

# FREE TRADE AGREEMENT BETWEEN ISRAEL AND MEXICO

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## FREE TRADE AGREEMENT BETWEEN ISRAEL AND MEXICO

### PREAMBLE

The Government of the State of Israel and the Government of the United Mexican States,

*Resolved to:*

*Strengthen* their economic relations and to promote economic development;

*Create* an expanded and secure market for the goods produced in their territories;

*Establish* clear and mutually advantageous rules governing their trade;

*Create* a framework for promoting investment and cooperation;

*Foster* the development of their trade with due regard to fair conditions of competition;

*Recall* the mutual interest of the Government of the State of Israel and the Government of the United Mexican States in reinforcement of the multilateral trading system as reflected in the WTO;

*Establish* a free trade area between the two countries through the removal of trade barriers;

*Create* new employment opportunities and improve living standards in their respective territories;

*Declaring* their readiness to explore other possibilities for extending their economic relations to other fields not covered by this Agreement;

*HAVE AGREED* as follows:

## CHAPTER I

### Initial Provisions

#### *Article 1-01*

### General Definitions

For purposes of this Agreement, unless otherwise specified:

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

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;
- (b) antidumping or countervailing duty or levy;
- (c) safeguard duty or levy; and
- (d) fee or other charge provided that it is commensurate with the cost of services rendered;

**GATT 1994** means the General Agreement of Tariffs and Trade of 1994, which is part of the WTO Agreement;

**good** means a domestic good as this is understood in GATT 1994 or such a good as the Parties may agree, and includes an originating good of that Party;

**Harmonized System** means the Harmonized Commodity Description and Coding System, and its General Rules of Interpretation, Section notes and Chapter notes, as adopted and implemented by the Parties in their respective tariff laws;

**measure** includes any law, regulation, procedure, requirement or practice;

**originating goods** means good or material that qualifies as originating under the provisions of Chapter III (Rules of Origin); and

**WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organization, including GATT 1994.

#### *Article 1-02*

### Establishment of the Free-Trade Area

The Parties to this Agreement, consistent with Article XXIV of GATT 1994, hereby establish a free trade area.

*Article 1-03*

Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:
  - (a) eliminate barriers to trade in, and facilitate the movement of goods between the territories of the Parties;
  - (b) promote conditions of fair competition in the free trade area;
  - (c) increase substantially investment opportunities in the territories of the Parties;
  - (d) create effective procedures for the implementation, application and compliance with this Agreement, and its joint administration; and
  - (e) establish a framework for further bilateral and multilateral cooperation to expand and enhance the benefits of this Agreement.
2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.
3. Each Party shall administer in a consistent, impartial and reasonable manner all laws, regulations, decisions and rulings affecting matters covered by this Agreement.

*Article 1-04*

Relation to Other Agreements

1. The Parties affirm their rights and obligations with respect to each other in accordance with the WTO Agreement, including GATT 1994, and its successor agreements and other agreements to which both Parties are party.
2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

*Article 1-05*

Extent of Obligations

Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance by states and municipal governments and authorities within its territory.

## CHAPTER II

### Trade in Goods

#### *Article 2-01*

#### Scope and Coverage

This Chapter applies to trade in goods of a Party, except as otherwise provided in this Agreement.

#### *Article 2-02*

#### National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to this end Article III of GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.
2. Paragraph 1 does not apply to the measures set out in Annex 2-02 (Exceptions to Article 2-02 and Article 2-04).

#### *Article 2-03*

#### Customs Duties and Tariff Elimination

1. The basic customs duty for the successive reductions set out in this Agreement shall be the lowest most-favored-nation rate effectively applied by each Party in the period starting on 1 July 1998 until 1 February 2000. If, after this date, any tariff reduction is applied on a most-favored-nation basis, such reduced customs duties shall replace the basic customs duties as from the date when such reduction is effectively applied. To this end, each Party shall cooperate to inform the other Party of basic customs duties and preferential rates in force.
2. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good of the other Party referred to in paragraphs 3 or 4.
3. Unless specified in this paragraph or elsewhere, each Party shall eliminate its customs duties on originating goods classified in Chapters 25 to 98 of the Harmonized System in four equal stages, the first one taking place on the entry into force of this Agreement, and the other three on 1 January of each successive year, so that these customs duties are completely eliminated by 1 January 2003:
  - (a) each Party shall eliminate its customs duties on goods classified in the Harmonized System headings or subheadings listed in Annex 2-03.3(a) (Products for Immediate Tariff Elimination) on the date of entry into force of this Agreement;
  - (b) each Party shall eliminate its customs duties on goods classified in the Harmonized System headings or subheadings listed in Annex 2-03.3(b) (Products with Tariff Elimination Schedule for 2005) in six equal stages, the first one taking place on the date of entry into force of this Agreement, and the other five on 1 January of each successive year, so that these customs duties are completely eliminated by 1 January 2005;
  - (c) for the purpose of elimination of duties in accordance with this Article, rates shall be

rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest .01 of the official monetary unit of the Party; and

- (d) goods classified in the Harmonized System headings 3502 and 3505 shall be treated in accordance with paragraph 4.

4. Except as otherwise provided in this Agreement, each Party shall eliminate or reduce duties on originating goods covered by Chapters 1 to 24 of the Harmonized System and by paragraph 3(d) and listed in Annexes 2-03.4(a) (Concessions made by Israel to Mexico) and 2-03.4(b) (Concessions made by Mexico to Israel) in accordance with the timetables and the conditions set out in those Annexes.

5. Upon request of either Party, the Parties shall consult to consider accelerating the elimination or reduction of customs duties set out in the Annexes referred to in paragraphs 3 and 4. The Parties shall examine periodically the possibilities of granting each other further concessions in trade in agricultural goods.

6. In accordance with paragraph 5, an agreement between the Parties to accelerate the elimination or the reduction of a customs duty on a good or the inclusion of a good in the Tariff Elimination Schedule or in Annexes 2-03.4(a) (Concessions made by Israel to Mexico) and (b) (Concessions made by Mexico to Israel), shall supersede any duty rate or staging category determined pursuant to their schedules for such good when approved by the Commission.

7. Upon entry into force of this Agreement, the Parties shall eliminate any customs users fee which is applied on originating goods on an *ad valorem* basis.

8. The preferential rates of duty set out in paragraph 3 shall apply to certain goods classified in Chapters 50 through 63 of the Harmonized System, within the Tariff Preferential Quotas set out in Annex 2-03 (8) (Tariff Preferential Quotas for certain Goods classified in Chapter 50 through 63 of the Harmonized System), provided that these goods comply with the provisions of Article 3-03(3).

#### *Article 2-04*

#### Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which the Parties are party, are incorporated into and made a part of this Agreement.

2. The Parties understand that the rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:

- (a) limiting or prohibiting the importation from the territory of the other Party of such good of that non-Party; or
- (b) requiring as a condition of export of such good of the Party to the territory of the other

Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on request of either Party, shall consult with a view to avoiding undue interference or distortion of pricing, marketing and distribution arrangements in a Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 2-02 (Exceptions to Article 2-02 and 2-04).

*Article 2-05*

Appellations of Origin or Geographical Indications

Annex 2-05 applies to appellations of origin or geographical indications.

*Article 2-06*

Committee on Trade

1. The Parties hereby establish a Committee on Trade, comprising representatives of each Party. The Committee shall meet on a date and with an agenda agreed in advance by the Parties. The office of chairman of the Committee shall be held alternatively by each Party. The Committee shall report to the Commission.

2. Upon request of either Party, the Committee shall convene in order to consider and find appropriate solution to any matter concerning trade in goods, including:

- (a) sanitary and phytosanitary measures;
- (b) standards-related measures;
- (c) antidumping and countervailing duties measures;
- (d) government procurement;
- (e) intellectual property rights; and
- (f) any other matter referred to it by the Commission.

3. Additionally, the Committee may, as if it considers appropriate, establish and determine the scope and mandate of any *ad hoc* group or subcommittee to deal with any specific matter.

## ANNEX 2-02

### Exceptions to Article 2-02 and Article 2-04

#### Measures of Israel

1. Restrictions on imports of waste and scrap of plastic, rubber, paper, metal, and glass that are maintained for ecological purposes.
2. Restrictions on imports of meat not approved by the Chief Rabbinate.
3. Restrictions on the import of used clothing and made-up textile of second quality.

#### Measures of Mexico

##### Exceptions to Article 2-02

Notwithstanding article 2-02, until 1 January 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”), 11 December 1989, and its amendments of 31 May 1995.

##### Exceptions to Article 2-04

1. 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.

*(For purposes of reference only, descriptions provided next to the corresponding item)*

<b>Item</b>	<b>Description</b>
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 extended oils, solvent naphtha and carbon black feedstocks only.
27.09	Petroleum oils and oils obtained from bituminous minerals, crude.
27.10	Aviation 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.
27.11	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.
27.14	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.

2. Mexico may maintain restrictions in effect on the date of entry into force of this Agreement on the importation of used products classified under heading 63.09 of the Harmonized System.

3. Mexico may adopt or maintain prohibitions or restrictions to the importation of used goods provided for in the items set out below:

*(For purposes of references only, descriptions are provided next to the corresponding item)*

<b>Item</b>	<b>Description</b>
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87, of a cylinder capacity exceeding 1,000 cc.
8701.20	Road tractors for semi-trailers.
87.02	Motor vehicles for the transport of ten or more persons.
87.03	Motor cars and other motor vehicles principally designed for the transport of persons, (other than those of heading 8702), including station wagons and racing cars.
87.04	Motor vehicles for the transport of goods.
8705.20	Mobile drilling derricks.
8705.40	Concrete mixers.
87.06	Chassis fitted with engines, for the motor vehicles of headings 87.01 to 87.05.

4. Until 1 January 2004, Mexico may adopt or maintain prohibitions or restrictions to the importation of used goods provided for in the items set out below.

8426.91.02	8471.60.06	8471.90.99	8708.70.02	8716.20.99
8426.91.03	8471.60.07	8474.20.02	8708.70.03	8716.31.01
8427.20.01	8471.60.08	8474.20.05	8708.70.07	8716.31.02
8429.20.01	8471.60.09	8474.20.06	8708.70.99	8716.31.99
8452.29.04	8471.60.10	8504.40.12	8711.10.01	8716.39.01
8471.10.01	8471.60.11	8701.90.02	8711.20.01	8716.39.02
8471.30.01	8471.60.12	8702.90.01	8711.30.01	8716.39.04
8471.41.01	8471.60.13	8703.10.01	8711.40.01	8716.39.05
8471.49.01	8471.60.99	8703.90.01	8711.90.99	8716.39.06
8471.50.01	8471.70.01	8705.10.01	8712.00.04	8716.39.07
8471.60.02	8471.80.01	8705.20.99	8712.00.99	8716.39.99
8471.60.03	8471.80.02	8705.90.01	8716.10.01	8716.40.99
8471.60.04	8471.80.03	8705.90.99	8716.20.01	8716.80.99
8471.60.05	8471.80.99	8708.70.01	8716.20.03	

5. Until 31 December 2003, Mexico may maintain prohibitions or restrictions to the importation of goods provided for in the items set out below:

*(For purposes of references only, descriptions are provided next to the corresponding item)*

<b>Item</b>	<b>Description</b>
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87, of a cylinder capacity exceeding 1,000 cc.
8701.20	Road tractors for semi-trailers.
87.02	Motor vehicles for the transport of ten or more persons.
87.03	Motor cars and other motor vehicles principally designed for the transport of persons, (other than those of heading 8702), including station wagons and racing cars.
87.04	Motor vehicles for the transport of goods.
8705.20	Mobile drilling derricks.
8705.40	Concrete mixers.
87.06	Chassis fitted with engines, for the motor vehicles of headings 87.01 to 87.05.



## ANNEX 2-03.3(a)

Products for Immediate Tariff Elimination (1) (2) (3)

<b>HS Code</b>	<b>Only</b>	<b>HS Code</b>	<b>Only</b>	<b>HS Code</b>	<b>Only</b>
250300		540341		82075010 (II)	
250410		540620		82075002 (Mx)	
250490		540810		830160 (II)	
250610		550110		83016099 (Mx)	
250621		550120		841920	
250629		550130		842121 (II)	
250700		550200		84212104 (Mx)	
250810		550310		84212199 (Mx)	
250820		550320		846610	
250830		550330		846693	
250840		550510		846911	
250850		550520		846912	
250860		550630		846920	
250870		570320		846930	
250900		570330		847010	
251020		590210		847021	
251110		590220		847029	
251120		590290		847030	
251200		690390 (II)		847040	
251311		69039099 (Mx)		847050	
251319		690919 (II)		847090	
251320		69091999 (Mx)		847110	
251400		691490		847130	
251511		720110		847141	
251512		720120		847149	
251520		720150		847150	
251611		720221		847160	
251612		720229		847170	
251621		720241		847180	
251622		720249		847190	
251690		720250		847310	
251810		720260		847321	
251820		720270		847329	
251830		720280		847330	
252010		720291		847340	
252020		720292		847350	
252210		720293		8481 (Mx)	For irrigation
252220		720299		851711	
252230		720310		851719	
252310		720390		851721	
252321		720410		851722	
252329		720421		851730	
252330		720429		851750	
252390		720430		851780	
252400		720441		851790	
252510		720449		851810	
252520		720450		851821	
252530		720510		851822	

<b>HS Code</b>	<b>Only</b>	<b>HS Code</b>	<b>Only</b>	<b>HS Code</b>	<b>Only</b>
252610		720521		851829	
252620		720529		851830	
252700		720610		851840	
252890		720690		851850	
252910		720711		851890	
252921		720712		851910	
252922		720719		851921	
252930		720720		851929	
253010		720810		851931	
253090		720825		851939	
260200		720826		851940	
260300		720827		851992	
260400		720836		851993	
260500		720837		851999	
260600		720838		852010	
260700		720839		852020	
260800		720840		852032	
260900		720851		852033	
261000		720852		852039	
261100		720853		852090	
261310		720854		852110	
261390		720890		852190	
261400		720915		852210	
261510		720916		852290	
261590		720917		852311	
261610		720918		852312	
261690		720925		852313	
261710		720926		852320	
261790		720927		852330	
262011		720928		852390	
262019		720990		852410	
262020		721011		852431	
262030		721012		852432	
262040		721020		852439	
262050		721030		852440	
262090		721041		852451	
270760		721049		852452	
280700		721050		852453	
282751 (II)		721061		852460	
28275101(Mx)		721069		852491	
282759 (II)		721070		852499	
28275999 (Mx)		721090		852510	
283421		721113		852520	
284990		721114		852530	
290129		721119		852540	
290220		721123		852610	
290244		721129		852691	
290330		721190		852692	
290349 (II)		721210		852712	
29034999 (Mx)		721220		852713	
290359 (II)		721230		852719	

HS Code	Only	HS Code	Only	HS Code	Only
29035902 (Mx)		721240		852721	
290369		721250		852729	
290410		721260		852731	
290516		721320		852732	
290519 (II)		721391		852739	
29051901 (Mx)		721399		852790	
29051902 (Mx)		721410		852812	
29051903 (Mx)		721430		852813	
29051904 (Mx)		721491		852821	
29051907 (Mx)		721499		852822	
29051908 (Mx)		721510		852830	
29051999 (Mx)		721550		852910	
290621		721590		852990	
290711		721610		853010	
290719 (II)		721621		853080	
29071902 (Mx)		721622		853120	
29071904 (Mx)		721631		853180	
29071905 (Mx)		721632		853190	
29071906 (Mx)		721633		853321	
29071908 (Mx)		721640		853400	
290723		721650		85371091 (II)	
290810		721661		85371004 (Mx)	
290890		721669		854381	
290919		721691		85438957 (II)	
290930 (II)		721699		85438959 (II)	
29093002 (Mx)		721710		85438999 (Mx)	
291010		721720		854011	
291020		721730		854012	
291241		721790		854020	
291249		721810		854040	
291411		721891		854050	
291429 (II)		721899		854060	
29142999 (Mx)	For use in food industry	721911		854071	
291439 (II)		721912		854072	
29143903 (Mx)		721913		854079	
29143904 (Mx)		721914		854081	
29143907 (Mx)		721921		854089	
291614		721922		854091	
291714		721923		854099	
291736		721924		854110	
291737		721931		854121	
291814		721932		854129	
291815		721933		854130	
292211		721934		854140	
292212		721935		854150	
292213		721990		854160	
292690		722011		854190	
292800 (II)		722012		854212	
29280006 (Mx)		722020		854213	
29310090 (II)		722090		854214	
29310099 (Mx)	For use for	722100		854219	

HS Code	Only	HS Code	Only	HS Code	Only
	agriculture				
293299 (II)		722211		854230	
29329999 (Mx)		722219		854240	
293319 (II)		722220		854250	
29331999 (Mx)		722230		854290	
293359		722240		854810	
293369		722300		854890	
300210 (II)		722410		870110	
30021004 (Mx)		722490		870120	
30021008 (Mx)		722511		870130	
30021099 (Mx)		722519		870190	
30049099 (Mx)	"Approtinina 500,000 KIU".	722520		870210	
300630 (II)		722530		870290	
30063001 (Mx)		722540		870310	
320411 (II)		722550		870321	
32041101 (Mx)		722591		870322	
32041199 (Mx)		722592		870323	
320412 (II)		722599		870324	
32041202 (Mx)		722611		870331	
320414 (II)		722619		870332	
32041402 (Mx)		722620		870333	
320417 (II)		722691		870390	
32041702 (Mx)		722692		870410	
320420 (II)		722693		870421	
32042003 (Mx)		722694		870422	
320649 (II)		722699		870423	
32064999 (Mx)		722710		870431	
340111		722720		870432	
340119		722790		870490	
340120		722810		871200	
340211		722820		880260	
340212		722830		880390	
340213		722840		900510	
340219		722850		900911	
340220		722860		900912	
340290		722870		900921	
380991 (II)		722880		900922	
38099101 (Mx)		722910		900930	
380992 (II)		722920		900990	
38099299 (Mx)		722990		901310	
381090 (II)		730110		901320	
38109001 (Mx)		730120		901811 (II)	
381300		730210		90181101 (Mx)	
381400		730220		901819 (II)	
381590 (II)		730230		90181905 (Mx)	
38159099 (Mx)		730240		90181910 (Mx)	
38220099 (Mx)	Diagnostic reagents for the detection of AIDS, Hepatitis,	730290		90181999 (Mx)	

HS Code	Only	HS Code	Only	HS Code	Only
390190	Chlamydia, TORCH and Helicobacter pylori.	730410		901832 (II)	
390760		730421		90183299 (Mx)	
390810 (II)		730429		90183990 (II)	
39081004 (Mx)		730431		90183999 (Mx)	
391000		730439		90184990 (II)	
391211		730441		90184999 (Mx)	
391231		730449		90189090 (II)	
391239		730451		90189015 (Mx)	
391390 (Mx)		730459		90189099 (Mx)	
		For use in irrigation, covering fields (either below or above), shadowing and greenhouses			
3917 (Mx)	For use in irrigation, covering fields (either below or above), shadowing and greenhouses	730490		902212 (II)	
391739 (II)		730511		90221201 (Mx)	
39173999 (Mx)	Epoxy resin pressure vessels for water treatment by inverse osmosis	730512		902214 (II)	
3920 (Mx)	For use in irrigation, covering fields (either below or above), shadowing and greenhouses	730519		90221499 (Mx)	
3921 (Mx)	For use in irrigation, covering fields (either below or above), shadowing and greenhouses	730520		902221 (II)	
39269040 (II)		730531		90222199 (Mx)	
39269031 (Mx)		730539		902290 (II)	
400910		730590		90229099 (Mx)	
400940		730650		902300	
401191		730810		902610 (II)	
401199		730820		90261099 (Mx)	
401290		730830		930100	
401693		730840		930200	
401699		750110		930310	
440810		750120		930320	

<b>HS Code</b>	<b>Only</b>	<b>HS Code</b>	<b>Only</b>	<b>HS Code</b>	<b>Only</b>
440831		750210		930330	
440839		750220		930390	
440890		750300		930400	
540110		750400		930510	
540120		750511		930521	
540210		750512		930529	
540220		750521		930590	
540233		750522		930610	
540242		750610		930621	
540243		750620		930629	
540262		750711		930630	
540310		750712		930690	
540331		750720		930700	
540332		750810		950390	
540333		750890			

- (1) “Il” refers to the Israeli Harmonized System Code as expressed in the “Israeli Customs Tariff”; Israel shall implement immediate tariff elimination for these items.
- (2) “Mx” refers to the Mexican Harmonized System Code as expressed in the “Tarifa de la Ley del Impuesto General de Importación (T.I.G.I.)”; Mexico shall implement immediate tariff elimination for these items.
- (3) Mexico shall grant immediate tariff elimination for originating “woven and non woven fabrics used for making bullet proof vests and suits”, for originating “bullet proof vests and suits”, as well as for originating “fabrics used for covering fields, shadowing and greenhousing”, regardless of what their HS tariff classification is.

