

Annex 300-A

Trade and Investment in the Automotive Sector

1. Each Party shall accord to all existing producers of vehicles in its territory treatment no less favorable than it accords to any new producer of vehicles in its territory under the measures referred to in this Annex, except that this obligation shall not be construed to apply to any differences in treatment specifically provided for in the Appendices to this Annex.
2. The Parties shall review, no later than December 31, 2003, the status of the North American automotive sector and the effectiveness of the measures referred to in this Annex to determine actions that could be taken to strengthen the integration and global competitiveness of the sector.
3. Appendices 300-A.1, 300-A.2 and 300-A.3 apply to the Parties specified therein respecting trade and investment in the automotive sector.
4. For purposes of this Annex, unless otherwise specified in the Appendices:

existing producer of vehicles means a producer that was producing vehicles in the territory of the relevant Party prior to model year 1992;

new producer of vehicles means a producer that began producing vehicles in the territory of the relevant Party after model year 1991;

used vehicle means a vehicle that:

- (a) has been sold, leased or loaned;
- (b) has been driven for more than
 - (i) 1,000 kilometers if the vehicle has a gross weight of less than five metric tons, or
 - (ii) 5,000 kilometers if the vehicle has a gross weight of five metric tons or more; or
- (c) was manufactured prior to the current year and at least 90 days have elapsed since the date of manufacture; and

vehicle means an automobile, a truck, a bus or a special purpose motor vehicle, not including a motorcycle.

Appendix 300-A.1

Canada

Existing Measures

1. Canada and the United States may maintain the *Agreement Concerning Automotive Products between the Government of Canada and the Government of the United States of America*, signed at Johnson City, Texas, January 16, 1965 and entered into force on September 16, 1966, in accordance with Article 1001, and Article 1002(1) and (4) (as they refer to Annex 1002.1, Part One), Article 1005(1) and (3), and Annex 1002.1, Part One (Waivers of Customs Duties) of the *Canada - United States Free Trade Agreement*, which provisions are hereby incorporated into and made a part of this Agreement for such purpose, except that for purposes of Article 1005(1) of that agreement, Chapter Four (Rules of Origin) of this Agreement shall be applied in the place of Chapter Three of the *Canada - United States Free Trade Agreement*.
2. Canada may maintain the measures referred to in Article 1002(1) and (4) (as they refer to Annex 1002.1, Parts Two and Three), Article 1002(2) and (3), Article 1003 and Parts Two (Export-Based Waivers of Customs Duties) and Three (Production-Based Waivers of Customs Duties) of Annex 1002.1 of the *Canada - United States Free Trade Agreement*. Canada shall eliminate those measures in accordance with the terms set out in that agreement.
3. For greater certainty, the differences in treatment pursuant to paragraphs 1 and 2 shall not be considered to be inconsistent with Article 1103 (Investment - Most-Favored-Nation Treatment).

Used Vehicles

4. Canada may adopt or maintain prohibitions or restrictions on imports of used vehicles from the territory of Mexico, except as follows:
 - (a) beginning January 1, 2009, Canada may not adopt or maintain a prohibition or restriction on imports from the territory of Mexico of originating used vehicles that are at least 10 years old;
 - (b) beginning January 1, 2011, Canada may not adopt or maintain a prohibition or restriction on imports from the territory of Mexico of originating used vehicles that are at least eight years old;
 - (c) beginning January 1, 2013, Canada may not adopt or maintain a prohibition or restriction on imports from the territory of Mexico of originating used vehicles that are at least six years old;
 - (d) beginning January 1, 2015, Canada may not adopt or maintain a prohibition or

restriction on imports from the territory of Mexico of originating used vehicles that are at least four years old;

- (e) beginning January 1, 2017, Canada may not adopt or maintain a prohibition or restriction on imports from the territory of Mexico of originating used vehicles that are at least two years old; and
- (f) beginning January 1, 2019, Canada may not adopt or maintain a prohibition or restriction on imports from the territory of Mexico of originating used vehicles.

5. Paragraph 4 shall not be construed to allow Canada to derogate from its obligations in respect of land transportation services under Chapter Twelve (Cross-Border Trade in Services), including its Schedule to Annex I.

