered into between the Parties under Article XXIV or the Enabling Clause, both of GATT 1994.]

Section B Substantive Provisions

Subsection B.1 National Treatment

Article 4. National Treatment

4.1. Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of the GATT 1994, including its interpretive notes, and to this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made an integral part of this Agreement.

[4.2. For greater clarity, no Party may maintain or introduce legislation or practice relating to the sale, offering for sale, purchase, transportation, distribution or use of originating goods imported into the territory of that Party which accords greater protection to local distributors of local suppliers than to local distributors of foreign suppliers.]

[4.3. The provisions of Article 4.1. on national treatment shall mean, with respect to a province, [or] state, [department] [or any other type of political division] of the Parties, a treatment no less favorable than the most favorable treatment that province, [or] state, [department] [or any other type of political division] accords to any like, directly competitive or substitutable goods as the case may be [, of the Party of which it forms a part].]

[4.4. This Article does not apply to measures set out in Annex XX.]

Subsection B.2 Tariffs

[This Section applies to trade in originating goods between the Parties.]

Article 5. Tariff Elimination Program

5.1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good at a level higher than that specified in the Party's commitments pursuant to the Tariff Elimination Program.

5.2. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods, in accordance with the terms established in Annex XX (Tariff Elimination Program).

[5.3. The Tariff Elimination Program shall not be applied to goods that receive export subsidies] [, except those permitted in conformity with rights and obligations of the WTO.]

[5.4. Used goods shall not benefit from the Tariff Elimination Program covered in this Chapter, including those identified as such in the Harmonized System headings or sub-headings.]

5.5. A Party may:

- a) increase a customs duty to a level not greater than the one established in the Tariff Elimination Program when that customs duty has previously been unilaterally reduced to a level less than that established in the Tariff Elimination Program.

- b) maintain or increase a customs duty when this is permitted pursuant to the dispute settlement provisions of the Marrakesh Agreement establishing the World Trade Organization.

[5.6. Any reclassification resulting from the application or the creation of new tariff break-outs by any Party of the Harmonized System shall not change the obligations under the Tariff Elimination Program.]

[5.7. Two or more Parties may consult to examine the possibility of accelerating the elimination of customs duties set out in the Tariff Elimination Program. [Once agreed by these Parties and approved pursuant to their applicable domestic legal procedures, for the purpose of trade between these Parties the agreement regarding the accelerated elimination of customs duties shall prevail over the Tariff Elimination Program.] [These tariff concessions will be extended to the rest of the Parties.][The Parties agreeing to an accelerated elimination of customs duties shall notify all other Parties. Upon the request of any other Party, each Party agreeing to an accelerated elimination of customs duties shall consult the Party that requests it to examine the possibility of concluding a similar agreement.]]

[5.8. At least once a year, as of the entry into force of this Agreement, the Parties shall examine, through the Committee on Trade in Goods, the possibility of incorporating into the Tariff Elimination Program goods not included in said Program.]

Subsection B.3 Special regimes

Article 6. Drawback, Duty Deferral Programs and Foreign Trade Zones.

[6.1. In matters concerning customs duty refunds and exemptions, the Parties preserve their rights and obligations, in accordance with their legislation and WTO commitments.]

[[6.1. Nothing in this Agreement prevents a Party from using Drawback, Duty Deferral Programs, Temporary Admission and Foreign Trade Zones. The goods that benefit from those regimes will benefit from the Tariff Elimination Program in the other Parties when they fulfill the rules of origin.]

[6.2. Each Party will provide that when goods imported into its territory are produced in or shipped from free trade zones in the territory of a Party, those goods shall not benefit from the Tariff Elimination Program provided for in this Chapter.]]

[[6.1. Except as otherwise provided in this Article, a Party shall not refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, [on condition that the good is:]

- [a) subsequently exported to the territory of another Party;]
- b) used as a material in the production of another good that is subsequently exported to the territory of another Party; or
- c) substituted by an identical or similar good used as a material in the production of another good that is exported to the territory of another Party,

in an amount that exceeds the total of the customs duties paid or owed on that quantity of the imported good that is materially incorporated in the good exported to the territory of the other Party, or replaced by

identical or similar goods that are materially incorporated in the good exported to the territory of the other Party, with the due discount for waste.]

[6.2. A Party shall not, on condition of export, refund, waive or reduce:

- a) the anti-dumping or countervailing duties that are applied pursuant to the domestic laws of the Party and which are compatible with the provisions of Chapter XX, “Unfair Trade Practices”;
- b) the premiums offered or collected on imported goods, arising out of any tendering system in respect of the administration of quantitative import restrictions or tariff rate quotas; and
- c) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.]

[6.3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported shall assess the customs duties as if the exported good had been withdrawn for domestic consumption.]