**ANNEX 2-03.3(b)****Products with Tariff Elimination Schedule for 2005 (1)**

<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>
280300	520841	551634	611410	790111
280910	520842	551641	611420	790112
280920	520843	551642	611430	790120
281122	520849	551643	611490	810600
281511	520851	551644	611511	810710
281512	520852	551691	611512	841810
282590	520853	551692	611519	841820
282911	520859	551693	611520	841830
282919	520911	551694	611591	841840
282990	520912	560110	611592	841850
283010	520919	560121	611593	841860
283322	520921	560122	611599	841890
283329	520922	560129	611610	848180
283429	520929	560130	611691	850110
283510	520931	560210	611692	850120
283522	520932	560221	611693	850131
283523	520939	560290	611699	850132
283524	520941	560311	611710	850133
283525	520942	560312	611720	850134
283526	520943	560313	611780	850140
283529	520949	560314	611790	850151
283531	520951	560391	620111	850152
283539	520952	560392	620112	850153
284110	520959	560393	620113	850161
284210	521011	560394	620119	850162
290722	521012	560410	620191	850163
291260	521019	560420	620192	850164
291429	521021	560490	620193	850410
291550	521022	560500	620199	850421
291735	521029	560600	620211	850422
292090	521031	560710	620212	850423
292144	521032	560721	620213	850431
293030	521039	560729	620219	850432
293100	521041	560730	620291	850433
300120	521042	560741	620292	850434
300190	521049	560749	620293	850440
300210	521051	560750	620299	850450
300220	521052	560790	620311	850490
300230	521059	560811	620312	853510
300290	521111	560819	620319	853521
300310	521112	560890	620321	853529
300320	521119	560900	620322	853530
300331	521121	570110	620323	853540
300340	521122	570190	620329	853590
300390	521129	570210	620331	853610
300410	521131	570220	620332	853620
300420	521132	570231	620333	853630
300431	521139	570232	620339	853641
300432	521141	570239	620341	853649
300439	521142	570241	620342	853650
300440	521143	570242	620343	853661
300450	521149	570249	620349	853669
300490	521151	570251	620411	853690
300510	521152	570252	620412	853720
300590	521159	570259	620413	854411

<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>
300610	521211	570291	620419	854419
300620	521212	570292	620421	854420
300630	521213	570299	620422	854430
300640	521214	570310	620423	854441
300650	521215	570490	620429	854449
300660	521221	570500	620431	854451
310290	521222	580110	620432	854459
310490	521223	580121	620433	854460
310520	521224	580122	620439	854470
310540	521225	580123	620441	
310559	530210	580124	620442	
310590	530290	580125	620443	
320300	530310	580126	620444	
321490	530390	580131	620449	
360500	530410	580132	620451	
380210	530490	580133	620452	
380820	530511	580134	620453	
380830	530519	580135	620459	
380890	530521	580136	620461	
382440	530529	580190	620462	
382490	530591	580211	620463	
390110	530599	580219	620469	
390130	530610	580220	620510	
390210	530620	580230	620520	
390311	530710	580310	620530	
390319	530720	580390	620590	
390390	530810	580410	620610	
390410	530820	580421	620620	
390421	530830	580429	620630	
390422	530890	580430	620640	
390430	530911	580500	620690	
390519	530919	580610	620711	
390530	530921	580620	620719	
390690	530929	580631	620721	
392330	531010	580639	620722	
400110	531090	580640	620729	
400211	531100	580710	620791	
400219	540231	580790	620792	
400249	540232	580810	620799	
400251	540239	580890	620811	
400259	540241	580900	620819	
400291	540249	581010	620821	
401110	540251	581091	620822	
440710	540252	581092	620829	
440724	540259	581099	620891	
440725	540261	581100	620892	
440726	540269	590110	620899	
440729	540320	590190	620910	
440791	540339	590310	620920	
440792	540342	590320	620930	
440799	540349	590410	620990	
441011	540410	590491	621010	
441019	540490	590492	621020	
441090	540500	590500	621030	
441111	540610	590610	621040	
441119	540710	590691	621050	
441121	540720	590699	621111	
<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	



<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>
441129	540730	590700	621112
441131	540741	590800	621120
441139	540742	590900	621131
441191	540743	591000	621132
441199	540744	591110	621139
441213	540751	591120	621141
441214	540752	591131	621142
441219	540753	591132	621143
441222	540754	591140	621149
441223	540761	591190	621210
441229	540769	600110	621220
441292	540771	600121	621230
441293	540772	600122	621290
441299	540773	600129	621310
500100	540774	600191	621320
500200	540781	600192	621390
500310	540782	600199	621410
500390	540783	600210	621420
500400	540784	600220	621430
500500	540791	600230	621440
500600	540792	600241	621490
500710	540793	600242	621510
500720	540794	600243	621520
500790	540821	600249	621590
510130	540822	600291	621600
510210	540823	600292	621710
510220	540824	600299	621790
510310	540831	610110	630110
510320	540832	610120	630120
510330	540833	610130	630130
510400	540834	610190	630140
510510	550690	610210	630190
510529	550700	610220	630210
510530	550810	610230	630221
510540	550820	610290	630222
510610	550911	610311	630229
510620	550912	610312	630231
510710	550921	610319	630232
510720	550922	610321	630239
510810	550931	610322	630240
510820	550932	610323	630251
510910	550941	610329	630252
510990	550942	610331	630253
511000	550951	610332	630259
511111	550952	610333	630260
511119	550953	610339	630291
511120	550959	610341	630292
511130	550961	610342	630293
511190	550962	610343	630299
511211	550969	610349	630311
511219	550991	610411	630312
511220	550992	610412	630319
511230	550999	610413	630391
511290	551011	610419	630392
511300	551012	610421	630399
520100	551020	610422	630411
520210	551030	610423	630419
520291	551090	610429	630491
520300	551110	610431	630492

<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>
520411	551120	610432	630493
520419	551130	610433	630499
520420	551211	610439	630510
520511	551219	610441	630520
520512	551221	610442	630532
520513	551229	610443	630533
520514	551291	610444	630539
520515	551299	610449	630590
520521	551311	610451	630611
520522	551312	610452	630612
520523	551313	610453	630619
520524	551319	610459	630621
520526	551321	610461	630622
520527	551322	610462	630629
520528	551323	610463	630631
520531	551329	610469	630639
520532	551331	610510	630641
520533	551332	610520	630649
520534	551333	610590	630691
520535	551339	610610	630699
520541	551341	610620	630710
520542	551342	610690	630720
520543	551343	610711	630790
520544	551349	610712	630800
520546	551411	610719	630900
520547	551412	610721	631010
520548	551413	610722	631090
520611	551419	610729	700719
520612	551421	610791	700729
520613	551422	610792	710691
520614	551423	610799	720211
520615	551429	610811	720219
520621	551431	610819	720230
520622	551432	610821	721310
520623	551433	610822	721420
520624	551439	610829	730300
520625	551441	610831	730610
520631	551442	610832	730620
520632	551443	610839	730630
520633	551449	610891	730640
520634	551511	610892	730660
520635	551512	610899	730690
520641	551513	610910	730711
520642	551519	610990	730719
520643	551521	611010	730721
520644	551522	611020	730722
520645	551529	611030	730723
520710	551591	611090	730729
520790	551592	611110	730791
520811	551599	611120	730792
520812	551611	611130	730793
520813	551612	611190	730799
520819	551613	611211	730890
520821	551614	611212	732510
520822	551621	611219	761290
520823	551622	611220	780110
520829	551623	611231	780191
520831	551624	611239	780200
520832	551631	611241	780411

<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>	<b>HS Code</b>
520833	551632	611249	780419
520839	551633	611300	780420

- (1) Excluding products covered by Annex 2-03.3(a), which shall be granted immediate tariff elimination.

## ANNEX 2-03.4(a)

Concessions made by Israel to Mexico

1. The following tariff concessions shall apply each year from the date of entry into force of this Agreement.

<i>Israel's Customs Tariff Code</i>	<i>Description</i>	<i>Specific provisions</i>
0402.29	Other	Quota of 300 tons duty free
0713.20	Chickpeas	Quota of 200 tons duty free
0901	Coffee	Free
0904.20	Fruits of the genus Capsicum or of the genus Pimenta (including allspice), dried or crushed or ground	Quota of 50 tons duty free
1108.12	Corn (maize) starch	25% reduction <sup>1</sup>
1207.40	Sesame seeds	Free
1701.11	Sugar	Free
1704.90	Sugar confectionery	Free
1806.20-90	Chocolate and other food preparations containing cocoa	Free
1901.20	Mixes and doughs for the preparation of bakers' wares of heading 1905	25% reduction <sup>1</sup>
2001.10	Cucumbers including gherkins	25% reduction <sup>1</sup>
2001.20	Onions	25% reduction <sup>1</sup>
2001.9090	Other	25% reduction <sup>1</sup>
2003.10	Mushrooms	25% reduction <sup>1</sup>
2004.9094 2004.9099	Other vegetables and mixtures of vegetables	Quota of 300 tons duty free
2005.10	Homogenized vegetables	Free
2005.40	Peas (Pisum sativum)	15% reduction <sup>1</sup>
2005.51	Beans, shelled	50% reduction <sup>1</sup>
2005.59	Other	25% reduction <sup>1</sup>
2005.60	Asparagus	50% reduction*
2005.9090	Other vegetables and mixtures of vegetables	Free
2006.00	Fruit, nuts, fruit-peel and other parts of plants, preserved by sugar (drained, glacé or crystallized)	50% reduction <sup>1</sup>
2007.10	Homogenized preparations	Free
2007.91	Citrus fruit	25% reduction <sup>1</sup>
2007.99	Other	20% reduction <sup>1</sup>
ex 2008.1110	Peanuts butter and peanut mash	Free
2008.20	Pineapples	50% reduction <sup>1</sup>
2008.80	Strawberries	50% reduction <sup>1</sup>
2008.91	Palm hearts	50% reduction <sup>1</sup>
2008.92	Mixtures	25% reduction <sup>1</sup>
2008.99	Other	25% reduction <sup>1</sup>
ex 2009.11-19	Orange juice concentrated in packings containing 230 kgs or more (50 brix or more).	Free
ex 2009.2030	Grapefruit juice concentrated in packings containing 230 kgs or more (50 brix or more).	Free

<i>Israel's Customs Tariff Code</i>	<i>Description</i>	<i>Specific provisions</i>
ex 2009.3010	Juice of any other single citrus fruit in packings containing 230 kgs or more (50 brix or more).	Free
2009.40	Pineapple juice	Aggregate quota of 600 ton duty free for subheadings 2009.40 and 2009.80 and item 2009.9090
2009.80	Juice of any other single fruit or vegetable	
2009.9090	Mixtures of juices	
2101.11	Coffee extracts	Free
2102.10	Active yeasts	Tariff fixed at 6%
2102.20	Inactive yeasts; other single-cell micro-organism, dead	Tariff fixed at 6%
2102.30	Prepared baking powders	Tariff fixed at 6%
2103.90	Other	Tariff fixed at 6%
2104.20	Homogenized composite food preparations	Free
2106.10	Protein concentrates	Free
2106.90	Other	Free
2203.00	Beer made from malt	Free
ex.2208.90	Tequila and Mezcal	Free

<sup>1</sup> Reduction from the lowest of the basic duty or the applicable MFN rate at the moment of importation.

2. Israel may adopt or maintain import measures to allocate in-quota imports made pursuant to a quota set out in this Annex, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the quota.

## ANNEX 2-03.4(b)

Concessions made by Mexico to Israel

1. The following tariff concessions shall apply each year from the date of entry into force of this Agreement.

<i>HS Code</i>	<i>Description</i>	<i>Specific provisions</i>
0601	Bulbs	Free
0602	Live plants	Free
0603	Cut flowers	Quota of 60 tons duty free
0604	Foliage	Free
ex 0703	<u>Only</u> : shallots and leeks	Free
ex 0709	<u>Only</u> : Basil, Chervil, Chives, Coriander, Dill, Lemon Grass, Lovage, Marjoram, Melissa, Mint, Oregano, Parsley, Rocket, Rocolla, Rosemary, Sage, Savory, Sorrel, Spring Onion, Tarragon, Thyme, Mizuna, Red Mustard, Salad Burnet, Spinach.	Free
ex 0711.10	<u>Only</u> : Pearl onions	Free
ex 0711.90	<u>Only</u> : Baby carrots, frozen	Free
ex 0901.21-22	<u>Only</u> : "Kosher coffee, in individual packages containing 10 grams or less of coffee".	See note for 2101.11
ex 0910	<u>Only</u> : Ginger, saffron, turmeric, thyme, bay leaves	Free
1209	Sowing seeds	Free
1211	Plants and parts of plants (including seeds and fruits)	Free
1704.90	<u>Only</u> : Kosher sugar confectionery	Free
1806.20-90	<u>Only</u> : Kosher chocolate and other Kosher food preparations containing cocoa	Free
ex 1904	<u>Only</u> : "Puffed corn covered with peanut butter, containing more than 20% but less than 50% of peanut butter "	Free
ex 2001.20	<u>Only</u> : Pearl onions	Free
ex 2004.90	<u>Only</u> : Baby carrots, frozen	Free
ex 2101.11	<u>Only</u> : "Kosher instant coffee, in individual packages containing 5 grams or less of coffee."	Aggregate quota of 50 ton duty free for ex 0901 and ex 2101.11. <sup>1/</sup>
2102.10	Active yeasts	Tariff fixed at 6%
2102.20	Inactive yeasts; other single-cell microorganism, dead	Tariff fixed at 6%
2102.30	Prepared baking powders	Tariff fixed at 6%
2103.90	Other	Tariff fixed at 6%
2106.10	Protein concentrates	Free
2106.90	Other prepared foodstuff	Free, except for Mexican item 2106.9005 "flavoured or coloured syrups".
2203.00	Beer made from malt	Free
ex 2208.90	<u>Only</u> : Arack	Free

<sup>1/</sup> If the quota is filled in any year, it will grow 25% for the next year, but it would be no greater than 200 ton.

2. Mexico may adopt or maintain import measures to allocate in-quota imports made pursuant to a quota set out in this Annex, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the quota.

**ANNEX 2-03.8**Tariff Preferential Quotas for certain Goods classified  
in Chapter 50 through 63 of the Harmonized System

1. Each Party shall apply the provision of article 02-03.8, in accordance to the following quantities:

(a) Apparel and Other Made Up Textile Articles(classified in Chapters 61 through 63 of the Harmonized System)

(b)  
For the first 3 years of entry into force of the Agreement 2.1 million dollars

For the year 4 and thereafter 3.0 million dollars

(c) Yarns and Fabrics (classified in Chapters 50 through 60 of the Harmonized System)

(d)  
For the first 3 years of entry into force of the Agreement 1.4 million dollars

For the year 4 and thereafter 2.0 million dollars

Total annual quota for the first three years of entry into force of the Agreement 3.5 million dollars

Total annual quota for the year 4 and thereafter 5.0 million dollars

2. Maximum amount of annual quota to be allocated within the same heading 15% of total annual quota

3. Mexico shall allocate the annual Tariff Preferential Quotas (TPQ's) specified in this Schedule through a "first come, first served" mechanism.

The Parties agree to review after 2005 the annual TPQ's to adjust it in the light of the experience in managing it and the bilateral trade flows.

**ANNEX 2-05**

Appellations of Origin and Geographical Indications

1. Israel shall recognize Tequila and Mezcal as geographical indications or appellations of origin of Mexico in respect to beverages. Therefore, Israel, in accordance with its legislation, shall ensure Mexico the legal means to enforce those rights against any import, manufacture or sale of any beverage, as Tequila and Mezcal, that is not manufactured in accordance with the Mexican laws and regulations applicable to those geographical indications or appellations of origin.
2. Articles 22 to 24 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights shall be applicable to the above mentioned geographical indications.