Appendix 300-A.2

Mexico

Auto Decree and Auto Decree Implementing Regulations

1. Until January 1, 2004, Mexico may maintain the provisions of the *Decree for Development and Modernization of the Automotive Industry* ("Decreto para el Fomento y Modernización de la Industria Automotriz"), December 11, 1989, (the "Auto Decree") and the *Resolution that Establishes Rules for the Implementation of the Auto Decree* ("Acuerdo que Determina Reglas para la Aplicación del Decreto para el Fomento y Modernización de la Industria Automotriz"), November 30, 1990, (the "Auto Decree Implementing Regulations") that would otherwise be inconsistent with this Agreement, subject to the conditions set out in paragraphs 2 through 18. No later than January 1, 2004, Mexico shall bring any inconsistent provision of the Auto Decree and the Auto Decree Implementing Regulations into conformity with the other provisions of this Agreement.

Autoparts Industry, National Suppliers and Independent Maquiladoras

2. Mexico may not require that an enterprise attain a level of national value added in excess of 20 percent of its total sales as one of the conditions to qualify as a national supplier or enterprise of the autoparts industry.

3. Mexico may require that a national supplier or an enterprise of the autoparts industry, in calculating its national value added solely for purposes of paragraph 2, include customs duties in the value of imports incorporated into the autoparts produced by such supplier or enterprise.

4. Mexico shall grant national supplier status to an independent maquiladora that requests such status and meets the requirements for that status set out in the existing Auto Decree, as modified by paragraphs 2 and 3. Mexico shall continue to grant to all independent maquiladoras that request national supplier status all existing rights and privileges accorded to independent maquiladoras under the existing *Decree for the Promotion and Operation of the Maquiladora Export Industry* ("Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación"), December 22, 1989 (the "Maquiladora Decree").

National Value Added

5. Mexico shall provide that a manufacturer ("empresa de la industria terminal") calculate its required national value added from suppliers (VANp) as a percentage of:

- (a) the manufacturer's reference value as set out in paragraph 8, or
- (b) the manufacturer's total national value added (VANt),

whichever is greater, except that Mexico shall provide that a manufacturer beginning production of motor vehicles in Mexico after model year 1991 calculate its required national value added from suppliers (VANp) as a percentage of its total national value added (VANt).

6. Mexico may not require that the percentage referred to in paragraph 5 be greater than:

- (a) 34 percent for each of the first five years beginning January 1, 1994;
- (b) 33 percent for 1999;
- (c) 32 percent for 2000;
- (d) 31 percent for 2001;
- (e) 30 percent for 2002; and
- (f) 29 percent for 2003.

7. Notwithstanding paragraph 6, Mexico shall allow a manufacturer that produced motor vehicles in Mexico before model year 1992 to use as its percentage referred to in paragraph 5 the ratio of actual national value added from suppliers (VANp) to total national value added (VANt) that the manufacturer attained in model year 1992, for so long as that ratio is lower than the applicable percentage specified under paragraph 6. In determining such ratio for model year 1992, purchases that the manufacturer made from independent maquiladoras that would have been eligible to receive national supplier status had paragraphs 2, 3 and 4 of this Appendix been in effect at that time, shall be included in the calculation of the manufacturer's national value added from suppliers (VANp), in the same manner as autoparts from any other national supplier or enterprise of the autoparts industry.

8. The annual reference value for a manufacturer ("reference value") shall be:

- (a) for each of the years 1994 through 1997, the base value for the manufacturer, plus no more than 65 percent of the difference between the manufacturer's total sales in Mexico in that year and its base value;
- (b) for each of the years 1998 through 2000, the base value for the manufacturer, plus no more than 60 percent of the difference between the manufacturer's total sales in Mexico in that year and its base value; and
- (c) for each of the years 2001 through 2003, the base value for the manufacturer, plus no more than 50 percent of the difference between the manufacturer's total sales in Mexico in that year and its base value.

9. Mexico shall provide that where a manufacturer's total sales in Mexico in a year are lower

than its base value, the reference value for the manufacturer for that year shall be equal to the manufacturer's total sales in Mexico for the year.

10. In the event an abnormal production disruption affects a manufacturer's production capability, Mexico shall allow the manufacturer to seek a reduction in its reference value before the Intersecretariat Automotive Industry Commission, established under Chapter V of the Auto Decree. If the Commission finds that the production capability of the manufacturer has been impaired by such an abnormal production disruption, the Commission shall reduce the manufacturer's reference value in an amount commensurate to the event.

11. If, on the request of a manufacturer, the Intersecretariat Automotive Industry Commission finds that the production capability of the manufacturer has been significantly disrupted as a result of a major retooling or plant conversion in the facilities of the manufacturer, the Commission shall reduce the manufacturer's reference value for that year in an amount commensurate with the disruption, provided that any reduction in that manufacturer's required national value added from suppliers (VANp) that may result from the Commission's determination to reduce the manufacturer's reference value shall be fully made up by the manufacturer over the 24 months after the date on which the retooling or plant conversion is completed.