[6.4. This Article does not apply to:

- a) a good entered under bond for transportation and exportation to the territory of another Party;
- b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported. Testing, cleaning, re-packing, inspecting, sorting, marking or preserving the good shall not be considered to change the condition of the good. Where such good has been commingled with fungible goods and exported in the same condition, its origin may be determined for purposes of this subparagraph [using the inventory methods set out in Chapter XX, “Rules of Origin”][on the basis of an inventory management method such as First-in, First-out or Last-in, First-out. This exemption shall not permit a Party to waive, refund, or reduce a customs duty contrary to Article 6.2.c.);
- c) a good imported into the territory of a Party, that is deemed to be exported from its territory or is used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of the other Party, by reason of:
 - i) delivery to a duty-free shop, or
 - ii) delivery for ship’s stores or supplies for ships or aircraft; [or]
 - [iii) delivery for use in joint undertakings of two or more Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be exported;]

- d) a refund made by one of the Parties of the customs duties paid on a particular good imported into its territory and subsequently exported to the territory of another Party, when this refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee; or
- e) an originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party.]

[6.5. The effective date of Article 6.1. and 6.3. shall be five (5) years after the date of entry into force of the Agreement.]

[6.6. No Party may adopt or maintain any waiver of customs duties that is conditioned on the fulfillment of a performance requirement.]]

Article 7. Other special regimes

[7.1. Parties shall grant duty-free admission to the goods, defined in the Chapter on Customs Procedures, in conformity with the procedures specified therein.]

[7.2. A Party shall not apply customs duties or other duties, fees, or charges on or in connection with the importation or exportation of digital products by electronic transmission.]

[7.3. The Parties authorize the duty-free re-entry of repaired or altered goods, in accordance with the provisions of Article 18 (Goods re-entered after repair or alteration) of Chapter XX on Customs Procedures.]

[7.4. The Parties authorize the [importation of] duty-free [entry] of commercial samples and printed advertising material, in accordance with the provisions of Article 19 ([Importation of] Duty-Free [entry] of certain commercial samples and printed advertising material) of Chapter XX on Customs Procedures.]

Subsection B.4 Non-tariff measures

Article 8. Import and export restrictions [and prohibitions]

8.1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any [originating] good of another Party or on the exportation or sale for export of any [originating] good destined for the territory of another Party, except as otherwise provided in Article XI of the GATT 1994 and its interpretive notes and other pertinent provisions in the WTO Agreements. To this end, Article XI of GATT 1994 and its interpretive notes are incorporated into and made an integral part of this Agreement. [For greater clarity, these provisions apply to prohibitions or restrictions on the importation of remanufactured goods.] [No Party shall adopt or maintain any restrictions, prohibitions, taxes, duties, or any charges on the export of any good to the territory of another Party, unless such tax or duty or charge is applied temporarily to alleviate acute shortages. For purposes of this paragraph, “temporarily” means up to one (1) year, or a longer period agreed by the Parties.]

8.2. No Party shall institute or maintain:

- a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duties orders and undertakings;
- [b) import licensing conditioned on the fulfillment of a performance requirement;]
- c) voluntary export restraints not consistent with Article VI of the GATT 1994, as implemented under Article 18 of the WTO Agreement on Subsidies and Countervailing Measures and Article 8.1 of the WTO Agreement on Implementation of Article VI of the GATT 1994; or
- d) import licensing procedures not consistent with the WTO Agreement on Import Licensing Procedures.

[8.3. 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, no provision of this Agreement shall be construed to prevent the Party from:

- a) limiting or prohibiting the importation from the territory of another Party of such goods of that Non-Party; or
- b) requiring as a condition for exporting such goods of the Party to the territory of another 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.]

[8.4. 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 the 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.]

[8.5. Upon entry into force of this Agreement, each Party shall notify to all other Parties its import licensing procedures, and thereafter shall notify to all other Parties all new import licensing procedures and changes to import licensing procedures within sixty (60) days of their effective date.]

[8.6. Notification of import licensing procedures and changes to import licensing procedures referred to in Article 8.5. shall include the following information:

- a) the products subject to import licensing procedures;
- b) contact point for information on eligibility;
- c) administrative body for submission of applications;
- d) the date and name of publication where licensing procedures are published;
- e) whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3 of the WTO Agreement on Import Licensing;
- f) in the case of automatic import licensing procedures, their administrative purpose;

- g) in the case of non-automatic import licensing procedures, the measure being implemented through the licensing procedure; and
- h) the expected duration of the licensing procedure, if this can be estimated with some probability, and if not, the reason why this information cannot be provided.]

[8.7. A Party's notification of import licensing procedures and changes to import licensing procedures referred to in Article 8.5. is without prejudice to their consistency with the Party's rights and obligations under this Agreement.]

[8.8. No Party shall apply import licensing procedures, or changes to import licensing procedures, not notified in accordance with Article 8.5. to goods of another Party until such time as the Party notifies the import licensing procedures in accordance with Article 8.6.]

8.9. Articles 8.1. through 8.2. shall not apply to the measures set out in Annex XX.

Article 9. Administrative fees and formalities

9.1. [Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of the GATT 1994, and antidumping and countervailing duties applied pursuant to a Party's domestic law) imposed on, or in connection with, importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.] [No Party shall increase or establish [any] customs processing fees [for the service provided by customs [or other State Entities, which are not proportional to the services provided]] and shall eliminate these fees for originating goods [upon] [no later than ten (10) years after] the entry into force of this Agreement.]