## CHAPTER III

### Rules of Origin

#### *Article 3-01*

### Definitions

For purposes of this Chapter:

**Customs Valuation Code** means the WTO Agreement on Implementation of Article VII of the GATT 1994, including its interpretative notes;

**direct overhead** means overhead incurred during a period, directly related to the good, other than direct material costs and direct labour costs;

**F.O.B.** means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

**fungible goods** means goods that are interchangeable for commercial purposes, whose properties are essentially identical, not practical to distinguish by the naked eye;

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

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

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

- (a) mineral goods extracted in the territory of one or both of the Parties;
- (b) vegetable goods harvested in the territory of one or both Parties;
- (c) live animals born and raised in the territory of one or both Parties;
- (d) goods obtained from hunting or fishing in the territory of one or both Parties;
- (e) fish, shellfish and other marine species taken from the sea by vessels registered or recorded with a Party and flying its flag;
- (f) goods produced on board factory ships from the goods referred to in subparagraph (e) provided such factory ships are registered or recorded with a Party and fly its flag;
- (g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
- (h) waste and scrap derived from:
  - (i) production in the territory of one or both Parties; or

- (ii) used goods collected in the territory of one or both Parties, provided such goods are fit only for the recovery of raw materials; or
- (i) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs (a) through (h), or from their derivatives, at any stage of production;

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

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

- (a) fuel and energy;
- (b) tools, dies and molds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

**indirect overhead** means overhead incurred during a period, other than direct overhead, direct labour costs and direct material costs;

**intermediate material** means a material that is self-produced and used in the production of a good, and designated pursuant to Article 3-07;

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

**net cost** means total cost less sales promotion, marketing and after-sales service costs, shipping and repackaging costs; and royalties, pursuant to the provisions of Annex 3-04 (Calculation of Net Cost);

**originating good or material** means a good or material that qualifies as originating under the provisions of this Chapter;

**packing materials and containers for shipment** means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale;

**place where the producer is located:** in relation to a good, the production plant of that good;

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

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

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

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 25 per cent or more of the outstanding voting stock or shares of each of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family (natural or adoptive children, brothers, sisters, parents, grandparents, or spouses);

**royalties** means payments made as consideration for technology transference and the right to use or exploitation of any copyright or intellectual property rights;

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

- (a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales promotion conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature such as product brochures, catalogs, technical literature, price lists, service manuals, sales aid information; establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;
- (b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;
- (c) salaries and wages, sales commissions, bonuses, medical insurance and pension benefits, travelling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;
- (d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees;
- (e) product liability insurance premium;
- (f) office supplies for sales promotion, marketing and after-sales service of goods;
- (g) telephone, mail and other communications for sales promotion, marketing and after-sales service;
- (h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

- (i) property insurance premiums, taxes, costs of utilities, and repair and maintenance of offices and distribution centers; and
- (j) payments by the producer to other persons for warranty repairs;

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

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

**total cost** means the sum of the following elements, pursuant to Annex 3-04 (Calculation of Net Cost):

- (a) the cost of direct materials used in the production of the good;
- (b) the costs of direct labour used in the production of the good; and
- (c) an amount of direct and indirect overhead of the good, reasonably allocated to the good, except for the following:
  - (i) costs and expenses of a service given by the producer of the good to another person, where the service is not related to the good;
  - (ii) costs and losses resulting from a sale of a part of the producer's company, which constitutes a discontinued operation;
  - (iii) the costs related to the cumulative effect of changes in the application of generally accepted accounting principles;
  - (iv) the costs and losses resulting from the sale of the producer's capital assets;
  - (v) costs and expenses related to fortuitous cases or *force majeure*;
  - (vi) profits obtained by the producer of the good, regardless of whether they were retained by the producer or paid to other persons as dividends and taxes paid on these profits, including taxes on capital gains; and
  - (vii) interest costs agreed among related persons exceeding those interests paid at market interest rate.

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

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

**used** means used or consumed in the production of goods.

*Article 3-02*

Application and Interpretation

1. For purposes of this Chapter:
  - (a) the basis for tariff classification is the Harmonized System;
  - (b) the determination of transaction value of a good or of a material shall be made in accordance with the principles of the Customs Valuation Code; and
  - (c) all costs referred to in this Chapter shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.
2. For purposes of this Chapter, in applying the Customs Valuation Code to determine the origin of a good:
  - (a) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions; and
  - (b) the provisions of this Chapter shall prevail over the Customs Valuation Code to the extent of any difference.

*Article 3-03*

Originating Goods

1. A good shall originate in the territory of one or both Parties where:
  - (a) the good is wholly obtained or produced entirely in the territory of one or both Parties, as defined in Article 3-01;
  - (b) the good is produced entirely in the territory of one or both Parties exclusively from materials that qualify as originating pursuant to this Chapter;
  - (c) the good satisfies the requirements specified in Annex 3-03 (Specific Rules of Origin)\*, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the territory of one or both Parties from non-originating materials; or
  - (d) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or both Parties, but one or more of the non-originating materials that are used in the production of the good does not undergo a change in tariff classification because:
    - (i) the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to Rule 2(a) of the General Rules of the Harmonized System; or

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\* This Annex is available in Office 3006 for consultation. It is also available on website referred to in footnote 1.

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

provided that the regional value content of the good, determined in accordance with Article 3-04, is not less than 45 per cent where the transaction value method is used, or is not less than 35 per cent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter, unless otherwise provided in the Annex 3-03 (Specific Rules of Origin).

2. For purposes of this Chapter, the production of a good from non-originating materials that undergo an applicable change in tariff classification and satisfy other requirements, as specified in Annex 3-03 (Specific Rules of Origin), shall occur entirely in the territory of one or both Parties and every regional value content of a good shall be entirely satisfied in the territory of one or both Parties.

3. For purposes of Article 2-03(8), a good classified in Chapter 50 through 63 may satisfy the requirements specified in the Annex 3-03(3) and shall be considered as an originating good.

4. Notwithstanding paragraphs 1 and 2, the Parties may agreed that for any specifically identified product or sector, the acquisition of originating status under the conditions set out in paragraph 1 shall not be affected if the good undergoes working or processing outside the Parties and are subsequently re-imported, provided that:

- (a) it can be demonstrated to the satisfaction of the customs authorities that:
  - (i) the re-imported goods result from the working or processing of the exported materials; and
  - (ii) the total added value acquired outside the territory of one or both Parties concerned through the application of this Article does not exceed 10 per cent of the F.O.B. price of the final product for which originating status is claimed; or
  - (iii) the working and processing carried out outside the territory of the Parties does not go beyond the non-qualifying operations listed in Article 3-16; and
- (b) the good satisfies all requirements set out in paragraph 1.

#### *Article 3-04*

#### Regional Value Content

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

2. For purposes of calculating the regional value content of a good on the basis of the transaction value method, the following formula shall be applied:

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

where

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

3. For purposes of paragraph 2, when the producer of the good does not export it directly, the transaction value of the good shall be adjusted to the point where the buyer receives the good in the territory where the producer is located.

4. For purposes of calculating the regional value content of a good on the basis of the net cost method, the following formula shall be applied:

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

where

- RVC: regional value content, expressed as a percentage;
- NC: net cost of the good; and
- VNM: value of non-originating materials used by the producer in the production of the good determined pursuant to Article 3-5.

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

- (a) there is no transaction value where the good is not the subject of a sale;
- (b) the transaction value of the good cannot be determined where there are restrictions on the disposition or use of the good by the buyer, other than restrictions that:
  - (i) are imposed or required by law or by the public authorities of the Party where the buyer of the good is located;
  - (ii) limit the geographical area in which the good may be resold; or
  - (iii) do not substantially affect the value of the good;
- (c) the sale or price is subject to a condition or consideration for which a value cannot be determined with respect to the good;
- (d) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the seller, unless the proper adjustment pursuant to Article 8 of the Customs Valuation Code can be made;

- (e) the buyer and seller are related persons and their relationship between them influenced the price, except as provided in Article 1.2 of the Customs Valuation Code;
- (f) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the producer sold the good exceeds 85 per cent of the producer's total sales of such goods during that period;
- (g) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article 3-08; or
- (h) the good is designated as an intermediate material under Article 3-07 and is subject to a regional value-content requirement.

6. Except for the goods specified in Article 3-15, a producer may average the regional value content for one or all the goods classified in the same subheading that he produces in the same plant or in several plants in the territory of one Party, on the basis of either all the goods produced by the producer or only those goods exported to the territory of the other Party:

- (a) in its fiscal year or period; or
- (b) in any period of one, two, three, four or six months.

*Article 3-05*

Value of Materials

1. The value of a material:
  - (a) shall be the transaction value of the material; or
  - (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, shall be determined in accordance with the principles set out in Articles 2 through 7 of the Customs Valuation Code.
  
2. Where not included under subparagraph (a) or (b) of paragraph 1, the value of a material shall include:
  - (a) freight, insurance, packing and all other costs incurred in transporting the material to the importation port in the territory of the Party where the producer of the good is located, except as provided in paragraph 3; and
  - (b) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.
  
3. The value of a non-originating material shall not include where the producer acquires the material in the territory of the Party where the producer is located, freight, insurance, packing and all other costs incurred in transporting the material from the warehouse of the supplier to the place where the producer is located; as well as any other known and ascertainable cost incurred in the territory of the producer of the good.



4. For purposes of determining the regional value content under Article 3-04, the value of non-originating materials used by the producer in the production of the good shall not include the value of the non-originating materials used by:

- (a) another producer in the production of an originating material, which is acquired and used by the producer of the good in the production of such good; or
- (b) the producer of the good in the production of a self-produced originating material, which is designated by the producer as an intermediate material under Article 3-07.

*Article 3-06*

De Minimis

1. A good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 3-03 (Specific Rules of Origin) is not more than 10 per cent of the transaction value of the good, adjusted to the basis set out in paragraphs 2 or 3, as the case may be, of Article 3-04 or, in the cases referred to in subparagraphs (a) through (e) of paragraph 5 of Article 3-04, the value of all such non-originating materials is not more than 10 per cent of the total cost of the good.

2. Where that same good is also subject to a regional value content, the value of such non-originating materials shall be taken into account in determining the regional value of the good and the good shall be required to satisfy all other applicable requirements under this Chapter.

3. A good that is subject to a regional value-content requirement pursuant to Annex 3-03 (Specific Rules of Origin) shall not be required to satisfy such requirement if the value of all non-originating materials is not more than 10 per cent of the transaction value of the good, adjusted to the basis set out in paragraphs 2 or 3, as the case may be, of Article 3-04 or, in the cases referred to in subparagraphs (a) through (e) of paragraph 5 of Article 3-04, the value of all such non-originating materials is not more than 10 per cent of the total cost of the good.

4. Paragraph 1 does not apply to:

- (a) a good provided for in Chapters 50 through 63 of the Harmonized System; or
- (b) a non-originating material used in the production of goods provided for in Chapters 01 through 19 and 22 through 27 of the Harmonized System, except where the non-originating material is provided for in a different subheading to the good for which the origin is being determined under this Article.

5. A good provided for in Chapters 50 through 63 of the Harmonized System that does not originate because certain fibers or yarns used in the production of the material that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3-03 (Specific Rules of Origin), shall nonetheless be considered to originate if the total weight of all such fibers or yarns in that material is not more than 7 per cent of the total weight of such material.

*Article 3-07*Intermediate Materials

1. For purposes of determining the regional value content under Article 3-04, the producer of the good may designate as an intermediate material, any self-produced material used in the production of the good that satisfies the requirements of Article 3-03.
2. Where an intermediate material is subject to a regional value content under subparagraph (d) of paragraph 1 of Article 3-03 or to Annex 3-03 (Specific Rules of Origin), the regional value content shall be determined on the basis of the net cost method provided for in paragraph 4 of Article 3-04.
3. For purposes of determining the regional value content of a good, the value of the intermediate material shall be the total cost that can be reasonably allocated to that intermediate material pursuant to Annex 3-04 (Calculation of Net Cost).
4. Where a material that has been designated as intermediate material is subject to a regional value content, no other self-produced material subject to a regional value content used in the production of such intermediate material may, at the same time, be designated by the producer as intermediate material.

*Article 3-08*Accumulation

For purposes of determining whether a good is an originating good, a producer may accumulate his production with one or more producers in the territory of one or both Parties, of materials incorporated in the good, in a manner that the production of materials be considered to have been performed by that producer, provided that the provisions of Article 3-03 are satisfied.

*Article 3-09*Fungible Goods and Materials

1. For purposes of determining whether a good is an originating good, where originating and non-originating fungible materials that are commingled in an inventory, are used in the production of a good, the origin of the materials may be determined pursuant to an inventory management method set out in paragraph 3.
2. Where originating and non-originating fungible goods are commingled and, prior to exportation do not undergo any production process or any operation in the territory of the Party where they were commingled other than unloading, loading or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party, the origin of the good may be determined on the basis of any of the inventory management methods set out in paragraph 3.
3. The inventory management methods for fungible goods or materials shall be the following:
  - (a) “FIFO method” (first in-first out) is the inventory management method by which the origin of the number of fungible goods or materials first received in the inventory is considered to be the origin of the same number of fungible goods or materials first withdrawn from the inventory;
  - (b) “LIFO method” (last in-first out) is the inventory management method by which the origin of the number of fungible goods or materials last received in the inventory is

considered to be the origin of the same number of fungible goods or materials first withdrawn from the inventory; or

- (c) “average method” is the inventory management method by which, except as provided in paragraph 4, the origin of fungible goods or materials is determined through the following formula:

$$\text{AOM} = \frac{\text{TOM}}{\text{TONM}} \times 100$$

AOM: average of originating fungible materials or goods;

TOM: total units of fungible originating goods or materials in the inventory prior to the shipment; and

TONM: total sum of units of fungible originating and non-originating goods or materials in the inventory prior to the shipment.

4. Where a good is subject to a regional value content, the determination of non-originating fungible materials shall be made through the following formula:

$$\text{ANM} = \frac{\text{TNM}}{\text{TONM}} \times 100$$

where

ANM: average of non-originating materials;

TNM: total value of fungible non-originating materials in the inventory prior to the shipment; and

TONM: total value of fungible originating and non-originating materials in the inventory prior to the shipment.

5. Once an inventory management method set out in paragraph 3 has been chosen, it shall be used through all the fiscal year or period.

#### *Article 3-10*

##### Sets, Kits or Composite Goods

1. Sets, kits and composite goods classified pursuant to Rule 3 of the General Rules of Interpretation of the Harmonized System, and the goods specifically described as a set, kit or composite goods in the nomenclature of the Harmonized System, shall qualify as originating, where every good contained in the set, kit or composite goods satisfies the applicable rule of origin for each of them under this Chapter.

2. Regardless of the provisions of paragraph 1, a set, kit or composite goods shall be considered as originating, if the value of all non-originating goods used in the collection of the set, kit or composite goods does not exceed 15 per cent of the transaction value of the set, kit or composite goods, adjusted to the basis set out in paragraphs 2 or 3, as the case may be, of Article 3-04 or, in the cases referred to in subparagraphs (a) through (e) of paragraph 5 of Article 3-04, if the value of all

non-originating goods used in the collection of the set, kit or composite goods is not more than 15 per cent of the total cost of the set.

3. The provisions of this Article shall prevail over the specific rules set out in Annex 3-03 (Specific Rules of Origin).

*Article 3-11*

Indirect Materials

Indirect materials shall be considered to be originating without regard to where the good is produced and the value of such materials shall be their cost as reported in the accounting records of the producer of the good.

*Article 3-12*

Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3-03 (Specific Rules of Origin), provided that:

- (a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately detached in the commercial invoice; and
- (b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If the good is subject to a regional value-content, the value of the accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

*Article 3-13*

Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3-03 (Specific Rules of Origin).

2. If the good is subject to a regional value-content requirement, the value of such packaging materials and containers for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

*Article 3-14*

Packing Materials and Containers for Shipment

1. Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether all non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 3-03 (Specific Rules of Origin).
2. Where the good is subject to a regional value content, the packing materials and containers for the shipment of the good shall be considered as originating and non-originating, as the case may be in calculating the regional value content of the good, and the value of such materials shall be their cost as reported in the accounting records of the producer of the good.

*Article 3-15*

Automotive Goods

1. For purposes of this Article:

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

- (a) motor vehicles provided for in subheading 8702.10 or 8702.90, where they are motor vehicles for the transport of 16 or more persons, or in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06;
- (b) motor vehicles provided for in subheading 8701.10 or 8701.30 through 8701.90;
- (c) motor vehicles provided for in subheading 8702.10 or 8702.90 where they are motor vehicles for the transport of 15 or fewer persons, or subheading 8704.21 or 8704.31; or
- (d) motor vehicles provided for in subheading 8703.21 through 8703.90;

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

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

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

**motor vehicle** means a good provided for in headings 87.01, 87.02, 87.03, 87.04, 87.05 or 87.06;

**plant** means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of motor vehicles;

**platform** means the primary load bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the

suspension components of the motor vehicle for various types of frames, such as the body-on frame or space-frame, and monoblocks; and

**underbody** means the floor pan of a motor vehicle;

2. For purposes of calculating the regional value content set out in Article 3-04 for a motor vehicle, the producer may average that calculation in his fiscal year or period using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

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

#### *Article 3-16*

#### Non-Qualifying Operations

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

- (a) dilution with water or another substance that does not materially alter the characteristics of the good;
- (b) simple operations for the maintenance of the good during transportation or storing, such as ventilation, refrigeration, removal of damaged parts, drying or addition of substances;
- (c) removal of dust, sieving, classification, selection, washing;
- (d) packing, repacking or packaging for retail sale;
- (e) collection of goods to form sets, kits or composite goods;
- (f) application of stamps, labels or similar distinctive signs;
- (g) washing, including removal of oxide, oil, paint or other coverings;
- (h) mere collection of parts and components classified as a good, according to Rule 2(a) of the General Rules of Interpretation of the Harmonized System. The above shall not apply to originating goods previously assembled and then disassembled for considerations of packaging, handling or transportation; or
- (i) mere disassembly of the good into parts or components. This shall not apply to originating goods previously assembled and then disassembled for considerations of packaging, handling or transportation.

2. A good shall not be considered originating merely by a production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.

3. The provisions of this Article shall prevail over the specific rules of origin set out in Annex 3-03 (Specific Rules of Origin).

*Article 3-17*

Transshipment and Direct Expedition

1. A good shall not be considered to be an originating good, even if it has undergone production that satisfies the requirements of Article 3-03 if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party.

2. A good shall not lose its originating condition where, in transit through the territory of one or more countries that are non Parties, with or without transshipment or temporary storage, under surveillance of the customs authorities of such countries:

- (a) transit is justified by geographical or transportation requirement considerations;
- (b) the good is not destined to trade or use in the transit country or countries; and
- (c) during transportation and storage the good is not submitted to operations other than packing, packaging, loading, reloading or operations to preserve it in good conditions.

3. Notwithstanding paragraph 1 and 2, within a year from the entry into force of the Agreement, the Parties shall agree on the condition and procedures required in order to allow that an originating good, which is transshipped without customs supervision through the territory of a non Party with each Party has entered separately into a free trade agreement under Article XXIV of GATT 1994 before the year 1999, will not lose its originating status.

*Article 3-18*

Consultation and Modifications

1. The Parties hereby establish a Committee on Rules of Origin and Customs Procedures, comprising representatives of each Party, which shall meet on the request of either Party.