Trade Balance

12. Mexico may not require a manufacturer to include in the calculation of its trade balance (S) a percentage of the value of direct and indirect imports of autoparts that the manufacturer incorporated into that manufacturer's production in Mexico for sale in Mexico (VTVd) in the corresponding year, greater than the following:

- (a) 80 percent for 1994;
- (b) 77.2 percent for 1995;
- (c) 74.4 percent for 1996;
- (d) 71.6 percent for 1997;
- (e) 68.9 percent for 1998;
- (f) 66.1 percent for 1999;
- (g) 63.3 percent for 2000;
- (h) 60.5 percent for 2001;
- (i) 57.7 percent for 2002; and

(j) 55.0 percent for 2003.

13. Mexico shall provide that, for purposes of determining a manufacturer's total national value added (VANt), paragraph 12 shall not apply to the calculation of the manufacturer's trade balance (S).

14. Mexico shall allow a manufacturer with a surplus in its extended trade balance to divide its extended trade balance by the applicable percentages in paragraph 12 to determine the total value of new motor vehicles that it may import.

15. Mexico shall provide that a manufacturer's adjustment factor (Y), included in the calculation of such manufacturer's extended trade balance, shall be equal to:

- (a) for a manufacturer that produced motor vehicles prior to model year 1992
 - (i) the greater of the manufacturer's reference value or the manufacturer's total national value added (VANt), minus
 - (ii) the manufacturer's actual national value added from suppliers (VANp) divided by the appropriate percentage specified under paragraph 6 or 7 as appropriate;
- (b) for all other manufacturers
 - (i) the manufacturer's total national value added (VANt), minus
 - (ii) the manufacturer's actual national value added from suppliers (VANp) divided by the appropriate percentage specified under paragraph 6,

except that the adjustment factor (Y) shall be zero if the amount resulting from subtracting (ii) from (i), under (a) or (b), is negative.

16. In determining the annual amount that a manufacturer may apply to its extended trade balance from unused surpluses earned prior to model year 1991, Mexico shall in any year allow the manufacturer to elect:

- (a) to use the procedures of the existing Auto Decree Implementing Regulations; or
- (b) to apply up to the Mexican peso equivalent of US\$150 million, adjusted annually for cumulative inflation, from the date of entry into force of this Agreement, based on the implicit price deflator for U.S. Gross Domestic Product (GDP) or any successor index published by the Council of Economic Advisers in its "Economic Indicators"

(hereinafter "U.S. GDP price deflator"). To adjust the US\$150 million ceiling for cumulative inflation up to a certain month of a year following 1994, the \$150 million shall be multiplied by the ratio of

- (i) the U.S. GDP price deflator current as of the month of that year, to
- (ii) the U.S. GDP price deflator current as of the date of entry into force of this Agreement,

provided that the price deflators under subparagraphs (i) and (ii) have the same base year.

The resulting adjusted amount shall be rounded to the nearest million dollars.

Other Restrictions in the Auto Decree

17. Mexico shall eliminate any restriction that limits the number of motor vehicles that a manufacturer may import into Mexico in relation to the total number of motor vehicles that such manufacturer sells in Mexico.

18. For greater certainty, the differences in treatment required under paragraphs 5, 7 and 15 shall not be considered to be inconsistent with Article 1103 (Investment - Most-Favored-Nation Treatment).

Other Restrictions

19. For the first 10 years after the date of entry into force of this Agreement, Mexico may maintain prohibitions or restrictions on the importation of new automotive products provided for in existing items 8407.34.02 (gasoline engines larger than 1000 cm³ but smaller than or equal to 2000 cm³, except for motorcycles), 8407.34.99 (gasoline engines larger than 2000 cm³, except for motorcycles) and 8703.10.99 (other special vehicles) in the Tariff Schedule of the *General Import Duty Act* ("Tarifa de la Ley del Impuesto General de Importación"), except that Mexico may not prohibit or restrict the importation of automotive products provided for in item 8407.34.02 (gasoline engines larger than 1000 cm³ but smaller than or equal to 2000 cm³, except for motorcycles), 8407.34.99 (gasoline engines larger than 2000 cm³, except for motorcycles) or 8703.10.99 (other special vehicles) by manufacturers that comply with the Auto Decree and the Auto Decree Implementing Regulations, as modified by this Appendix.