9.2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of another Party. [In the case of smaller economies, they shall eliminate such fees no later than ten (10) years after the entry into force of this Agreement.]

9.3. Upon entry into force of this Agreement, each Party shall notify to all other Parties its fees and charges imposed on, or in connection with, importation or exportation, and thereafter shall notify to all other Parties all new fees and charges and changes to fees and charges [at least (...) days in advance of] [within (...) days following] their effective date.

[9.4. Notification of fees and charges imposed on or in connection with importation or exportation referred to in Article 9.3. shall include the following information:

- a) description of the fee or charge, including the amount of the fee or charge and the nature of services rendered;
- b) the contact point for information;
- c) the administrative body that collect the fee;
- d) the date and name of publication where the fee or charge is published;

- e) where and how the fee or charge is collected; and
- f) the person liable for payment.]

[9.5. No Party shall apply fees and charges, or changes to fees and charges, not notified according to Article 9.3. to goods of another Party until such time as the Party notifies the fees and charges in accordance with Article 9.4.]

9.6. Each Party shall ensure that a current list of its fees and charges imposed on or in connection with importation or exportation is published. Each Party shall also [where feasible] publish the information simultaneously on the Internet.

Article 10. Export taxes

[10.1. No Party shall adopt or maintain any tax, duty or other charge on the export of any good to the territory of another Party,] [unless such tax, duty or charge is also 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 11. Other export measures

[11.1. A Party may adopt or maintain a restriction otherwise justified under Articles XI: 2(a) or XX (g), (i) or (j) of the GATT 1994 with respect to the export of a good of the Party to the territory of another Party, only if:

- a) the restriction does not reduce the proportion of the total export shipments of the specific good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent thirty-six (36) month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;
- b) the Party does not impose a higher price for exports of a 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) of this Article 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 goods or categories of goods supplied to that other Party.]

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

Subsection B.5 Other measures

[Article 12. Distinctive products]

[12.1. The Parties recognize the following products as distinctive products of the corresponding Party:

Party	Distinctive Product
Brazil	Cachaça
Bolivia	Singani
Colombia	Coffee and molas
Dominican Republic	Dominican Rum Dominican Tobacco Coffee from Juncalito Cacao from Cibao Dominican Amber Larimar
El Salvador	Pupusas
Guatemala	Guatemala Coffee Antigua Coffee Frajanes Coffee Atitlan Coffee Huhuetenango Coffee Nuevo Oriente Coffee Coban Coffee San Marcos Coffee Guatemala Rum
Mexico	Tequila and mezcal
Nicaragua	Chontaleño Cheese Nicaraguan Rum
Panama	Seco and molas
Peru	Pisco
United States	Bourbon Whisky and Tennessee Whisky]

[12.2. Parties shall not permit the sale of any product as distinctive products, unless it has been manufactured in the corresponding Party in accordance with its laws and regulations governing the manufacture of that product.]

[Article 13. Treatment of digital products]

[13.1. A Party shall not accord less favorable treatment to some digital products that it accords to other like digital products

- a) on the basis that
 - i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory, or

- ii) the author, performer, producer, developer, or distributor of such digital products is a foreign person,

or

- b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.]

[13.2. a) A Party shall not accord less favorable treatment to digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to the like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.

- b) A Party shall not accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.]

Section C Procedures and Institutions

[Article 14. Committee on Trade in Goods]

[14.1. The Parties shall create a Committee on Trade in Goods, made up of representatives of each Party, which shall meet at least once a year or at the request of one of the Parties.]

[14.2. The Committee shall be established within six (6) months of the Agreement coming into force. Any decision adopted by the Committee shall be by consensus.]

[14.3. The Committee shall have the following duties:

- a) To monitor the application and administration by the Parties of the [principles][rights and obligations] contained in this Chapter.
- b) To coordinate the activities and ensure the proper functioning of the Non-Agricultural Goods Sub-committee.
- c) To examine the proposals regarding [accelerated] tariff elimination that are submitted by the Parties.
- d) To assess any proposed modification, amendment or addition to the relevant provisions in order to improve the application of what is set forth in this Chapter and to recommend the pertinent changes to the Commission.
- e) To coordinate the exchange of commercial information between the Parties.
- f) To submit an annual report to the Commission regarding its activities.]

[14.4. The Parties shall establish an Agricultural Sub-committee and a Non-Agricultural Goods Sub-committee, whose duties shall be:

- a) To act as a consultation forum for issues relating to market access for agricultural and non-agricultural products.
- b) To recommend to the Committee the adoption of measures that encourage free trade between the Parties.
- c) To meet at least once a year or at the request of any of the Parties or the Committee.
- d) To submit to the Committee any issue over which they have not reached an agreement within sixty (60) days of the date on which they became aware of said issue; and
- e) To submit an annual report to the Committee on the agreements reached and activities carried out.]

ANNEXES