2. The Committee shall:

- (a) ensure the effective implementation and administration of this Chapter and Chapter IV (Customs Procedures);
- (b) agree on the interpretation, application and administration of this Chapter and Chapter IV (Customs Procedures);
- (c) endeavor to agree on:
  - (i) tariff classification and customs valuation matters relating to determinations of origin;
  - (ii) equivalent procedures and criteria for the request, approval, issuing, modification, revocation and implementation of advance rulings; or
  - (iii) review the Certificate of Origin or the Declaration of Origin set out in Article 4-02

- (d) consider the proposed customs-related administrative and operational modifications that may affect the flow of trade between the Parties;
- (e) revise Article 4-05;
- (f) propose to the Commission any modification or addition to Annex 3-03 (Specific Rules of Origin);
- (g) propose to the Commission the implementation of the Uniform Procedures established in accordance with Article 4-12, as well as any modification or addition to them; and
- (h) consider any other matter as the Parties may agree related to this Chapter and Chapter IV (Customs Procedures).

3. The Parties will consult regularly and shall cooperate to ensure that this Chapter and Chapter IV (Customs Procedures) are applied in an effective and uniform manner, in accordance with the spirit and the objectives of this Agreement.



## ANNEX 3-03(3)

Rules of Origin for certain Goods classified in Chapter 50 through 63  
of the Harmonized System under Tariff Preferential Quotas

- 50.01-60.02 A change to yarns or fabrics classified in heading 50.01 through 60.02 from fiber or yarn produced or obtained outside the free trade area, provided that the good is spun, woven or knitted in a Party; or
- 52.04 A change to this heading from any other heading, except from any of headings 52.05 through 52.07; or
- A change to heading 52.04 from heading 52.05 through 52.07, whether or not there is also a change from any other heading, provided that the change is the result of dyeing or bleaching, and lubrication and precision winding; or
1. 54.01 A change to heading 54.01 from any other heading, except from heading 54.02; or
- A change to heading 54.01 from heading 54.02, whether or not there is also a change from any other chapter, provided that the change involves up-twisting, dyeing or bleaching or thermofixing and lubrication and precision winding; or
- 55.08 A change to heading 55.08 from any other heading, except from heading 55.09 through 55.11; or
- A change to heading 55.08 from heading 55.09 through 55.11, whether or not there is also a change from any other heading, provided that the change is the result of dyeing or bleaching, and lubrication and precision winding; or
- 56.01-59.11 a change to heading 56.01 through 59.11 from any other chapter, including another chapter within that group.
- 61.01-63.10 A change to heading 61.01 through 63.10 from fabric or yarn produced or obtained outside the free trade area provided that the good is both cut (or knitted to shape) and sewn or otherwise assembled in the territory of a Party; or
- 61.01-61.17 A change to heading 61.01 through 61.17 other than garment parts, from not more than six major garment parts or other garment parts that were the result of change from any other chapter, except from non-originating material of chapter 60 and may undergo assembly, which is less than substantial assembly, outside the territory of the Parties, provided it is subsequently reimported into the territory of the Party; or
- 62.01-62.17 A change to heading 62.01 through 62.17 other than garment parts, from not more than six major garment parts or other garment parts that were the result of change from any other chapter, except from non-originating materials of heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08 or 55.12 through 55.16 and may undergo assembly, which is less than substantial assembly, outside the territory of the Parties, provided it is subsequently re-imported into the territory of the Party.
- Note 1: For the purposes of the rules of origin of heading 52.04, 54.01 or 55.08, the following definitions shall apply:

Uptwisting of yarn: means twisting the yarn in “S” direction or “Z” direction; the process of twisting yarn on the uptoner. The yarn to be twisted, which has been wound on a balanced support package, is placed on a revolving spindle. The yarn from the revolving supply package is fed upward through a gathering eye or guide, over a stop motion and a tension bar or bars, through a traversing guide, and onto the revolving collecting package.

Thermofixing: A process of heating in autoclave for the purpose of twist setting or of lowering the shrinkage rate;

Lubricating (called also dressing): is a finishing treatment designed to facilitate the use of textile yarn as sewing thread, for example, by giving it antifriction properties or thermal resistance, preventing the formation of static electricity or improving its appearance. Such treatment involves the use of substances based on silicones, starch, wax, paraffin, etc.

Precision winding: winding is the process of transferring yarn or thread from one type of package to another to facilitate subsequent processing. The rehandling of yarn is an integral part of the fiber and textile industries. Not only must be package and the yarn itself be suitable for processing on the next machine in the production process, but also other factors such as packing cases, pressure due to winding tension, etc. must be considered. Basically, there are two types of winding machines: precision winders and drum winders. Precision winders, used primarily for filament yarn, have a traverse driven by a cam that is synchronized with the spindle and produce package with diamond-patterned wind.

Note 2: for the purposes of the rules of origin of heading 61.01 through 61.17 or 62.01 through 62.17 "substantial assembly" means the sewing together or other assembly of six or more major or other parts of a good of this chapter.

Note 3: for purposes of the rules of origin of heading 61.01 through 61.17 or 62.01 through 62.17 "major garment parts" means integral components of the garment, but does not include such parts as collars, cuffs, waistbands, plackets, pockets, lining, padding, accessories, or the like.

## ANNEX 3-04

### Calculation of Net Cost

#### *Section A - Definitions*

For purposes of this Annex:

**allocation base** means any of the following allocation bases that are used by the producer for calculating the cost ratio with respect to the good:

- (a) the sum of the direct labour costs and the direct material costs of the good;
- (b) the sum of the direct labour costs, the direct material costs and the direct overhead of the good;
- (c) direct labour hours or direct labour costs;
- (d) units produced;
- (e) machine-hours;
- (f) sales amount;
- (g) floor space; or
- (h) any other allocation bases that are considered reasonable and measurable;

**internal management purpose** means any procedure for costs allocation that is used for purposes relating to tax reporting, financial reporting, internal control, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement; and

**non-allowable costs** means sales promotion, marketing and after-sales service costs; royalties, shipping and repackaging costs.

#### *Section B - Calculation of the Net Cost*

1. The net cost is calculated in accordance with the following formula:

$$NC = TC - NAC$$

where:

NC: net cost.

TC: total cost.

NAC: non-allowable costs.

2. For purposes of calculating the total cost:
  - (a) the producer of the good may choose to average the total cost with respect to the good and other identical or similar goods produced in a single plant by the producer over:
    - (i) a month; or

- (ii) any consecutive period longer than a month that is evenly divisible into the number of months of the producer's fiscal year or period;
- (b) for purposes of subparagraph (a), the producer of the good shall consider all the good's units produced within the chosen period. The producer may not rescind or modify that period, once elected;
- (c) for purposes of calculating total cost, where the producer of the good is using, for an internal management purpose, a cost allocation method to allocate to the good the direct material costs, the direct labour costs or the direct or indirect overhead or part thereof, and that method reasonable reflects the direct material costs, the direct labour costs or direct or indirect overhead incurred in the production of the good, that method shall be considered as a method to reasonable allocate costs and shall be used to allocate the costs to the good;
- (d) the producer of the good may determine a reasonable costs amount, when those costs have not been allocated to the good, as follows:
  - (i) with respect to direct material costs and direct labour costs, on the basis of any method that reasonably reflects the direct material and direct labour used in the production of the good; and
  - (ii) with respect to direct and indirect overhead, the producer of the good may choose one or more allocation bases that reflect a relationship between the overhead and the good, in accordance with subparagraphs (f) and (g);
- (e) the producer of the good may choose any reasonable costs allocation method, which shall be used throughout the producer's fiscal year or period;
- (f) with respect to each allocation base, the producer may chose to calculate a cost ratio for each good produced, in accordance with the following formula:

$$CR = \frac{AB}{TAB} \times 100$$

where

CR: cost ratio with respect to the good;

AB: allocation base for the good; and

TAB: total allocation base for all the goods produced by the producer of the good.

- (g) the costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where

CAG: costs allocated to the good;

CA: costs to be allocated; and

CR: cost ratio with respect to the good.

- (h) for purposes of calculating the net cost, where non-allowable costs are included in the total cost to be allocated to a good, the cost ratio used to allocate those costs to the good shall be used to determine the amount of non-allowable costs to be subtracted from the total cost allocated to the good; and
- (i) any costs allocated in accordance with any reasonable costs allocation method that is used for internal management purpose are considered not to be reasonable allocated, when it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent the provisions of this Chapter.

3. Where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs (including standard costs, budgeted forecasts or other similar estimating procedures), before or during the chosen period, as set out in paragraph 2(a), the producer shall conduct an analysis, at the end of the producer's fiscal year or period, of the actual costs incurred over that period with respect to the production of the good, in accordance with the provisions of this Annex.

## CHAPTER IV

### Customs Procedures

#### *Article 4-01*

#### Definitions

1. For purposes of this Chapter:

**competent authority** means the authority that, according to the legislation of each Party, is responsible for the administration of its customs laws and regulations. The names of such authorities are listed in Annex 4-01 (Competent Authorities);

**commercial importation** means the importation of a good into the territory of a Party for the purpose of sale, or any commercial, industrial or other like use;

**customs value** means the value of a good for purposes of calculating customs duties according to the legislation of each Party;

**determination of origin** means a determination issued as a result of a verification of origin that determines whether a good qualifies as an originating good in accordance with Chapter III (Rules of Origin);

**exporter** means an exporter located in the territory of the Party from which the good is exported and who, under this Chapter, is required to maintain in the territory of that Party the records referred to in Article 4-06(1)(a);

**identical goods** means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of its origin under Chapter III (Rules of Origin);

**importer** means an importer located in the territory of a Party, to which the good is imported, who, under this Chapter, is required to maintain, in the territory of that Party, the records referred to in Article 4-06(1)(b);

**preferential tariff treatment** means the duty rate applicable to an originating good in accordance with this Agreement;

**producer** means “producer”, according to Article 3-01, located in the territory of a Party, who is required to maintain, in the territory of that Party, the records referred to in Article 4-06(1)(a);

**valid certificate of origin** means a certificate of origin in the format referred to in Article 4-02(1), completed, signed and dated by the exporter of the good, in accordance with the provisions of this Chapter and with its instructions; and

**value** means the value of a good or material for purposes of applying Chapter III (Rules of Origin).

2. Except as otherwise defined in this Article, the definitions of Chapter III (Rules of Origin) are incorporated herein.

*Article 4-02*Certificate and Declaration of Origin

1. For purposes of this Chapter, prior to the implementation of this Agreement, the Parties shall establish a unique form for the Certificate and the Declaration of Origin, and may thereafter revise the form by agreement.
2. The Certificate of Origin referred to in paragraph 1, will have the purpose of certifying that a good being exported from the territory of one Party into the territory of the other Party is considered to qualify as an originating good.
3. Each Party shall require its exporters to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment.
4. Each Party shall provide that where an exporter is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:
  - (a) the Declaration of Origin referred to in paragraph 1, for the good subject to exportation which shall be completed and signed by the producer of the good and voluntarily provided to the exporter by the producer; and
  - (b) the exporter's knowledge of whether the good qualifies as an originating good.
5. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter in the territory of the other Party, whether or not he is also the producer of the good, be applicable to:
  - (a) a single importation of a good into the Party's territory; or
  - (b) multiple importations of identical goods into the Party's territory that occur within a specified period, not exceeding 12 months, as indicated in the Certificate of Origin by the exporter,

and shall be accepted by its competent authority for two years after the date on which the Certificate was signed.

6. Each Party shall provide that where originating goods imported under a valid Certificate of Origin are invoiced in the territory of a non-Party, the importing Party shall grant preferential tariff treatment, provided that such goods are shipped directly from the territory of the other Party, subject to the provisions of Article 3-17.
7. The Certificate of Origin for a good imported into the territory of the importing Party shall be completed in one of the official languages of this Agreement. If the Certificate of Origin is not completed in the official language of the importing Party, a translation into the English language shall be attached thereto. If the Certificate of Origin is completed in the English language, a translation into the Spanish or the Hebrew language shall not be required.

*Article 4-03*Obligations Regarding Importations

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

- (a) make a written declaration on the import document provided for in its legislation, on the basis of a valid Certificate of Origin, that the good qualifies as an originating good;
- (b) have the original Certificate of Origin in its possession at the time such declaration is made;
- (c) provide, on the request of the competent authority of the importing Party, a copy of the original Certificate of Origin; and
- (d) promptly submit a corrected declaration and pay any duties owed, where the importer has reason to believe that the Certificate of Origin on which a declaration was based contains incorrect information. Where the importer submits the above mentioned declaration before the competent authority initiates the exercise of its powers to conduct a verification, he shall not be subject to penalties, according to the legislation of each Party.

2. Each Party shall provide that where an importer fails to comply with any of the requirements established in paragraph 1 of this Article, that Party may deny the preferential tariff treatment requested for the good imported from the territory of the other Party. However, where a Certificate of Origin is illegible or defective on its face or contains minor formal errors that may affect the accuracy of the Certificate of Origin, the importer shall be granted a period not less than five working days to provide the customs administration with a copy of the corrected certificate.

3. Each Party shall provide that where a good qualified as an originating good when it was imported into the territory of that Party, but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than six months after the date on which the written declaration referred to in Article 4-03(1)(a) was made, despite the fact that he did not have in his possession a valid Certificate of Origin, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, provided that the importer:

- (a) submits, if required by the importing Party, a written declaration that the good qualifies as an originating good on the import document referred to in Article 4-03(1)(a);
- (b) submits at the time of application for a refund:
  - (i) a copy of the original Certificate of Origin and has the original Certificate of Origin in his possession; and
  - (ii) such other documentation relating to the importation of the good as the importing Party may require.

#### *Article 4-04*

#### Obligations Regarding Exportations

1. Each Party shall provide that its exporter or producer, who completed and signed a Certificate or a Declaration of Origin, provide, on request of its competent authority, a copy of the Certificate or Declaration of Origin, as the case may be.

2. Each Party shall provide that its exporter or a producer that has completed and signed a Certificate or a Declaration of Origin, and that has reasons to believe that the Certificate or the Declaration contains incorrect information, shall promptly notify in writing, of any change that could affect the accuracy or validity of the Certificate or Declaration of Origin to all persons to whom the



certificate or declaration was given, as well as to the competent authority of the importing Party. The notification shall be sent by one of the methods stipulated in Article 4-07(2). If this is done prior to the commencement of a verification and if the exporter or producer demonstrates that at time of issuance of the Certificate of Origin he possessed facts upon which he could reasonably rely to the effect that the good qualified as an originating good, the exporter or producer shall not be subject to penalties for having submitted an incorrect certificate or declaration.

3. Each Party shall provide that a false certification or declaration of origin by its exporter or producer, certifying that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to its importer for a contravention of its customs laws and regulations regarding the making of a false statement or representation.

#### *Article 4-05*

##### Exceptions

Provided that the importation does not form part of a series of importations that may be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 4-02 and 4-03, the Parties shall not require a Certificate of Origin for the importation of goods in the following cases:

- (a) a commercial importation of goods, whose customs value does not exceed one thousand U.S. dollars or its equivalent amount in the Party's currency or any other higher amount that the Party establishes, except that it may require that the invoice accompanying the importation include a statement of the importer or of the exporter certifying that the good qualifies as an originating good;
- (b) a non-commercial importation of goods whose customs value does not exceed one thousand U.S. dollars or its equivalent amount in the Party's currency or any higher amount as established by the Party; and
- (c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin.

#### *Article 4-06*

##### Records

Each Party shall provide that:

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

- (iv) the sale of, the shipping route and all points of shipment prior to the importation of the good that is exported from its territory and invoiced in the territory of a non Party to the importer in the territory of the other Party;
- (b) an importer claiming preferential tariff treatment for a good imported into its Party's territory from the territory of the other Party, shall maintain, for a minimum of five years after the date of importation of the good, the original Certificate of Origin and all other documentation, as the competent authority of the importing Party may require, relating to the importation of the good; and
- (c) an exporter, producer or importer that is required to maintain documents or records under this Article shall provide copies of the original thereof to the competent authority conducting a verification in accordance with Article 4-07, upon request made by such competent authority. For this purpose, all copies of records provided must match with the original documentation from which such copies were made.

*Article 4-07*

Origin Verification

1. For purposes of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment qualifies as an originating good, the importing Party may conduct a verification through its competent authority, in the territory of the other Party by means of:

- (a) written questionnaires to an exporter or a producer in the territory of the other Party;
- (b) verification visits to the premises of an exporter or a producer in the territory of the other Party to review the records and documents that demonstrate the compliance with the rules of origin, pursuant to Article 4-06 and to observe the facilities used in the production of the good and, as the case may be, the facilities used in the production of the materials used in the production of the good; or
- (c) such other procedure as the Parties may agree.

2. The competent authority of the importing Party shall send the questionnaires and any communication relating to a verification visit, referred to in paragraphs 1(a) and 1(b), to the exporters or producers in the territory of the other Party, by any of the following means:

- (a) certified or registered mail with confirmation of receipt;
- (b) any other method that produces a confirmation of receipt by the exporter or producer; or
- (c) such other method that the Parties may agree.

3. The provisions of paragraph 1 shall not prevent the competent authority of the importing Party from exercising its powers to conduct verifications in its territory, in relation with the fulfilment of any other obligation by its own importers, exporters or producers.

4. The exporter or producer who receives a questionnaire pursuant to paragraph 1(a), shall answer it correctly and return it within 45 days from the date of its receipt.

5. Each Party shall provide that, where it has received the answer to the questionnaire referred to in paragraph 1(a) within the period specified therein, and considers that it requires more information to determine whether the good subject to the verification qualifies as an originating good, it may, through its competent authority, request additional information from the exporter or producer, by means of a subsequent questionnaire, in which case, the exporter or producer shall answer it and return it, within 30 days from the date of its receipt.
6. If the exporter or producer fails to respond correctly to any of the questionnaires referred to in paragraphs 4 or 5, or does not return it within the period specified therein, the importing Party may determine that the good subject to the verification does not qualify as an originating good and may deny it preferential tariff treatment, upon written determination under paragraph 17.
7. The conducting of a verification in accordance with one of the methods set forth in paragraph 1 shall not preclude the use of another verification method provided for in paragraph 1.
8. Before conducting a verification visit pursuant to paragraph 1(b), the importing Party shall, through its competent authority, deliver a written notification of its intention to conduct the visit, at least 30 days in advance of the proposed date of the visit. The written notification shall be sent to the exporter or producer whose premises are to be visited and to the competent authority of the Party in whose territory the visit is to occur. The competent authority of the importing Party shall obtain the written consent of the exporter or producer whose premises are to be visited.
9. The notification referred to in paragraph 8 shall include:
- (a) the identity of the competent authority issuing the notification;
  - (b) the name of the exporter or producer whose premises are to be visited;
  - (c) the date and place of the proposed verification visit;
  - (d) the object and scope of the proposed verification visit, including specific reference to the good or goods subject of the verification referred to in the Certificate(s) or Declaration(s) of Origin;
  - (e) the names and titles of the officials performing the verification visit; and
  - (f) the legal authority for the verification visit.
10. Any modification to the information referred to in paragraph 9, will be notified in writing, prior to the verification visit, in the manner specified in paragraph 2, to the exporter or producer, and to the competent authority of the exporting Party.
11. If within 30 days from the date of the notification of the proposed visit under paragraph 8, the exporter or producer has not given its written consent to such a visit, the importing Party may determine that the good or goods that would have been the subject of the visit upon written determination under paragraph 17 do not qualify as originating goods and may deny them preferential tariff treatment.
12. Each Party shall provide that, where its competent authority receives a notification pursuant to paragraph 9, it may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such a longer period as the Parties may agree.
13. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 12.