Autotransportation Decree and Autotransportation Implementing Regulations

20. Mexico shall eliminate the Mexican *Decree for Development and Modernization of the Autotransportation Vehicle Manufacturing Industry*, ("Decreto para el Fomento y Modernización de la Industria Manufacturera de Vehículos de Autotransporte"), December 1989,

and the *Resolution that Establishes Rules for the Implementation of the Autotransportation Decree* ("Acuerdo que Establece Reglas de Aplicación del Decreto para el Fomento y Modernización de la Industria Manufacturera de Vehículos de Autotransporte"), November 1990. Mexico may adopt or maintain any measure respecting autotransportation vehicles, autotransportation parts or manufacturers of autotransportation vehicles provided that the measure is not inconsistent with this Agreement.

Importation of Autotransportation Vehicles

21. Mexico may adopt or maintain a prohibition or restriction on the importation of autotransportation vehicles of another Party until January 1, 1999, except with respect to the importation of autotransportation vehicles pursuant to paragraphs 22 and 23.
22. For each of the years 1994 through 1998, Mexico shall allow any manufacturer of autotransportation vehicles to import, for each type of autotransportation vehicle, a quantity of originating autotransportation vehicles equal to at least 50 percent of the number of vehicles of such type that the manufacturer produced in Mexico in that year.
23. For each of the years 1994 through 1998, Mexico shall allow persons other than manufacturers of autotransportation vehicles to import, in a quantity to be allocated among such persons, originating autotransportation vehicles of each type as follows:
 - (a) for each of the years 1994 and 1995, no less than 15 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico;
 - (b) for 1996, no less than 20 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico; and
 - (c) for each of the years 1997 and 1998, no less than 30 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico.

Mexico shall allocate such quantity through a non-discriminatory auction.

Used Vehicles

24. Mexico may adopt or maintain prohibitions or restrictions on imports of used vehicles from the territory of another Party, except as follows:
 - (a) beginning January 1, 2009, Mexico may not adopt or maintain a prohibition or restriction on imports from the territory of Canada or the United States of originating used vehicles that are at least 10 years old;
 - (b) beginning January 1, 2011, Mexico may not adopt or maintain a prohibition or restriction on imports from the territory of Canada or the United States of originating used vehicles that are at least eight years old;

- (c) beginning January 1, 2013, Mexico may not adopt or maintain a prohibition or restriction on imports from the territory of Canada or the United States of originating used vehicles that are at least six years old;
 - (d) beginning January 1, 2015, Mexico may not adopt or maintain a prohibition or restriction on imports from the territory of Canada or the United States of originating used vehicles that are at least four years old;
 - (e) beginning January 1, 2017, Mexico may not adopt or maintain a prohibition or restriction on imports from the territory of Canada or the United States of originating used vehicles that are at least two years old; and
 - (f) beginning January 1, 2019, Mexico may not adopt or maintain a prohibition or restriction on imports from the territory of Canada or the United States of originating used vehicles.
25. (a) Paragraph 24 shall not apply to the importation on a temporary basis of a used vehicle provided for in item 8705.20.01 (mobile drilling derricks), 8705.20.99 (other mobile drilling derricks) or 8705.90.01 (street sweepers) of the Tariff Schedule of the *General Import Duty Act*. Such importation shall be subject to the conditions set out in Section B(4)(b) of Annex 301.3 for such time as Mexico may adopt or maintain a prohibition or restriction on the importation of the vehicle under paragraph 24.
- (b) Paragraph 24 shall not be construed to allow Mexico to derogate from its obligations in respect of land transportation services under Chapter Twelve (Cross-Border Trade in Services), including its Schedule to Annex I.

Import Licensing Measures

26. Mexico may adopt or maintain import licensing measures to the extent necessary to administer restrictions pursuant to:
- (a) the Auto Decree and the Auto Decree Implementing Regulations, as modified by this Appendix, on the importation of motor vehicles;
 - (b) paragraph 19 of this Appendix on the importation of new automotive products provided for in item 8407.34.02 (gasoline engines larger than 1000 cm³ but smaller than or equal to 2000 cm³, except for motorcycles), 8407.34.99 (gasoline engines larger than 2000 cm³, except for motorcycles) or 8703.10.99 (other special vehicles) in the Tariff Schedule of the *General Import Duty Act*;
 - (c) paragraphs 22 and 23 of this Appendix on the importation of autotransportation

vehicles; and

- (d) paragraph 24 (a) through (f) of this Appendix on the importation of used vehicles that are motor vehicles or autotransportation vehicles or of other used vehicles provided for in existing item 8702.90.01 (trolley buses), 8705.10.01 (mobile cranes), 8705.20.99 (other mobile drilling derricks), 8705.90.01 (street sweepers) or 8705.90.99 (other special purpose vehicles, nes) in the Tariff Schedule of the *General Import Duty Act*;

provided that such measures shall not have trade restrictive effects on the importation of such goods additional to those due to restrictions imposed in accordance with this Appendix, and that a license shall be granted to any person that fulfills Mexico's legal requirements for the importation of the goods.

Definitions

27. For purposes of this Appendix:

abnormal production disruption means a disruption in a manufacturer's production capability resulting from a natural disaster, fire, explosion or other unforeseen event beyond the manufacturer's control;

automotive products (referred to as "productos automotrices" in rule 1, paragraph III of the Auto Decree Implementing Regulations) means motor vehicles and autoparts;

autoparts (referred to as "partes y componentes automotrices" in article 2, paragraph X of the Auto Decree) means parts and components intended for use in a motor vehicle;

autotransportation parts means parts and components intended for use in an autotransportation vehicle;

autotransportation vehicle means a vehicle of one of the following types:

- (a) a vehicle without a chassis and with an integrated body, intended for the transport of more than 10 persons, with a gross vehicle weight of more than 8,864 kilograms, provided for in item 8702.10.02, 8702.10.03, 8702.90.03, 8702.90.04, 8705.20.01 or 8705.40.01 of the *General Import Duty Act*;

- (b) a vehicle with a chassis, intended for the transport of goods or more than 10 persons, with a gross vehicle weight of more than 8,864 kilograms, provided for in item 8702.10.01, 8702.10.03, 8702.90.02, 8702.90.04, 8704.22.99, 8704.23.99, 8704.32.99, 8705.20.01, 8705.40.01 or 8706.00.99 of the Tariff Schedule of the *General Import Duty Act*; or
- (c) a vehicle with two or three axles, either with integrated equipment or intended for the transport of goods by hauling a trailer, or semi-trailer, provided for in item 8701.20.01, 8705.20.01, 8705.40.01 or 8706.00.99 of the Tariff Schedule of the *General Import Duty Act*;

base value means the average for model years 1991 and 1992 of a manufacturer's production in Mexico for sale in Mexico (VTVd), adjusted annually for cumulative inflation, based on the *Mexican National Producer Price Index of Vehicles, Autoparts, and other Transportation Goods* ("Indice Nacional de Precios al Productor de vehículos, refacciones y otros materiales de transporte"), or any successor index, published by the Bank of Mexico ("Banco de Mexico") in its "Economic Indicators" ("Indicadores Economicos") (hereinafter "Mexican NPPI"). To adjust the base value for cumulative inflation up to 1994 or a subsequent year, the average for model years 1991 and 1992 of the manufacturer's VTVd shall be multiplied by the ratio of:

- (a) the Mexican NPPI for that year, to
- (b) the Mexican NPPI for 1992,

provided that the price indices set out in subparagraphs (a) and (b) have the same base year;

enterprise of the autoparts industry (referred to as "empresa de la industria de autopartes" in article 2, paragraph V, and articles 6 and 7 of the Auto Decree) means an enterprise constituted or organized under the law of, and operating in, Mexico that produces autoparts and:

- (a) whose annual invoice value of sales of autoparts to manufacturers, for use as original equipment by the manufacturer in its production of automotive products for sale in Mexico, constitutes more than 60 percent of the enterprise's annual total invoice value of sales, calculating its annual invoice value of sales of autoparts to manufacturers in accordance with rule 20 of the Auto Decree Implementing Regulations as of August 12, 1992, or any other measure adopted by Mexico that is no more restrictive than such rule;
- (b) complies with the national value added requirements pursuant to paragraphs 2 and 3 of this Appendix;
- (c) complies with the capital structure required under the *Law to Promote Mexican Investment and Regulate Foreign Investment* ("Ley para Promover la Inversión

Mexicana y Regular la Inversión Extranjera"), March 9, 1973, and the *Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment* ("Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera"), May 16, 1989, as applied consistently with Mexico's commitments set out in its Schedule to Annex I of Part Five (Investment, Services and Related Matters); and