14. The Party conducting a verification visit shall permit an exporter or a producer whose good or goods are the subject of a verification visit, to designate two observers to be present during the visit, provided that the observers do not participate in a manner other than as observers. The failure of the exporter or producer to designate observers shall not result in the postponement of the visit. The competent authority of the exporting Party, according to the national procedures and regulations of the Party conducting the verification may send a representative to be present during the verification visit, upon notifying the competent authority of the importing Party, provided that he be present as an observer only.

15. The Party conducting the verification of origin of a good imported into its territory under this Article may determine that a material used in the production of the good is a non-originating material where the producer or exporter of the good, or the producer or supplier of the material, does not provide the information, documents or records relating to the origin of the material that demonstrate that the material in question is an originating material. Such a determination shall not necessarily lead to a decision that the good, itself, is not originating.

16. Each Party shall, through its competent authority, conduct a verification of a regional value-content requirement in accordance with the generally accepted accounting principles applied in the territory of the Party from which the good was exported.

17. After carrying out the verification procedures outlined in paragraph 1, the competent authority of the importing Party shall in the manner specified in paragraph 2, provide the exporter or producer whose good is subject to the verification, a written determination of whether or not the good qualifies as an originating good under Chapter III (Rules of Origin), including findings of fact and the legal basis for the determination.

18. Where the exporter or producer has failed to respond to or return a questionnaire as set forth in paragraphs 4 and 6, or has not given its written consent to a verification visit as set forth in paragraph 11, and the importing Party, denies preferential tariff treatment to the good in question, a written determination thereof, pursuant to paragraph 17, shall be sent to the exporter or producer, in the manner specified in paragraph 2.

19. When the Party conducting a verification determines, based on the information obtained during the verification, that a good does not qualify as an originating good, by written determination issued under paragraph 17, it shall grant the exporter or producer whose good was the subject of the verification, 30 days from the date of receipt of the written determination, to provide any additional comments or information before denying preferential tariff treatment to the good, and shall issue a final determination after taking into consideration any comments or additional information received from the exporter or producer during the above-mentioned period, and shall send it to the exporter or producer in the manner specified in paragraph 2.

20. Where the verification completed by a Party indicates that an exporter or a producer has repeatedly made false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter III (Rules of Origin). In taking such an action, the competent authority of the importing Party shall notify the person who issued the Certificate of Origin and the competent authority of the exporting Party.

21. Each Party shall provide that where it determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the Party from whose territory the good was exported, the Party's determination shall not become effective until it notifies in writing both the importer of the good and

the person that completed and signed the Certificate of Origin for the good and the competent authority of the other Party.

22. A Party shall not apply a determination made under paragraph 17 to an importation made before the effective date of the determination where:

- (a) the competent authority of the Party from whose territory the good was exported issued a ruling on the tariff classification or on the value of such materials, on which a person is entitled to rely; and
- (b) the above mentioned rulings were given prior to the commencement of the origin verification.

*Article 4-08*

Confidentiality

1. Each Party shall maintain, in accordance with its legislation, the confidentiality of information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained pursuant to this Chapter may only be disclosed to those competent authorities of the Parties responsible for the administration and enforcement of determinations of origin and customs and other indirect taxes on imports, for the purposes of this Agreement.

*Article 4-09*

Advance Rulings

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory. The advance rulings shall be issued by the competent authority of the importing Party to its importer or to an exporter or a producer of the other Party, on the basis of the facts and circumstances presented by such importer, exporter or producer relating to the origin of the goods.

2. The advance rulings shall concern:

- (a) whether a good qualifies as an originating good under Chapter III (Rules of Origin);
- (b) whether non-originating materials used in the production of a good undergo an applicable change in tariff classification set out in the Annex 3-03 (Specific Rules of Origin);
- (c) whether a good satisfies a regional value-content requirement under Chapter III (Rules of Origin);
- (d) whether the method for value to be applied by an exporter or a producer in the territory of another Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good for which an advance ruling is requested, is appropriate for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter III (Rules of Origin);
- (e) whether the method applied by the exporter or producer in the territory of the other Party for reasonably allocating costs, in accordance with the Annex 3-04 (Calculation

of Net Cost), is appropriate for the purpose of determining whether a good satisfies a regional value-content under Chapter III (Rules of Origin); or

- (f) such other matters as the Parties may agree.
3. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including:
- (a) the information reasonably required by the competent authority to process an application including whether or not the good or goods in question have been or are the subject of a verification or an advance ruling;
  - (b) the right of its competent authority to request, at any time during the course of an evaluation of an application for an advance ruling, supplemental information from the person requesting the ruling;
  - (c) the obligation of the competent authority to issue the advance ruling within 120 days, after it has obtained all necessary information from the person requesting the ruling; and
  - (d) the obligation of the competent authority to issue the advance ruling including findings of fact and the legal basis for the determination.

The issuance of an advance ruling shall be declined where a good is subject to a verification of origin or to a review and appeal process in the territory of a Party.

4. Each Party shall provide that the advanced rulings issued to imports into its territory, shall be effective as of the date they are issued, or on such later date as may be specified therein, except when the ruling is modified or revoked pursuant to paragraph 6. The advance ruling shall be valid only with regards to the person or entity on whose behalf it was issued and as long as the substantial facts and circumstances upon which it was based are true and accurate and have not been changed or modified. The issuance of the advance ruling shall not affect in any manner whatsoever the right of the competent authority that issued the ruling to conduct a verification, as set forth in Article 4-07.

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

6. An advance ruling may be modified or revoked by the competent authority that issued the ruling in the following cases:

- (a) if the ruling is based on an error:
  - (i) of fact;
  - (ii) in the tariff classification of a good or a material that is the subject of the ruling; or
  - (iii) in the application of a regional value-content requirement under Chapter III (Rules of Origin);
- (b) if the ruling is not in accordance with Chapter III (Rules of Origin) or with an interpretation agreed by the Parties or a modification regarding Chapter III (Rules of Origin);

- (c) if there is a change in the material facts or circumstances on which the ruling is based;
- (d) to conform with an administrative or judicial decision or a change in the domestic law of the Party that issued the advance ruling; or
- (e) any other relevant factor that could affect the outcome of the advanced ruling.

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

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

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

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

10. Each Party shall provide that, where its competent authority determines that the advance ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties, where that person demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, although preferential tariff treatment may be denied after the completion of verification procedures in accordance with the relevant provisions of Article 4-07.

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

#### *Article 4-10*

##### Penalties

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

#### *Article 4-11*

##### Review and Appeal

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

- (a) complete and sign a Certificate or Declaration of Origin for a good that has been the subject of a determination of origin, according to paragraph 15 of Article 4-07; or
- (b) have received an advance ruling pursuant to Article 4-09.

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

*Article 4-12*

Uniform Procedures

No later than the date of entry into force of this Agreement, the Parties shall, through their respective administrative regulations or departmental directives, implement the Certificate and Declaration of Origin, and implement Uniform Procedures that may be necessary for the administration, application, interpretation and other matters as the Parties may agree of Chapter III (Rules of Origin) and this Chapter.



## **ANNEX 4-01**

### **Competent Authorities**

For purposes of this Chapter, “competent authorities” are:

- (a) in the case of Israel, the Department of Customs and VAT of the Ministry of Finance;  
and
- (b) in the case of Mexico, the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público) or its successor.

## CHAPTER V

### Emergency Actions

#### *Article 5-01*

#### Definitions

For purposes of this Chapter:

**competent investigating authority** means the competent authority of each Party set out in Annex 5-01;

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

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

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

**good originating in the territory of a Party** means an “originating good”, as defined in Chapter III (Rules of Origin);

**like good** means a good which, although not alike in all respects, has like characteristics and like component materials which enable it to perform the same functions and to be commercially interchangeable with the good to which it is compared;

**petition** means also complaint;

**representative of the domestic industry** means the producers accounting for at least 50 per cent of the production of the like or directly competitive good operating in the territory of the importing Party;

**serious injury and threat of serious injury** means “serious injury” and “threat of serious injury”, as defined in the WTO Agreement on Safeguards and shall be determined in accordance with this Agreement; and

**transition period** means for each good the period of tariff elimination for that good with the addition of two years.

#### *Article 5-02*

#### Bilateral Emergency Actions

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

- (a) suspend the further reduction of any rate of a customs duty provided for under this Agreement on the product; or

- (b) increase the rate of a customs duty on the product to a level not exceeding the base rate of customs duty, as referred to in paragraph 1 of Article 2-03.

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

- (a) the Party initiating such a proceeding shall, without delay, deliver to the other Party written notice thereof;
- (b) any such action shall be taken no later than one year after the date of initiation of the proceeding;
- (c) no action may be maintained beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;
- (d) no action may be taken by a Party against any particular good originating in the territory of the other Party more than two times or for a cumulative period exceeding two years; and
- (e) upon the termination of the action, the rate of duty shall be the rate which would have been in effect but for the action.

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

#### *Article 5-03*

#### Global Emergency Actions

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

- (a) imports from the other Party account for a substantial share of total imports; and
- (b) imports from the other Party contribute importantly to the serious injury or threat thereof caused by total imports.

2. In determining whether:

- (a) imports from the other Party account for a substantial share of total imports, those imports normally shall not be considered to account for a substantial share of total imports if that Party is not among the top five suppliers and does not supply at least 15 per cent of the good subject to the proceeding, measured in terms of import share during the most recent representative period, that shall normally be three-years. During the first three years after the entry into force of this Agreement, the import share may be calculated for a period shorter than three years to the extent not to include the years before the date of entry into force of this Agreement; and
- (b) imports from the other Party contribute importantly to the serious injury or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of the other Party and the level and change in the level of

imports of the other Party. In this regard, imports from the other Party normally shall not be deemed to contribute importantly to serious injury or threat thereof, if the growth rate of imports from that Party during the period in which the injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

3. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1 or 4:

- (a) the Party initiating such a proceeding shall, without delay, deliver to the other Party written notice thereof;
- (b) where, as a result of an action, the rate of a customs duty is increased, the margin of preference shall be maintained;
- (c) no action may be taken by a Party against any particular good originating in the territory of the other Party more than two times or for a cumulative period exceeding two years; and
- (d) upon the termination of the action, the rate of a customs duty shall be the rate which would have been in effect but for the action.

4. A Party taking such action, from which a good from the other Party is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good from the other Party in the action in the event that the competent investigating authority determines that an increase in imports of such good from the other Party is contributing importantly to the serious injury or threat thereof and thereby undermines the effectiveness of the action.

#### *Article 5-04*

##### Administration of Emergency Action Proceedings

1. Neither Party may impose restrictions on a product in an action under Articles 5-02 or 5-03:
  - (a) without delivery of prior written notice to the other Party, and without adequate opportunity for consultations with the other Party, at least 20 days in advance of taking the action; and
  - (b) that would have the effect of reducing imports of such good from the other Party below the trend of imports of the good from that Party over a recent representative base period, which may include dates prior to the increase in imports under Article 5-02 or 5-03, with allowance for reasonable growth.
2. The Party taking an action pursuant to Article 5-02 or 5-03 shall endeavor to provide to the other Party a mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional custom duties expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose product the action is taken may take tariff action having trade effects substantially equivalent to the action taken. The Party taking the tariff action shall apply such action only while the measure is in force, and shall not exercise this right without delivering adequate opportunity for consultation.
3. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or

administrative tribunals. Negative injury determinations shall not be subject to modification, except by such review.

4. An emergency action proceeding may be initiated by a petition by or on behalf of the domestic industry. The petition shall be considered to have been made on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like good produced by the domestic industry.

5. In special circumstances, a Party may initiate an emergency action proceeding on its own motion.

6. Where the basis for an investigation is a petition filed by an entity representative of a domestic industry, the petition shall include adequate and detailed information concerning the petitioner, as well as all other relevant information to the extent that such information is publicly available from governmental or other sources, or best estimates and their basis if such information is not available, concerning the following:

- (a) the imported good as well as the like or directly competitive domestic good;
- (b) representativeness, according to paragraph 4;
- (c) import data for a sufficient representative period of no less than two years that form the basis of the assertion that the imported good is causing or threatening to cause serious injury;
- (d) data on total domestic production of the like or directly competitive good for the same period;
- (e) quantitative and objective data indicating the nature and extent of injury to the concerned domestic industry, such as data showing changes in the level of sales, prices, production, productivity, capacity utilization, market share, profits and losses, and employment; and
- (f) evidence showing the existence of causal link, in accordance with Article 4.2(b) of the WTO Agreement on Safeguards, between increased imports of the product concerned and the serious injury or threat thereof to the domestic industry.

7. Immediately after initiation, and due regard being paid to the requirement for the protection of confidential information, the investigating authority shall make available for review by interested parties the petition, the assessment of the authority under paragraph 9 and any other data or information that constitutes the basis for initiation.

8. On initiating an emergency action proceeding concerning the other Party, the competent investigating authority shall publish notice and notify the other Party of the initiation of the proceeding. The notice shall identify the petitioner or other requester, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the proceedings, including dates of deadlines for filing briefs, statements and other documents, time and place of hearing if so decided by the competent authority, the place at which the petition and any other documents filed in the course of the proceeding may be reviewed, and the name, address and telephone number of the office to be contacted for more information.

9. The investigating authority shall not publish the notice required under paragraph 8 without first assessing carefully the existence of the information detailed in paragraph 6 notwithstanding the initiation is due to a petition or self-motion, and shall determine whether such information is sufficient in order to justify initiations of the proceedings.

10. In the course of each proceeding, the competent investigating authority shall:
  - (a) allow interested parties to submit evidence and their views, including the opportunity to respond in writing;
  - (b) hold a hearing upon request, after providing reasonable notice, to allow all interested parties, and any association whose purpose is to represent the interests of consumers in the territory of the Party initiating the proceeding, to appear in person or by counsel, to present evidence and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and
  - (c) provide an opportunity to all interested parties and any such association to respond to presentations made at that hearing.
11. The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties and consumer associations providing such information furnish non-confidential written summaries thereof, or where they indicate that the information cannot be summarized, the reasons why a summary cannot be provided.
12. In conducting its proceeding the competent investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, including the rate and amount of the increase in imports of the good concerned, in absolute and relative terms as appropriate, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.
13. The competent investigating authority shall not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof. Where factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.
14. The competent investigating authority, before making a final affirmative determination in an emergency action proceeding, shall allow sufficient time to gather and consider the relevant information, and to conduct its proceeding in accordance with paragraph 10.
15. The competent investigating authority shall publish promptly a report in accordance with Article 4.2(c) of the WTO Agreement on Safeguards that shall set forth the findings and reasoned conclusions of the investigating authority on all pertinent issues of law and fact.
16. In its report, the competent investigating authority shall not disclose any confidential information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.

**ANNEX 5-01**

Competent Investigating Authority

For purposes of this Chapter, “competent authority” means:

- (a) in the case of Israel, the Commissioner of Trade Levies, or its successor; and
- (b) in the case of Mexico, Secretaría de Comercio y Fomento Industrial (Secretariat of Trade and Industrial Development), or its successor.

## CHAPTER VI

### Government Procurement

#### *Article 6-01*

#### Scope and Coverage

1. This Chapter applies to any law, regulation, procedure or practice regarding any procurement
  - (a) by entities set out in Annex I;
  - (b) of goods in accordance with Annex II, services in accordance with Annex III, or construction services in accordance with Annex IV; and
  - (c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold as set out in Annex V<sup>1</sup>.
2. Paragraph 1 is subject to the provisions set out in Annex VI.
3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.
4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.
5. This Chapter covers any procurement<sup>2</sup> by any contractual means, including through such methods as purchase, lease, rental or hire purchase, with or without an option to buy, including any combination of goods and services.

#### *Article 6-02*

#### National Treatment and Non-Discrimination

1. With respect to any law, regulation, procedure or practice regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods of the other Party, to the suppliers of such goods and to the services suppliers of the other Party, treatment no less favorable than the most favorable treatment that the Party accords to domestic goods, services and suppliers.
2. With respect to any law, regulation, procedure or practice regarding government procurement covered by this Chapter, each Party shall ensure:
  - (a) that its entities shall not treat a locally-established supplier less favorably than another locally-established supplier on the basis of the degree of foreign affiliation or ownership; and,

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<sup>1</sup> The threshold value shall be calculated and adjusted according to the provisions set out in Annex V.

<sup>2</sup> Procurement does not include:

- (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or states and municipal governments; and
- (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.



- (b) that its entities shall not discriminate against locally- established suppliers on the basis of the country of production of the goods or service being supplied, provided that the country of origin is the other Party in accordance with Articles 6-03 and 6-04.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.

*Article 6-03*

Rules of Origin

1. A Party shall not apply rules of origin to goods imported from the other Party, for purposes of government procurement covered by this Chapter, that are different from the rules of origin applied in the normal course of trade.

2. Following the conclusion of the work program for the harmonization of rules of origin for goods to be undertaken under the WTO Agreement on Rules of Origin, the Parties shall take the results of that work program into account in amending paragraph 1 as appropriate.

*Article 6-04*

Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party, subject to prior notification and consultation with the other Party, where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of either Party.

2. Following the conclusion of the negotiations regarding trade in services within the framework of the General Agreement on Trade in Services, the Parties shall take the results of those negotiations into account in amending paragraph 1 as appropriate.

*Article 6-05*

Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts<sup>3</sup> for purposes of implementing this Chapter.

2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.

3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter.

4. If an individual requirement for procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:

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<sup>3</sup> This Chapter shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article 9.

- (a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
- (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

5. In cases of contracts for the lease, rental or hire purchase of goods or services, or in the case of contracts, which do not specify a total price, the basis for valuation shall be:

- (a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value; or
- (b) in the case of contracts for an indefinite period, the monthly installment multiplied by 48.

If there is any doubt, the second basis for valuation, namely (b), is to be used.