- (d) that, on the fulfillment of the requirements under subparagraphs (a), (b) and (c), is registered with the Ministry of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial") ("SECOFI") as an enterprise of the autoparts industry, except that SECOFI may grant registration to an enterprise that complies with subparagraphs (b) and (c) but does not comply with subparagraph (a);

extended trade balance for a manufacturer is equal to $S + T + W + 0.3I + SFt - Y$, where:

- (a) S denotes the manufacturer's trade balance;
- (b) T denotes the transfer of
 - (i) trade balance surpluses between the manufacturer and other manufacturers, and
 - (ii) foreign exchange to the manufacturer that an enterprise of the autoparts industry has earned from exports of autoparts, excluding the value of import content in such exports, and excluding foreign exchange that the enterprise has earned from exports of autoparts that were promoted by the manufacturer,

applied in accordance with rule 8 of the Auto Decree Implementing Regulations as of August 12, 1992, or any other measure adopted by Mexico that is no more restrictive than such rule;

- (c) W denotes the transfer to the manufacturer of foreign exchange that a maquiladora has earned from the export of automotive products, excluding the value of the import content in such exports, provided that the maquiladora is not a national supplier, and one or more of the following conditions is met
 - (i) the manufacturer is, directly or indirectly, a majority shareholder of the maquiladora,
 - (ii) the manufacturer and the maquiladora have a majority shareholder in common, or

- (iii) the manufacturer is a promoter of the automotive goods exported by such maquiladora,

calculated in accordance with article 9 of the Auto Decree and rule 8 of the Auto Decree Implementing Regulations as of August 12, 1992, or any other measure adopted by Mexico that is no more restrictive than that article or rule;

- (d) I denotes the value of the manufacturer's investments in fixed assets of Mexican origin destined for permanent use in Mexico, excluding machinery and equipment purchased in Mexico but not produced in Mexico, that the manufacturer may transfer to its extended trade balance, applied in accordance with article 11 of the Auto Decree and rule 8 of the Auto Decree Implementing Regulations as of August 12, 1992, or any other measure adopted by Mexico that is no more restrictive than the article or rule;
- (e) SFt denotes the manufacturer's trade balance surpluses unused in prior years and transferred to the current year, calculated in accordance with rules 17 and 19 of the Auto Decree Implementing Regulations as of August 12, 1992, as modified by paragraph 16 of this Appendix, or any other measure adopted by Mexico that is no more restrictive than such rules; and
- (f) Y denotes the adjustment factor calculated in accordance with paragraph 15;

independent maquiladora means an enterprise registered as an export maquiladora enterprise under the existing Maquiladora Decree, that has no majority shareholder in common with any manufacturer, and in which no manufacturer is directly or indirectly a majority shareholder;

manufacturer (referred to as "empresa de la industria terminal" in article 2, paragraph IV, and articles 3, 4 and 5 of the Auto Decree) means an enterprise constituted or organized under the law of, and operating in, Mexico, that is:

- (a) registered with SECOFI; and
- (b) engaged in Mexico in the manufacture or final assembly of motor vehicles;

manufacturer of autotransportation vehicles means an enterprise constituted or organized under the law of, and operating in, Mexico:

- (a) that is registered with SECOFI;
- (b) that manufactures autotransportation vehicles in Mexico; and
- (c) where the enterprise's

- (i) total invoice value of sales of autotransportation vehicles and autotransportation parts that it produces in Mexico, minus
- (ii) total invoice value of autotransportation parts that the enterprise imports directly, plus the value of the import content of autotransportation parts that it purchases in Mexico,

is equal to at least 40 percent of its total invoice value of sales of autotransportation vehicles and autotransportation parts that the enterprise produces in Mexico;

manufacturer's production in Mexico for sale in Mexico (VTVd) means the total invoice value of a manufacturer's sales in Mexico of motor vehicles and autoparts it produced in Mexico, excluding the manufacturer's sales of imported motor vehicles;

manufacturer's total sales in Mexico means the manufacturer's total invoice value of sales of motor vehicles it produced in Mexico for sale in Mexico plus the total invoice value of its sales of imported motor vehicles;

model year (referred to as "año-modelo" in article 2, paragraph IX of the Auto Decree) means a 12-month period beginning November 1;

motor vehicle (referred to as "vehículos automotores" in article 2, paragraph IV of the Auto Decree) means an automobile, a compact automobile of popular use, a commercial truck, a light duty truck or a medium duty truck, where:

- (a) **automobile** means a vehicle intended for the transport of up to 10 persons, provided for in items 8703.21 through 8703.33, 8703.90.99, 8706.00.01, 8706.00.02 or 8706.00.99 of the Tariff Schedule of the *General Import Duty Act*;
- (b) **compact automobile of popular use** means a vehicle that complies with the characteristics set out in the existing *Decree that Establishes Exemptions for Compact Automobiles of Popular Use* ("Decreto que Otorga Exenciones a los Automóviles Compactos de Consumo Popular"), August 2, 1989, provided for in items 8703.21 through 8703.33, 8703.90.99, 8706.00.01, 8706.00.02 or 8706.00.99 of the Tariff Schedule of the *General Import Duty Act*;
- (c) **commercial truck** means a vehicle with or without a chassis, intended for the transport of goods or more than 10 persons, with a gross vehicle weight of up to 2,727 kilograms provided for in items 8702.10, 8702.90.02, 8702.90.03, 8702.90.04, 8703.21 through 8703.33, 8703.90.99, 8704.21.99, 8704.31.99, 8705.20.01, 8705.40.01, 8706.00.01, 8706.00.02 or 8706.00.99 of the Tariff Schedule of the *General Import Duty Act*;

- (d) **light duty truck** means a vehicle with or without a chassis, intended for the transport of goods or more than 10 persons, with a gross vehicle weight of more than 2,727 but no more than 7,272 kilograms provided for in item 8702.10, 8702.90.02, 8702.90.03, 8702.90.04, 8704.21.99, 8704.22.99, 8704.31.99, 8704.32.99, 8705.20.01, 8705.40.01, 8706.00.01, 8706.00.02 or 8706.00.99 of the Tariff Schedule of the *General Import Duty Act*; and
- (e) **medium duty truck** means a vehicle with or without a chassis, intended for the transport of goods or more than 10 persons, with a gross vehicle weight of more than 7,272 but no more than 8,864 kilograms provided for in item 8702.10, 8702.90.02, 8702.90.03, 8702.90.04, 8704.22.99, 8704.32.99, 8705.20.01, 8705.40.01, 8706.00.01, 8706.00.02 or 8706.00.99 of the Tariff Schedule of the *General Import Duty Act*;

national supplier (referred to as "proveedor nacional" in article 2, paragraph VII of the Auto Decree) means an enterprise constituted or organized under the law of, and operating in, Mexico:

- (a) that supplies to manufacturers autoparts classified in categories 26, 40, 41, 42, 43 and 57 of the input-output matrix of the National Institute of Statistics, Geography and Informatics ("Instituto Nacional de Estadística, Geografía e Informática"), published in 1980;
- (b) that is registered with SECOFI;
- (c) in which no manufacturer, directly or indirectly, is a majority shareholder;
- (d) that has no majority shareholders that are also majority shareholders of any manufacturer; and
- (e) that complies with the national value added requirements pursuant to paragraphs 2 and 3;

national value added from suppliers (VANp) (referred to as "VANp" in rule 18 of the Auto Decree Implementing Regulations) means, for a manufacturer, the sum of:

- (a) the national value added contained in the autoparts that the manufacturer purchases from national suppliers and from enterprises of the autoparts industry, excluding purchases of autoparts from such suppliers and enterprises destined for the aftermarket, and
- (b) the foreign exchange attributable to the value of exports of autoparts, excluding the value of import content in the exports, produced by national suppliers and

enterprises of the autoparts industry, where the export of the autoparts was promoted by the manufacturer,

calculated in accordance with formula 7 of rule 18 in the Auto Decree Implementing Regulations as of August 12, 1992, or any other measure adopted by Mexico that is no more restrictive than such formula;

national value added means, for an enterprise of the autoparts industry or a national supplier, the total value of sales of such enterprise or supplier minus the value of its total imports, direct and indirect, excluding those imports incorporated in autoparts destined for the aftermarket, as modified by paragraphs 2 and 3;

total national value added (VANt) (referred to as "valor agregado nacional de la empresa de la industria terminal" in rule 18 of the Auto Decree Implementing Regulations) means, for a manufacturer, either:

- (a) the sum of the manufacturer's production in Mexico for sale in Mexico (VTVd) plus the manufacturer's trade balance (S), where the trade balance (S) is greater than zero; or
- (b) the manufacturer's production in Mexico for sale in Mexico (VTVd), where the manufacturer's trade balance (S) is negative;

total sales means, for a national supplier or an enterprise of the autoparts industry, the sum of:

- (a) the invoice value of sales of autoparts by that supplier or enterprise to a manufacturer that are intended for use as original equipment in the motor vehicles or autoparts that the manufacturer produces, excluding autoparts destined for the aftermarket; and
- (b) the value of autoparts that the supplier or enterprise exports, either directly or through a manufacturer, less the value of the imported content of such autoparts; and

trade balance (S) (referred to as "saldo en balanza comercial" in rule 9 of the Auto Decree Implementing Regulations), for a manufacturer, is equal to $X + TP - ID - IP$, where:

- (a) X denotes the value of the manufacturer's direct exports of motor vehicles and autoparts that it produces,
- (b) TP denotes the foreign exchange attributable to the value of exports of autoparts, excluding the value of import content in the exports, produced by national suppliers and enterprises of the autoparts industry, where the exportation of such autoparts was promoted by the manufacturer,

- (c) ID denotes the value of the manufacturer's direct imports, excluding duties and domestic taxes, and whether the imports are for domestic consumption ("definitivas") or for re-export ("temporales"), incorporated in the motor vehicles and autoparts produced by the manufacturer, excluding autoparts destined for the aftermarket, and
- (d) IP denotes the value of import content in the autoparts purchased by the manufacturer from an enterprise of the autoparts industry or a national supplier that are incorporated in the motor vehicles and autoparts produced by the manufacturer, excluding the import content of autoparts destined for the aftermarket, calculated in accordance with rules 10, 12, 13, 14, and 15 of the Auto Decree Implementing Regulations as of August 12, 1992, or any other measure adopted by Mexico that is no more restrictive than such rules;

provided that, for purposes of subparagraphs (c) and (d), the value of imports for domestic consumption ("definitivas") shall be discounted in accordance with paragraph 12.

Appendix 300-A.3

United States - Corporate Average Fuel Economy

1. In accordance with the schedule set out in paragraph 2, for purposes of the *Energy Policy and Conservation Act of 1975*, 42 U.S.C. §§ 6201 *et seq.* ("the CAFE Act"), the United States shall consider an automobile to be domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in Canada, Mexico or the United States, unless the assembly of the automobile is completed in Canada or Mexico and such automobile is not imported into the United States prior to the expiration of the 30 days following the end of the model year.
2. Paragraph 1 shall apply to all automobiles produced by a manufacturer and sold in the United States, wherever produced and irrespective of car line or truck line, in accordance with the following schedule:
 - (a) with respect to a manufacturer that initiated the production of automobiles in Mexico before model year 1992, the enterprise subject to the fuel economy requirements for those automobiles under the CAFE Act may make a one-time election at any time between January 1, 1997 and January 1, 2004, to have paragraph 1 applied beginning with the next model year after its election;
 - (b) with respect to a manufacturer initiating the production of automobiles in Mexico after model year 1991, paragraph 1 shall apply beginning with the next model year after either January 1, 1994 or the date that the manufacturer initiates the production of automobiles in Mexico, whichever is later;
 - (c) with respect to any other manufacturer producing automobiles in the territory of a Party, the enterprise subject to the fuel economy requirements for those automobiles under the CAFE Act may make a one-time election at any time between January 1, 1997 and January 1, 2004, to have paragraph 1 applied beginning with the next model year after its election. If such a manufacturer initiates the production of automobiles in Mexico, it shall be subject to subparagraph (b) on the date it initiates such production;
 - (d) with respect to all manufacturers of automobiles not producing automobiles in the territory of a Party, paragraph 1 shall apply beginning with the next model year after January 1, 1994; and
 - (e) with respect to a manufacturer of automobiles covered by subparagraph (a) or (c), paragraph 1 shall apply beginning with the next model year after January 1, 2004, where the enterprise subject to the fuel economy requirements for those automobiles

under the CAFE Act, has not made an election under subparagraph (a) or (c).

3. The United States shall ensure that any measure it adopts pertaining to the definition of domestic production in the CAFE Act or its implementing regulations shall apply equally to value added in Canada or Mexico.

4. Nothing in this Appendix shall be construed to require the United States to make any changes in its fuel economy requirements for automobiles, or to prevent the United States from making any changes in its fuel economy requirements for automobiles that are otherwise consistent with this Appendix.

5. For greater certainty, the differences in treatment pursuant to paragraphs 1 through 3 shall not be considered to be inconsistent with Article 1103 (Investment - Most-Favored-Nation Treatment).

6. For purposes of this Appendix:

automobile means "automobile" as defined in the CAFE Act and its implementing regulations;

manufacturer means "manufacturer" as defined in the CAFE Act and its implementing regulations;
and

model year means "model year" as defined in the CAFE Act and its implementing regulations.