6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

#### *Article 6-06*

#### Technical Specifications

1. Technical specifications laying down the characteristics of the goods or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Technical specifications prescribed by procuring entities shall, where appropriate:

- (a) be in terms of performance rather than design or descriptive characteristics; and
- (b) be based on international standards, national technical regulations<sup>4</sup>, recognized national standards<sup>5</sup> or building codes.

3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

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<sup>4</sup> For the purpose of this Chapter, a technical regulation is a document which lays down characteristics of a good or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

<sup>5</sup> For the purpose of this Chapter, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a good, service, process or production method.

4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

*Article 6-07*

Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles 6-07 through 6-14.

2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner, which would have the effect of precluding competition.

3. For the purposes of this Chapter:

- (a) open tendering procedures are those procedures under which all interested suppliers may submit a tender;
- (b) selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article 6-10 and other relevant provisions of this Chapter, those suppliers invited to do so by the entity may submit a tender; and
- (c) limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article 6-15.

*Article 6-08*

Qualification of Suppliers

1. In the process of qualifying suppliers, entities shall not discriminate among suppliers of the Party or between domestic suppliers and suppliers of the other Party. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favorable to suppliers of the other Party than to domestic suppliers. The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the suppliers, and its activity, if any, in the territory of the Party of the procuring entity;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of the other Party off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Party who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate

in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;

- (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice under paragraph 1 of Article 6-09, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;
- (f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
- (g) each Party shall ensure that:
  - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and
  - (ii) efforts be made to minimize differences in qualification procedures between entities.
- (h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Chapter.

#### *Article 6-09*

##### Invitation to Participate

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article 6-15. The notice shall be published in the appropriate publication listed in Annex VII.
2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
3. Entities in Annex I (only for government enterprises) may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.
4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.
5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article 6-20 and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.

6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:

- (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the goods or services to be procured;
- (b) whether the procedure is open or selective or will involve negotiation;
- (c) any date for starting delivery or completion of delivery of goods or services;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation; and
- (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

- (a) a statement that interested suppliers should express their interest in the procurement to the entity;
- (b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex VII a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;

- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

- (d) the nature of the goods or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Chapter.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by this Chapter.

#### *Article 6-10*

#### Selection Procedures

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Party, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.

3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles 6-08 and 6-09. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

5. Where an entity of the Parties does not invite or admit a supplier to tender, the entity shall, on the request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

*Article 6-11*Time – Limits of Tendering and Delivery

1. Any prescribed time-limit shall be adequate to allow suppliers of the other Party as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.
2. Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.
3. Except in so far as provided in paragraph 4,
  - (a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article 6-09;
  - (b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article 6-09; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;
  - (c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article 6-09.
4. The periods referred to in paragraph 3 may be reduced in the circumstances set out below:
  - (a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:
    - (i) as much of the information referred to in paragraph 6 of Article 6-09 as is available;
    - (ii) the information referred to in paragraph 8 of Article 6-09;
    - (iii) a statement that interested suppliers should express their interest in the procurement to the entity; and
    - (iv) a contact point with the entity from which further information may be obtained,the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than ten days;
  - (b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article 6-09, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;

- (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than ten days from the date of the publication referred to in paragraph 1 of Article 6-09; or
- (d) the period referred to in paragraph 3(c) may, for procurements by entities listed in Annex I (only for government enterprises), be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.

5. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

#### *Article 6-12*

#### Tender Documentation

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.

2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article 6-09, and the following:

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;
- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
- (g) a complete description of the goods or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of goods or services of the other Party, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment; and



(j) any other terms or conditions.

3. In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.

4. In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.

5. Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

#### *Article 6-13*

##### Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram, facsimile or other means of electronic transmission<sup>6</sup> are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, facsimile or electronic transmission. Tenders presented by telephone shall not be permitted. The content of the telex, telegram, facsimile or electronic transmission shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and
- (b) the opportunities that may be given to tenders to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Chapter. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles 6-17, 6-20, 6-21 and Chapter X (Institutional Provisions and Dispute Settlement Procedures).

4. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the

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<sup>6</sup> Means of electronic transmission consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.

conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.

5. Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic goods or services, or goods or services of the other Party, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.

6. Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

7. No entity may make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

8. The Parties shall not require for the performance of the contract or as award criteria in the tender the establishment of the supplier or service provider or his presence in the territory of the contracting entity, except where such establishment or presence is an essential and objective requirement for the performance of the contract to be awarded.

9. Option clauses shall not be used in a manner which circumvents the provisions of this Chapter.

#### *Article 6-14*

#### Negotiations

1. A Party may provide for entities to conduct negotiations:
  - (a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article 6-09; or
  - (b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.
2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.
3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:
  - (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;
  - (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;
  - (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and

- (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

*Article 6-15*

Limited Tendering

1. The provisions of Articles 6-07 through 6-14 governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of the other Party or protection to domestic producers or suppliers:

- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Chapter, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment<sup>7</sup> or services;
- (e) when an entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to Articles 6-07 through 6-14<sup>8</sup>;
- (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the

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<sup>7</sup> It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by this Chapter.

<sup>8</sup> Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

additional construction services may not exceed 50 per cent of the amount of the main contract;

- (g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles 6-07 through 6-14 and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;
- (h) for goods purchased on a commodity market;
- (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;
- (j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Chapter, notably as regards the publication, in the sense of Article 6-09, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners;
- (k) an entity may use limited tendering procedures when an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles 6-17, 6-20, 6-21, and under Chapter X (Institutional Provisions and Dispute Settlement Procedures).

#### *Article 6-16*

##### Offsets

1. Entities shall not, in the qualification and selection of suppliers, goods or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets, except otherwise provided in Annex VI.

2. For purposes of this Article, offsets are conditions imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

#### *Article 6-17*

##### Challenge Procedures

1. In the event of a complaint by a supplier that there has been a breach of this Chapter in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.
2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Chapter arising in the context of procurements in which they have, or have had, an interest.
3. Each Party shall provide its challenge procedures in writing and make them generally available.
4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Chapter shall be retained for three years.
5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days from that time.
6. Challenges shall be heard by a court or by an impartial and independent reviewing authority with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review authority which is not a court shall either be subject to judicial review or shall have procedures which provide that:
  - (a) participants can be heard before an opinion is given or a decision is reached;
  - (b) participants can be represented and accompanied;
  - (c) participants shall have access to all proceedings;
  - (d) proceedings can take place in public;
  - (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
  - (f) witnesses can be presented; and
  - (g) documents are disclosed to the review body.
7. Challenge procedures shall provide for:
  - (a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
  - (b) an assessment and a possibility for a decision on the justification of the challenge;
  - (c) correction of the breach of the Chapter or compensation for the loss or damages suffered, where appropriate. In the case of compensation for the loss or damages suffered, it shall be limited to costs for tender preparation or protest.

8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

*Article 6-18*

Exceptions to this Chapter

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the goods or services of handicapped persons, of philanthropic institutions or of prison labor.

*Article 6-19*

Rectification, Modification and Privatization

1. Each Party may modify its coverage under this Chapter only in exceptional circumstances.
2. Where a Party modifies its coverage under this Chapter, that Party shall:
  - (a) notify the other Party of the modification;
  - (b) reflect the change in the appropriate Annex; and
  - (c) propose to the other Party appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.
3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to Annexes I to VI, provided that it notifies such rectifications to the other Party and the other Party does not object to such proposed rectification within 30 days. In such cases, compensation need not be proposed.
4. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its government procurement entities covered by this Chapter, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity whether or not subject to this Chapter, provided that it notifies such reorganization to the other Party. In such cases, compensation need not be proposed. No Party may undertake such reorganizations or programs to avoid the obligations of this Chapter.
5. Where a Party considers that:
  - (a) an adjustment proposed under paragraph 2(c) is not adequate to maintain a comparable level of mutually agreed coverage; or
  - (b) a rectification or amendment does not meet the requirements of paragraph 3 and should be compensated,

that Party may have recourse to procedures under Chapter X (Institutional Provisions and Dispute Settlement Procedures).

6. Where a Party considers that a reorganization of procurement entities does not meet the requirements of paragraph 4 and should be compensated, it may have recourse to procedures under Chapter X (Institutional Provisions and Dispute Settlement Procedures), provided that it has objected to such reorganization within 60 days from the day of the notification.

7. Nothing in this Chapter shall be construed to prevent a Party from divesting an entity covered by this Chapter:

- (a) If, on the public offering of shares of an entity listed in Annex I (government enterprises), or through other methods, the entity is no longer subject to government control, that Party may delete the entity from its Annex, and withdraw the entity from the coverage of this Chapter, on notification to the other Party.
- (b) Where the other Party objects to the withdrawal on the grounds that the entity remains subject to government control, that Party may have recourse to procedures under Chapter X (Institutional Provisions and Dispute Settlement Procedures).

#### *Article 6-20*

##### Provision of Information and Review as regards of Parties

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Chapter, in the appropriate publications listed in Annex VII and in such a manner as to enable other Party and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to the other Party its government procurement procedures.

2. The Party of an unsuccessful tenderer may seek, without prejudice to the provisions under Chapter X (Institutional Provisions and Dispute Settlement Procedures), such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the Party of the procuring entity shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the Party of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the Party of the unsuccessful tenderer.

3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to the other Party.

4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the Party providing the information.

5. The Parties shall annually exchange, on a reciprocal basis, all available relevant data regarding statistics on its procurements covered by this Chapter. The first exchange of relevant data will take place two years after the entry into force of this Agreement.

6. Following the conclusion of the negotiations regarding Israel's commitments under Article XIX(5) of the WTO Government Procurement Agreement, the Parties shall take the results of those negotiations into account in amending paragraph 5 as appropriate.

*Article 6-21*

Information and Review as regards Obligations of Entities

1. Entities shall publish a notice in the appropriate publication listed in Annex VII not later than 72 days after the award of each contract under Articles 6-13 through 6-15. These notices shall contain:

- (a) the nature and quantity of goods or services in the contract award;
- (b) the name and address of the entity awarding the contract;
- (c) the date of award;
- (d) the name and address of winning tenderer;
- (e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
- (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article 6-09 or justification according to Article 6-15 for the use of such procedure; and
- (g) the type of procedure used.

2. Each entity shall, on request from a supplier of a Party, promptly provide:

- (a) an explanation of its procurement practices and procedures;
- (b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and
- (c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.

4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

*Article 6-22*

Further Negotiations

In the case that, after the entry into force of this Agreement, Israel or Mexico offer a WTO Government Procurement Agreement or North American Free Trade Agreement Party, respectively,



additional advantages with regard to the rules, procurement procedures or access to their respective procurement markets beyond what has been agreed under this Chapter, that Party shall agree to enter into negotiations with the other Party with a view to extending these advantages to the other Party on a reciprocal basis.

## ANNEX I

### Covered Entities under Chapter VI

#### *Part A - Covered Entities of Mexico*

#### Section 1 Federal Government Entities

(Authentic in the Spanish language only)

1. Secretaría de Gobernación (Ministry of Government), includes:
  - Centro Nacional de Desarrollo Municipal (National Center For Municipal Studies)
  - Comisión Calificadora de Publicaciones y Revistas Ilustradas (Illustrated Periodicals and Publications Classification Commission)
  - Consejo Nacional de Población (National Population Council)
  - Archivo General de la Nación (General Archives of the Nation)
  - Instituto Nacional de Estudios Históricos de la Revolución Mexicana (National Institute of Historical Studies on the Mexican Revolution)
  - Patronato para la Reincorporación Social por el Empleo en el Distrito Federal (Social Reintegration Assistance Foundation)
  - Centro Nacional de Prevención de Desastres (National Disaster Prevention Center)
2. Secretaría de Relaciones Exteriores (Ministry of Foreign Relations)
3. Secretaría de Hacienda y Crédito Público (Ministry of Finance and Public Credit), includes:
  - Comisión Nacional Bancaria y de Valores (National Banking and Securities Commission)
  - Comisión Nacional de Seguros y Fianzas (National Insurance and bonds Commission)
  - Instituto Nacional de Estadística, Geografía e Informática (National Institute of Statistics, Geography and Informatics)
  - Servicio de Administración Tributaria ( Tax Administration Service)
4. Secretaría de Agricultura, Ganadería y Desarrollo Rural (Ministry of Agriculture, Livestock and Rural Development), includes:
  - Apoyos y Servicios a la Comercialización Agropecuaria (ASERCA) (Support Services for Agricultural Marketing)
  - Instituto Nacional de Investigaciones Forestales y Agropecuarias (National Forestry and Agricultural Research Institute)
5. Secretaría de Comunicaciones y Transportes (Ministry of Communication and Transport), includes:
  - Comisión Federal de Telecomunicaciones (Telecommunications Federal Commission)
  - Instituto Mexicano de Transporte (Mexican Institute of Transport)
6. Secretaría de Comercio y Fomento Industrial (Ministry of Commerce and Industrial Development)
7. Secretaría de Educación Pública (Ministry of Public Education), includes:
  - Instituto Nacional de Antropología e Historia (National Institute of Anthropology and History)
  - Instituto Nacional de Bellas Artes y Literatura (National Institute of National Arts and Literature)
  - Radio Educación (Radio Education)
  - Centro de Ingeniería y Desarrollo Industrial (Engineering and Industrial development Center)
  - Consejo Nacional para la Cultura y las Artes (National Council for Culture and the Arts)
  - Comisión Nacional del Deporte (National Sports Commission)
8. Secretaría de Salud (Ministry of Health), includes:
  - Administración del Patrimonio de la Beneficencia Pública (Public Charity Fund Administration)
  - Centro Nacional de la Transfusión Sanguínea (National Blood Transfusion Center)
  - Centro Nacional de Rehabilitación (National Rehabilitative Center)

- Consejo Nacional para la Prevención y Control del Síndrome de Inmunodeficiencia Adquirida (Conasida).(National Council for the Prevention and Control of the Autoimmune Deficiency Syndrome)
- 9. Secretaría del Trabajo y Previsión Social (Ministry of Labor and Social Welfare), includes:
  - Procuraduría Federal de la Defensa del Trabajo (Office of the Federal Attorney for Labor Defense)
- 10. Secretaría de la Reforma Agraria (Ministry of Agrarian Reform), includes:
  - Instituto Nacional de Desarrollo Agrario (National Institute of Agrarian Development)
- 11. Secretaría de Medio Ambiente, Recursos Naturales y Pesca (Ministry of Environment, Natural Resources and Fisheries), includes:
  - Instituto Nacional de la Pesca (National Institute of Fisheries)
  - Instituto Mexicano de Tecnología del Agua
- 12. Procuraduría General de la República (Office of the Attorney General of the Republic)
- 13. Secretaría de Energía (Ministry of Energy), includes:
  - Comisión Nacional de Seguridad Nuclear y Salvaguardias (National Commission on Nuclear Safety and Safeguards)
  - Comisión Nacional para el Ahorro de Energía (National Commission for Energy Conservation)
- 14. Secretaría de Desarrollo Social (Ministry of Social Development)
- 15. Secretaría de Turismo (Ministry of Tourism)
- 16. Secretaría de Contraloría y Desarrollo Administrativo (Ministry of Comptroller and Administrative Development)
- 17. Secretaría de la Defensa Nacional (Ministry of National Defense)
- 18. Secretaría de Marina (Ministry of Navy)

## Section 2 Government Enterprises

(Authentic in the Spanish language only)

1. Talleres Gráficos de México (National Printers)
2. Aeropuertos y Servicios Auxiliares (ASA) (Airports and Auxiliary)
3. Caminos y Puentes Federales de Ingresos y Servicios Conexos (CAPUFE) (Federal Toll Roads and Bridges and Related Services)
4. Servicio Postal Mexicano (Mexican Postal Service)
5. Ferrocarriles Nacionales de México (FERRONALES) (National Railways of Mexico)
6. Telecomunicaciones de México (TELECOM) (Telecommunications of Mexico)
7. Petróleos Mexicanos (Mexican Petroleum) (PEMEX Corporativo) (*No incluye las compras de combustibles y gas*) (PEMEX Corporative) (*Not including procurements of fuels or gas*)
  - PEMEX Exploración y Producción (PEMEX Exploration and Production)
  - PEMEX Refinación (PEMEX Refinement)
  - PEMEX Gas y Petroquímica Básica (PEMEX Gas and Basic)
  - PEMEX Petroquímica (PEMEX Petrochemical)
8. Comisión Federal de Electricidad (Federal Electricity Commission)
9. Consejo de Recursos Minerales (Mineral Resources Council)
10. Distribuidora e Impulsora Comercial Conasupo S.A. de C.V. (DICCONSA) (Commercial Distributor and Trade Promotion S.A. de C.V)
11. Leche Industrializada Conasupo, S.A. de C.V. (LICONSA) (*No incluye las compras de bienes agrícolas adquiridos para programas de apoyo a la agricultura o bienes para la alimentación humana*). (Conasupo Industrialized Milk, S.A. de C.V.) (*Not including procurements of agricultural goods made in furtherance of agricultural support programs or goods for human feeding programs*)
12. Procuraduría Federal del Consumidor (Office of the Federal Attorney for Consumers)
13. Servicio Nacional de Información de Mercados (National Markets Information Service)

14. Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) (Social Security And Services Institute for Government Workers)
15. Instituto Mexicano del Seguro Social (IMSS) (Mexican Social Security Institute)
16. Sistema Nacional para el Desarrollo Integral de la Familia (DIF) (*No incluye las compras de bienes agrícolas adquiridos para programas de apoyo a la agricultura o bienes para la alimentación humana*). (National System for Integrated Family Development) (*Not including procurements of agricultural goods made in furtherance of agricultural support programs or goods for human feeding programs*)
17. Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas (Social Security Institute for the Mexican Armed Forces)
18. Instituto Nacional Indigenista (INI) (National Institute of Indian Peoples)
19. Instituto Nacional para la Educación de los Adultos (National Institute for Adult Education)
20. Centros de Integración Juvenil (Youth Integration Centers)
21. Instituto Nacional de la Senectud (National Institute on Old Age)
22. Comité Administrador del Programa Federal de Construcción de Escuelas (CAPFCE) (Administrative Committee of the School Construction Federal Program)
23. Comisión Nacional del Agua (CNA) (National Water Commission)
24. Comisión para la Regularización de la Tenencia de la Tierra (Commission for the Regularization of Land Tenure)
25. Consejo Nacional de Ciencia y Tecnología (CONACYT) (National Science and Technology Council)
26. NOTIMEX, S.A. de C.V.
27. Instituto Mexicano de Cinematografía (Mexican Institute of Cinematography)
28. Lotería Nacional para la Asistencia Pública (National Lottery for Public Assistance)
29. Pronósticos para la Asistencia Pública (Sports Lottery)
30. Comisión Nacional de Zonas Áridas (National Commission on Arid Zones)
31. Comisión Nacional de los Libros de Texto Gratuitos (National Commission of the Free Textbooks)
32. Comisión Nacional de Derechos Humanos (National Commission on Human Rights)
33. Consejo Nacional de Fomento Educativo (National Educational Development Council).
34. Laboratorios de Biológicos y Reactivos, S.A. de C.V. (Laboratory of Biologicals and Reagents of Mexico, S.A. de C.V.)

### Section 3 Sub-Federal Government Entities

None.

#### *Part B - Covered Entities of Israel*

### Section 1 Central Government Entities

1. House of Representatives (The Knesset)
2. Prime Minister's Office
3. Ministry of Agriculture and Rural Development
4. Ministry of Communications
5. Ministry of Construction and Housing
6. Ministry of Education, Culture and Sport
7. Ministry of the Environment
8. Ministry of Finance
9. Civil Service Commissioner
10. Ministry of Foreign Affairs
11. Ministry of Health
12. Ministry of Immigrants Absorption
13. Ministry of National Infrastructure excluding Fuel Authority

14. Ministry of Industry and Trade
15. Ministry of the Interior
16. Ministry of Justice
17. Ministry of Labour and Social Affairs
18. Ministry of Religious Affairs
19. Ministry of Science and Technology
20. Ministry of Tourism
21. Ministry of Transport
22. The State Controller's office

#### Section 2 Government Enterprises

1. Israel Airports Authority
2. Israel Ports and Railways Authority
3. Israeli Broadcasting Authority
4. Israel Educational Television
5. Postal Authority
6. Israel Electricity Company
7. Mekoroth Water Resources Ltd.
8. Sports' Gambling Arrangement Board
9. Israel Standards Institute
10. National Insurance Institute

#### Section 3 Sub-Central Government Entities

None.

## ANNEX II

### Goods Covered

#### *Part A - List of Goods covered by Mexico*

This Chapter applies to all goods. However, for procurement by the Secretaría de la Defensa Nacional and the Secretaría de Marina only the following goods are included in the coverage of this Chapter:

(Note: numbers refer to the Federal Supply Classification codes)

22. Railway equipment
23. Motor vehicles, trailers and cycles (except buses in 2310; and military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24. Tractors
25. Vehicular equipment components
26. Tires and tubes
29. Engine accessories
30. Mechanical power transmission equipment
32. Woodworking machinery and equipment
34. Metal working machinery
35. Service and trade equipment
36. Special industry machinery
37. Agricultural machinery and equipment
38. Construction, mining, excavating and highway maintenance equipment
39. Materials handling equipment
40. Rope, cable, chain and fittings
41. Refrigeration and air conditioning equipment
42. Fire fighting, rescue and safety equipment)
43. Pumps and compressors
44. Furnace, steam plant, drying equipment and nuclear reactors
45. Plumbing, heating and sanitation equipment
46. Water purification and sewage treatment equipment
47. Pipe, tubing, hose and fittings
48. Valves
49. Maintenance and repair shop equipment
52. Measuring tools
53. Hardware and abrasives
54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials
61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, dental and veterinary equipment and supplies
66. Instruments and laboratory equipment
67. Photographic equipment
68. Chemicals and chemical products
69. Training aids and devices
70. General purpose automatic data processing equipment, software, supplies and support equipment
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment

74. Office machines, text processing system and visible record equipment
75. Office supplies and devices
76. Books, maps and other publications (except 7650: drawings and specifications)
77. Musical instruments, phonographs and home-type radios
78. Recreational and athletic equipment
79. Cleaning equipment and supplies
80. Brushes, paints, sealers and adhesives
81. Containers, packaging and packing supplies
85. Toiletries
87. Agricultural supplies
88. Live animals
91. Fuels, lubricants, oils and waxes
93. Non-metallic fabricated materials
94. Non-metallic crude materials
96. Ores, minerals and their primary products (except 9620: minerals, natural and synthetic)
99. Miscellaneous

*Part B - List of Goods covered by Israel*

This Chapter applies to all goods, excluding the following:

- (a) Ministry of Health
  - Insulin and infusion pumps
  - Audiometers
  - Medical dressings (bandages, adhesive tapes excluding gauze bandages and gauze pads)
  - Intravenous solution
  - Administration sets for transfusion
  - Scalp vein sets
  - Hemi-dialysis and blood lines (does not cover blood derivatives)
  - Blood packs (does not cover blood derivatives)
  - Syringe needles
- (b) Israel Electricity Company:
  - Cables for electricity (H.S. 8544)
  - Electro-mechanic meters (ex. H.S. 9028)
  - transformers (H.S. 8504)
  - disconnectors and switchers (H.S. 8535-8537)
  - electric motors (H.S. 8501)
- (c) Israel Ports and Railways Authority:
  - Cables

## ANNEX III

### Covered Services

#### *Part A - List of Services covered by Mexico*

This Chapter applies to all services set out below that are procured by the entities listed in Annex I.

Note: Based on the United Nations Central Product Classification (CPC)

#### CPC Professional Services

863 Taxation services (excluding legal services)

#### Architectural services

86711 Advisory and pre-design architectural services

86712 Architectural design services

86713 Contract administration services

86714 Combined architectural design and contract administration services

86719 Other architectural services

#### Engineering services

86721 Advisory and consultative engineering services

86722 Engineering design services for foundations and building structures

86723 Engineering design services for mechanical and electrical installations for buildings

86724 Engineering design services for civil engineering construction

86725 Engineering design for industrial processes and production

86726 Engineering design services n.e.c.

86727 Other engineering services during the construction and installation phase

86729 Other engineering services

#### Integrated engineering services

86731 Integrated engineering services for transportation, infrastructure turnkey projects

86732 Integrated engineering and project management services for water supply and sanitation works turnkey projects

86733 Integrated engineering services for the construction of manufacturing turnkey projects

86739 Integrated engineering services for other turnkey projects

8674 Urban planning and landscape architectural services

#### Computer and Related Services

841 Consultancy services related to the installation of computer hardware

842 Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

843 Data processing services, including processing, tabulation and facilities management services

844 Data base services

845 Maintenance and repair services of office machinery and equipment including computers

849 Other computer services

#### Real Estate Services

821 Real estate services involving own or leased property

822 Real estate services on a fee or contract basis



## Rental/Leasing Services without Operators

- 831 Leasing or rental services concerning machinery and equipment without operator, including computers
- 832 Leasing or rental services concerning personal and household goods (excluding in 83201, the rental of prerecorded records, sound cassettes, CD's and excluding 83202, rental services concerning video tapes)

## Other Business Services

## Management consulting services

- 86501 General management consulting services
- 86503 Marketing management consulting services
- 86504 Human resources management consulting services
- 86505 Production management consulting services
- 86509 Other management consulting services, including agrology, agronomy, farm management and related consulting services
- 8676 Technical testing and analysis services including quality control and inspection
- 8814 Services incidental to forestry and logging, including forest management
- 883 Services incidental to mining, including, drilling and field services

## Related scientific and technical consulting services

- 86751 Geological, geophysical and other scientific prospecting services, including those related to mining
- 86752 Subsurface surveying services
- 86753 Surface surveying services
- 86754 Map making services
- 8861 through
- 8866 Repair services incidental to metal products, to machinery and equipment including computers, and communications equipment
- 874 Building-cleaning
- 876 Packaging services

## Environmental Services

- 940 Sewage and refuse disposal, sanitation and other environmental protection services, including sewage services, nature and landscape protection services and other environmental protection services n.e.c.

## Hotels and restaurants (including catering)

- 641 Hotel and other lodging services
- 642 Food services
- 643 Beverage serving services

## Travel agency and tour operators services

- 7471 Travel agency and tour operator services

*Part B - List of Services covered by Israel*

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

CPC	Description
6112, 6122, 633, 886	Maintenance and Repair Services
841-3	Computer and related services
864	Market research and public opinion
865-6	Management consulting
8671	Architectural services
8672-3	Engineering services
8674	Urban Planning
871	Advertising services
874, 82201-82206	Building – cleaning services & Property Management Services
88442	Publishing & Printing services on a fee or contract basis
9401-5	Environmental services

Note: The offer regarding services(including construction services referred in Annex IV to this chapter) is subject to the limitation and conditions specified in Israel's offer under the General Agreement on Trade in Services negotiation.

## ANNEX IV

### Covered Construction Services

#### *Part A - List of Construction Services covered by Mexico*

This Chapter applies to all construction services set out below that are procured by the entities listed in Annex I.

#### Construction Work Codes

Note: Based on the United Nations Central Product Classification (CPC) Division 51.

Definition of Construction work: Pre-erection work; new construction and repair, alteration, restoration and maintenance work on residential buildings, non-residential buildings or civil engineering works. This work can be carried out either by general contractors who do the complete construction work for the owner of the project, or on own account; or by subcontracting parts of the construction work to contractors specializing, e.g., in installation work, where the value of work done by subcontractors becomes part of the main contractor's work. The products classified here are services which are essential in the production process of the different types of constructions, the final output of construction activities.

Code	Descriptions
511	Pre-erection work at construction sites
5111	Site investigation work
5112	Demolition work
5113	Site formation and clearance work
5114	Excavating and earthmoving work
5115	Site preparation work for mining (except for mining of oil and gas which is classified under FO42)
5116	Scaffolding work
512	Construction works for buildings
5121	For one and two dwelling buildings
5122	For multi-dwelling buildings
5123	For warehouses and industrial buildings
5124	For commercial buildings
5125	For public entertainment buildings
5126	For hotel, restaurant and similar buildings
5127	For educational buildings
5128	For health buildings
5129	For other buildings
513	Construction work for civil engineering
5131	For highways (except elevated highways), streets , roads, railways and airfield runways
5132	For bridges, elevated highways, tunnels ,subways and railroads
5133	For waterways, harbours, dams and other water works
5134	For long distance pipelines, communication and power lines (cables)
5135	For local pipelines and cables; ancillary works
5136	For constructions for mining and manufacturing
5137	For constructions for sport and recreation
5138	Dredging services
5139	For engineering works n.e.c.
514	Assembly and erection of prefabricated constructions
515	Special trade construction work
5151	Foundation work, including pile driving
5152	Water well drilling
5153	Roofing and water proofing
5154	Concrete work

- 5155 Steel bending and erection, including welding
- 5156 Masonry work
- 5159 Other special trade construction work
- 516 Installation work
- 5161 Heating, ventilation and air conditioning work
- 5162 Water plumbing and drain laying work
- 5163 Gas fitting construction work
- 5164 Electrical work
- 5165 Insulation work (electrical wiring, water, heat, sound)
- 5166 Fencing and railing construction work
- 5169 Other installation work
- 517 Building completion and finishing work
- 5171 Glazing work and window glass installation work
- 5172 Plastering work
- 5173 Painting work
- 5174 Floor and wall tiling work
- 5175 Other floor laying, wall covering and wall papering work
- 5176 Wood and metal joinery and carpentry work
- 5177 Interior fitting decoration work
- 5178 Ornamentation fitting work
- 5179 Other building completion and finishing work
- 518 Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator

*Part B - List of Construction Services covered by Israel*

This Chapter applies to all construction services set out below that are procured by the entities listed in Annex I.

Definition:

A construction services contract is a contract that has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of construction services:

CPC	Description
511	Pre-erection work at construction sites
512	Construction work for buildings
513	Construction work for civil engineering
514	Assembly and erection of prefabricated construction
515	Special trade construction work
516	Installation work
517	Building completion and finishing work
518	Renting services related to equipment for construction

## ANNEX V

### Thresholds

#### *Part A - Thresholds applicable to Mexico*

1. The thresholds for procurement, by entities listed in Annex I (federal government entities) are:
  - 100,000 United States dollars for goods or services specified in Annexes II and III, or any combination thereof, and
  - 6,500,000 United States dollars for construction services specified in Annex IV.
  
2. The thresholds for procurements by entities listed under Annex I (government enterprises) are:
  - 250,000 United States dollars for goods or services specified in Annexes II and III, or any combination thereof, and
  - 8,000,000 United States dollars for construction services specified in Annex IV.
  
3. However, in order to provide equivalence to the current value of the thresholds applied in the context of the North American Free Trade Agreement, Mexico shall, from the entry into force of this Agreement, apply the actual North American Free Trade Agreement thresholds instead of those mentioned in paragraphs 1 and 2.
  
4. Mexico shall calculate and convert the value of the thresholds into pesos using the conversion rate of the Banco de México. Its conversion rate shall be the existing value of the Mexican peso in terms of the US dollar as of 1 December and 1 June of each year, or the first working day thereafter. The conversion rate as of 1 December shall apply from 1 January to 30 June of the following year, and the conversion rate as of 1 June shall apply from 1 July to 31 December of that year.

#### *Part B - Thresholds applicable to Israel*

##### Central Government Entities

Goods (specified in Annex II)	Threshold:	130,000 SDR
Services (specified in Annex III)	Threshold:	130,000 SDR
Construction Services (specified in Annex IV)	Threshold:	8,500,000 SDR

##### Other Governmental Entities

Goods (specified in Annex II)	Threshold:	355,000 SDR
Services (specified in Annex III)	Threshold:	355,000 SDR
Construction Services (specified in Annex IV)	Threshold:	8,500,000 SDR

## ANNEX VI

### General Notes

#### *Part A - General Notes and Derogations governing Mexico's Offer set out in Annex I through V*

#### Section 1 Transitional Provisions

Notwithstanding any other provision of this Chapter, Annexes 1 through 5 are subject to the following transitional provisions:

#### Pemex, CFE and non-energy construction

1. Mexico may set aside from the obligations of this Chapter for each calendar year following the entry into force of this Agreement the respective percentage specified in paragraph 2 of:

- (a) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by Pemex in the year that are above the thresholds set out in Annex V;
- (b) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by CFE in the year that are above the thresholds set out in Annex V; and
- (c) the total value of procurement contracts for construction services procured in the year that are above the thresholds set out in Annex V, excluding procurement contracts for construction services procured by Pemex and CFE.

2. The percentages referred to in paragraph 1 are as follows:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8 and thereafter
45%	40%	35%	35%	35%	30%	30%	0%

3. The value of procurement contracts that are financed by loans from regional and multilateral financial institutions shall not be included in the calculation of the total value of procurement contracts under paragraphs 1 and 2. Procurement contracts that are financed by such loans shall also not be subject to any restrictions set out in this Chapter.

4. Mexico shall ensure that the total value of the procurement contracts under any single FSC class (or other classification system agreed by the Parties) that are set aside by Pemex or CFE under paragraphs 1 and 2 for any calendar year does not exceed 15 per cent of the total value of the procurement contracts that may be set aside by Pemex or CFE for that year.

5. Mexico shall ensure that after 31 December of the fourth year following the entry into force of this Chapter, Pemex and CFE each shall make all reasonable efforts to assure that the total value of procurement contracts under any single FSC class (or other classification system as agreed by the Parties) that are set aside by Pemex or CFE under paragraphs 1 and 2 for any year does not exceed 50 per cent of the total value of all Pemex or CFE procurement contracts under that FSC class (or other classification system as agreed by the Parties) for that year.

## Pharmaceuticals

6. Until 1 January of the eighth year following its entry into force, this Chapter shall not apply to the procurement by the Secretaría de Salud, IMSS, ISSSTE, Secretaría de la Defensa Nacional and the Secretaría de Marina of drugs that are not currently patented in Mexico or whose Mexican patents have expired. Nothing in this paragraph shall prejudice protection of intellectual property rights.

### Section 2 Permanent Provisions

1. This Chapter does not apply to procurements made:
  - (a) with a view to commercial resale by government owned retail stores;
  - (b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements);
  - (c) by one entity from another entity of Mexico; or
  - (d) for the purchase of water and for the supply of energy or of fuels for the production of energy.
  - (e) by Secretaría de Salud, IMSS, ISSSTE, Secretaría de la Defensa Nacional and the Secretaría de Marina of the following goods:
    - (i) Insulin and infusion pumps
    - (ii) Audiometers
    - (iii) Medical dressings (bandages, adhesive tapes excluding gauze bandages and gauze pads)
    - (iv) Intravenous solution
    - (v) Administration sets for transfusion
    - (vi) Scalp vein sets
    - (vii) Hemi-dialysis and blood lines (not covering blood derivatives)
    - (viii) Blood packs (not covering blood derivatives)
    - (ix) Syringe needles
  - (f) by Petróleos Mexicanos (PEMEX) and Comisión Federal de Electricidad (CFE), of the following goods:
    - (i) Cables for electricity (H.S. 8544)
    - (ii) Electro-mechanic meters (EX. H.S.9028)
    - (iii) Transformers (H.S. 8504)
    - (iv) Disconnectors and switchers (H.S. 8535-8537)
    - (v) Electric motors (H.S. 8501)
  - (g) by Secretaría de Comunicaciones y Transportes (SCT) of cables.
2. This Chapter does not apply to public utility services (including telecommunication, transmission, water and energy services).
3. This Chapter does not apply to any transportation services including: land transportation (CPC 71); water transport (CPC 72); air transport (CPC 73); supporting and auxiliary transport (CPC 74); post and telecommunication (CPC 75); repair services of other transport equipment, on a fee or contractual basis (CPC 8868).

4. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.

5. This Chapter does not apply to financial services; research and development services; and management and operation contracts awarded to federally funded research and development centres or related to carrying out government, sponsored research programs.

6. Notwithstanding any other provision in this Chapter, Mexico may set aside procurement contracts from the obligations of this Chapter, subject to the following:

- (a) the total value of the contracts set aside may not exceed the Mexican peso equivalent of:
  - (i) 1.0 billion United States dollars, in each year until 31 December of the seventh year following the entry into force of this Agreement, which may be allocated by all entities except Pemex and CFE;
  - (ii) 1.8 billion United States dollars, in each year beginning 1 January of the eighth year following the entry into force of this Agreement, which may be allocated by all entities;
- (b) no entity subject to sub-paragraph (a) may set aside contracts in any year of a value of more than 20 per cent of the total value of contracts that may be set aside for that year.
- (c) the total value of the contracts set aside by Pemex or CFE may not exceed the Mexican peso equivalent of 720 million United States dollars in each calendar year, beginning 1 January of the eighth year following the entry into force of this Agreement.
- (d) For the administration of the set asides under this Annex, Mexico will apply the same criteria and treatment as applied to North American Free Trade Agreement members, except as otherwise provided in this Annex.

7. Beginning one year after the date of entry into force of this Agreement, the dollar values referred to in paragraph 6 shall be adjusted annually for cumulative inflation from the date of entry into force of this Agreement, based on the implicit price deflator for the United States Gross Domestic Product (USGDP) or any successor index published by the Council of Economic Advisors in "Economic Indicators".

The dollar values adjusted for cumulative inflation up to January of each year following 2000 shall be equal to the original dollar values multiplied by the ratio of:

- (a) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of January of that year, to
- (b) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of the date of entry into force of this Chapter,

provided that the price deflators under subparagraph (a) and (b) have the same base year. The resulting adjusted dollar values shall be rounded to the nearest million dollars.



8. The national security exception provided for in Article 6-18 of this Chapter covers procurements made in support of safeguarding nuclear materials or technology.

9. Notwithstanding any other provision of this Chapter, an entity may impose a local content requirement of no more than:

- (a) 40 per cent, for labour-intensive turnkey or major integrated projects; or
- (b) 25 per cent, for capital-intensive turnkey or major integrated projects.

For purposes of this paragraph, a ‘turnkey or major integrated project’ means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity with respect to which:

- (a) the prime contractor is vested with the authority to select the general contractors or subcontractors;
- (b) neither the Government of Mexico nor its entities fund the project;
- (c) the person bears the risks associated with non-performance; and
- (d) the facility will be operated by an entity or through a procurement contract of that entity.

10. Notwithstanding the thresholds set out in Annex V, Article 6-02 applies to any procurement from locally-established suppliers of oil and gas field supplies or equipment by Pemex at any project site where it performs works.

11. In the event that Mexico exceeds in any given year the total value of contracts it may set aside for that year in accordance with paragraph 6 or paragraphs 1,2, and 4 of section 1, Mexico shall consult with Israel with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of any Party under Chapter X (Institutional Provisions and Dispute Settlement Procedures).

12. Nothing in this Chapter shall be construed to require Pemex to enter into risk-sharing contracts.

*Part B - General Notes and Derogations  
governing Israel's Offer set out in Annex I to V*

1. This Chapter shall not apply to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

2. This Chapter shall not apply to contracts for the purchase of water and for the supply of energy and of fuels for the production of energy.

3. This Chapter shall not apply to the acquisition or rental of land, buildings or other immovable property, or concerning rights thereon.

4. Notwithstanding any other provision of this Chapter, Israel may operate provisions which require the limited incorporation of domestic content, offset procurement or transfer of technology, in

the form of objective and clearly defined conditions for participation in procedures for the award of contracts. This shall be done under the following terms:

- (a) Israel shall ensure that its entities indicate the existence of such conditions in their tender notices and specify them clearly in the contract documents.
- (b) Suppliers will not be required to purchase goods that are not offered on competitive terms, including price and quality, or to take any action which is not justified from a commercial standpoint.
- (c) Offsets in any form may be required up to 35 per cent of the contract going down to 30 per cent on 1 January 2001 and to 20 per cent on 1 January 2005 and thereafter.
- (c) For the administration of the offset under this Annex, Israel will apply the same criteria and treatment as applied to the WTO Government Procurement Agreement members, except as otherwise provided in this Annex.

5. This Chapter does not apply to procurement made by an entity from any other government entity.

## **ANNEX VII**

### **Publications**

This Annex contains the publications utilised by Parties for the publication of laws, regulations, judicial decisions, administrative rulings of general application, including invitations to participate and qualification of suppliers and any procedure regarding government procurement covered by this Chapter.

#### **Mexico**

Diario Oficial de la Federación  
Semanario Judicial de la Federación (sólo para jurisprudencia)

#### **Israel**

The Official Gazette (for publications under Article 6-20(1))  
The Jerusalem Post  
International Herald Tribune - Haáretz

## **CHAPTER VII**

### WTO Rights and Obligations

#### *Article 7-01*

### Unfair Trade Practices

The Parties confirm their rights and obligations relating to the application of antidumping and countervailing duties under the WTO Agreement on Implementation of Article VI of the General Agreement of Tariffs and Trade of 1994 and the WTO Agreement on Subsidies and Countervailing Duties.

#### *Article 7-02*

### Standards, Technical Regulation and Conformity Assessment Procedures

The Parties confirm their rights and obligations relating to standards, technical regulations and conformity assessment procedures under the WTO Agreement on Technical Barriers to Trade.

#### *Article 7-03*

### Sanitary and Phytosanitary Measures

The Parties confirm their rights and obligations relating to sanitary and phytosanitary measures under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

#### *Article 7-04*

### Services

The Parties confirm their rights and obligations relating to trade in services under the WTO General Agreement on Trade in Services (GATS).

#### *Article 7-05*

### Intellectual Property

The Parties confirm their rights and obligations relating to intellectual property rights under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP's).

#### *Article 7-06*

### Dispute Settlement

No Party may have recourse to dispute settlement under Chapter X (Institutional Provisions and Dispute Settlement Procedures) for any matter arising under this Chapter.

## CHAPTER VIII

### Competition Policy, Monopolies and State Enterprises

#### *Article 8-01*

#### Definitions

For purposes of this Chapter:

**competition law** means “competition law”, as defined in Annex 8-01;

**designate** means to establish, authorize or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

**monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service but does not include an entity granted an exclusive intellectual property right solely by reason of such grant; and

**state enterprise** means an enterprise owned or controlled through ownership interests by a Party.

#### *Article 8-02*

#### Competition Policy

1. The Parties undertake to enforce their respective competition laws in order to avoid anticompetitive business conduct recognizing that such conduct may have adverse effects on their bilateral trade, affecting the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures taken by each Party.

2. In the enforcement of its competition laws, each Party shall accord suppliers of goods and services originating in the other Party treatment no less favorable than that accorded to domestic suppliers or to suppliers of any other country, in respect of all the suppliers' rights and obligations under its competition laws.

3. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article where judicial challenge procedures are provided by the other Party under its legislation.

#### *Article 8-03*

#### Cooperation

Each Party recognizes the importance of cooperation and coordination between their competition authorities to further effective competition law enforcement in order to enhance the fulfillment of the objectives of this Agreement. The Parties declare their willingness to cooperate on issues of competition law enforcement, including notification, consultation and exchange of information related to the enforcement of competition laws on matters that may affect their bilateral trade.

*Article 8-04*

Restrictive Arrangements

1. Nothing in this Agreement shall be interpreted to prevent a Party from approving a restrictive arrangement as established in their competition law.
2. Where a Party approves a restrictive arrangement that may affect the interests of the other Party, the Party shall:
  - (a) wherever possible, provide prior written notification to the other Party or publish the approval; and
  - (b) endeavor to introduce at the time of the approval such conditions on the arrangement as to minimize any adverse effect on competition.

*Article 8-05*

Monopolies

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.
2. Where a Party intends to designate a monopoly and the designation may affect the interests of the other Party, the Party shall:
  - (a) wherever possible, provide prior written notification to the other Party; and
  - (b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as to minimize or eliminate any nullification or impairment of benefits.
3. Each Party shall ensure through regulatory control, administrative supervision or the application of measures, that any privately-owned monopoly it designates and any government monopoly it maintains or designates:
  - (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;
  - (b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price quality, availability, marketability, transportation and other terms and conditions or purchase or sale; and
  - (c) does not use its monopoly position to engage, either directly or indirectly including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect the other Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.

4. Paragraph 3 does not apply to procurement by governmental agencies of goods and services for governmental purposes and not with a view to commercial resale or with a view to use the production of goods or the provision of services for commercial sale.

5. For purposes of this Article “maintain” means designate prior to the date of entry into force of this Agreement and existing on the date of the entry into force of this Agreement in accordance with Article 12-03.

*Article 8-06*

State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party’s obligations wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise it maintains or establishes accords non-discriminatory treatment in the sale of its goods.

**ANNEX 8-01**

**Competition Law**

For purposes of this Chapter, "competition law" means:

- (a) in the case of Israel, Restrictive Business Practices Law 5748-1988 and its regulations; and
- (b) in the case of Mexico, the Federal Law of Economic Competition (LFCE) (1993), the Regulations of the LFCE (1998) and the Internal Regulation of the Federal Competition Commission (1998).

As well as any amendments thereto, and such other laws and regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement.



## CHAPTER IX

### Publication, Notification and Administration of Laws

#### *Article 9-01*

#### Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

#### *Article 9-02*

#### Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published.
2. To the extent possible, each Party shall publish in advance any such measure that it proposes to adopt.

#### *Article 9-03*

#### Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.
2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

#### *Article 9-04*

#### Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 9-03 to particular persons or goods of the other Party in specific cases that:

- (a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in

support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

- (c) its procedures are in accordance with domestic law.

## CHAPTER X

### Institutional Provisions and Dispute Settlement Procedures

#### *Section A - Institutions*

#### *Article 10-01*

#### The Free Trade Commission

1. The Commission shall comprise representatives of both Parties. The principal representative of each Party shall be the cabinet level officer or Minister primarily responsible for international trade, or a person designated by the cabinet level officer or Minister.
2. The Commission shall:
  - (a) supervise the implementation of this Agreement;
  - (b) examine its further elaboration;
  - (c) resolve any matter or dispute that may arise regarding its interpretation or application;
  - (d) supervise the work of all committees established under this Agreement; and
  - (e) consider and seek to resolve any other matter that may affect the operation of this Agreement and review the possibility of further removal of obstacles to trade between the Parties.
3. The Commission may:
  - (a) establish and delegate responsibilities to, *ad hoc* or standing committees, working groups or expert groups;
  - (b) seek the advice of non-governmental persons or groups;
  - (c) modify the Model Rules of Procedure and Code of Conduct established under Articles 10-08 and 10-10; and
  - (d) take such other action in the exercise of its functions as the Parties may agree.
4. All decisions of the Commission shall be taken by consensus.
5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired alternatively by the two Parties.

#### *Section B - Dispute Settlement*

#### *Article 10-02*

#### Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

*Article 10-03*Recourse to Dispute Settlement Procedures

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement, or wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment as set out in Annex 10-03 (Nullification and Impairment).

*Article 10-04*Dispute Settlement under the WTO

1. Subject to paragraphs 2 and 3, disputes regarding any matter arising under both this Agreement and the WTO Agreement or any agreement negotiated thereunder to which both Parties are party, may be settled in either forum at the discretion of the complaining Party after the exhaustion of the consultations under Article 10-05.
2. The Parties shall favorably consider resolving their differences by using the mechanisms as established under this Agreement. Before a Party initiates a dispute settlement proceeding under the WTO Agreement against the other Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify the other Party of its intention. If the other Party wishes the dispute to be settled under the dispute settlement procedures provided in this Agreement, it shall inform promptly the notifying Party and the Parties shall consult with a view to agree on a single forum.
3. Once dispute settlement procedures have been initiated under Article 10-06 or dispute settlement procedures have been initiated under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the forum selected shall be used to the exclusion of the other.
4. For purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel, as specified under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, following consultations under Article 4 thereof.

## CONSULTATIONS

*Article 10-05*Consultations

1. If the matter is not settled through cooperation, either Party may request in writing consultations with the other Party regarding any matter referred to under Article 10-03.
2. The requesting Party shall deliver the request to the other Party.
3. Consultations on matters of urgency, including those regarding perishable goods, shall commence within 15 days of the date of delivery of the request.
4. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other relevant consultative provisions of this Agreement. To this end, the Parties shall:

- (a) provide each other with sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement; and
- (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing that information.

#### INITIATION OF PROCEDURES

##### *Article 10-06*

##### Commission - Good Offices, Conciliation and Mediation

1. If the Parties fail to resolve a matter pursuant to Article 10-05 within:
  - (a) 30 days of delivery of a request for consultations,
  - (b) 15 days of delivery of a request for consultations in matters covered by Article 10-05(3); or
  - (c) any other period as they may agree,

any Party may request in writing a meeting of the Commission.

2. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Party.

3. Unless otherwise agreed, the Commission shall convene within 20 days of delivery of the request and shall endeavor to resolve the dispute promptly.

4. The Commission may:
  - (a) call on such technical advisers or create such working groups or expert groups as it deems necessary;
  - (b) have recourse to good offices, conciliation, mediation or such other dispute resolution mechanisms; or
  - (c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings, regarding other matters before it pursuant to this Article, that it determines are appropriate to be considered jointly.

#### PANEL PROCEEDINGS

##### *Article 10-07*

##### Request for an Arbitral Panel

1. If the matter has not been resolved, either Party may request in writing the establishment of an arbitral panel within:
  - (a) 30 days after the Commission has convened pursuant to Article 10-06;
  - (b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 10-06(5);
  - (c) 15 days after the Commission has convened under Article 10-05(3); or
  - (d) such other period as the Parties may agree.
2. On delivery of the request, the Commission shall establish an arbitral panel.
3. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter and the Model Rules of Procedure set out in Article 10-10.

*Article 10-08*

Establishment of Panels

1. By the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of up to 20 individuals to serve as panelist in disputes under this Chapter. Each Party shall select up to 10 individuals who may be nationals or residents of that Party. The Parties shall normally appoint panelist from the roster.
2. By the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of up to 10 individuals non-nationals of the Parties, who are willing to serve as chair of a panel established under Article 10-07. The roster members shall be appointed by consensus for a term of four years, and may be reappointed.
3. All panelists shall:
  - (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (b) be selected with a view to ensuring the independence of the panel member, and not be affiliated with or take instructions from any Party; and
  - (c) comply with a Code of Conduct to be established by the Commission by 1 January 2001.

*Article 10-09*

Panel Selection

1. The panel shall comprise three members.
2. Within 20 days of the delivery of the request for the establishment of the panel, each Party shall select and notify the other Party of a panelist pursuant with paragraph 10-08(1).

3. Within 20 days of the delivery of the request for the establishment of the panel, each Party shall propose a candidate from the agreed roster established under paragraph 10-08(2) to serve as chair of the panel.
4. The Parties shall endeavour to agree on the chair within 20 days of the appointment of the last panelist.
5. If a Party fails to appoint its panelist pursuant to paragraph 2, it shall be selected by lot from the roster established under paragraph 10-08(1) from that Party's individuals on the roster.
6. If the Parties are unable to agree on the chair, it shall be selected by lot among the candidates of the roster established under paragraph 10-08(2).
7. Should a panelist be unable to continue to serve as panelist, a new panelist shall be selected in accordance with this Article.
8. If a Party believes that a panelist is in violation of the Code of Conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

*Article 10-10*

Rules of Procedure

1. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure established by the Commission by 1 January 2001. The Model Rules of Procedure shall:
  - (a) assure a right to at least one hearing before the panel and the opportunity to provide written submissions and rebuttal arguments;
  - (b) permit counsel chosen by a Party to advise that Party during panel proceedings, including hearings;
  - (c) require that a Party's position be presented by official spokespersons of that Party; and
  - (d) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.
2. The Parties shall agree on the terms of reference. If the Parties fail to agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article 10-13(2)."
3. If the complaining Party, having raised it during the Commission meeting, wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.
4. If a Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of the Agreement or to have caused

nullification or impairment as set out in Annex 10-03 (Nullification and Impairment), the terms of reference shall so indicate.

*Article 10-11*

Role of Experts

1. On request of a Party or on its own initiative, the panel may seek technical advice from any person or body, including highly qualified independent experts, on any scientific or technical matter raised by a Party in a proceeding, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.
2. The Parties shall be provided a copy of the expert's report and an opportunity to provide comments on the report to the panel. Such comments shall be provided to the other Party.
3. The panel shall consider the expert's report and any comments submitted by the Parties on the report in the preparation of its report.

*Article 10-12*

Initial Report

1. Unless the Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 10-11.
2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected present to the Parties an initial report containing:
  - (a) findings of fact, including any findings pursuant to a request under Article 10-10(4);
  - (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment as set out in Annex 10-03 (Nullification and Impairment), or any other determination requested in the terms of reference; and
  - (c) its recommendations, if any, for resolution of the dispute.
3. Panelists may furnish separate opinions on matters not unanimously agreed.
4. Any Party may submit written comments to the panel on its initial report within 30 days of presentation of the report, or any other period as the Parties may otherwise agree. Such comments shall be provided to the other Party.
5. In such an event, and after considering such written comments, the panel may, on its own initiative or on the request of either Party:
  - (a) request any further views of either Party;
  - (b) reconsider its report; and
  - (c) make any further examination that it considers appropriate.

*Article 10-13*

Final Report



1. The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the Parties otherwise agree.
2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.
3. Unless the Commission decides otherwise, the final report of the panel shall be made available to the public 15 days after it is presented to the Parties.

*Article 10-14*

Implementation of Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the report.
2. Wherever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment as set out in Annex 10-03 (Nullification and Impairment) or, failing such a resolution, compensation.

*Article 10-15*

Non-Implementation - Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment as set out in Annex 10-03 (Nullification and Impairment) and the Party complained against has not reached agreement with the complaining Party on a mutually satisfactory resolution pursuant to Article 10-14(1) within 30 days of receiving the final report, the complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.
2. In considering what benefits to suspend pursuant to paragraph 1:
  - (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment as set out in Annex 10-03 (Nullification and Impairment); and
  - (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
3. On the written request of any Party delivered to the other Party, the Commission shall to the extent possible, reconvene the panel which issued the report to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive. Where it is not possible to reconvene this panel, the new panelists shall be selected in accordance with Article 10-09.
4. The panel proceedings pursuant to paragraph 3 shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the date the complaining party made the request pursuant to paragraph 3 or such other period as the Parties may agree.
5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure, found to be inconsistent with the obligations of this Agreement or causes nullification or

impairment as set out in Annex 10-03 (Nullification and Impairment), has been removed, or a mutually satisfactory solution is reached.

*Article 10-16*

Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

*Section C - Private Commercial Dispute Settlement*

*Article 10-17*

Resolution of Private Commercial Disputes

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.
2. To this end, each Party shall provide appropriate legal framework to enable observance of agreements to arbitrate and for the recognition and enforcement by courts of arbitral awards in such disputes.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

**ANNEX 10-03**

**Nullification and Impairment**

If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of this Agreement is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

## CHAPTER XI

### Exceptions

#### *Article 11-01*

### Definitions

For purposes of this Chapter:

**tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

**taxation measures**: does not include:

- (a) a “customs duty”, as defined in Article 1-01; and
- (b) measures listed in exceptions (b) and (c) of that definition.

#### *Article 11-02*

### General Exceptions

Article XX of the GATT 1994 and its interpretative notes, or any equivalent provision of a successor Agreement to which all Parties are party, are incorporated into and made part of this Agreement. The Parties understand that the measures referred to in Article XX(b) of GATT 1994, include environmental measures necessary to protect human, animal or plant life or health, and Article XX(g) of GATT 1994, applies to measures relating to the conservation of living and non-living exhaustible natural resources.

#### *Article 11-03*

### National Security

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:
  - (i) relating to traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;
  - (ii) taken in time of war or other emergency in international relations; or
  - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of biological, chemical and nuclear weapons or other nuclear explosive devices; or
- (c) to prevent any Party from taking action in pursuance of its obligation under the United Nations Charter of maintenance of international peace and security.

*Article 11-04*

Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Notwithstanding paragraph 2, Article 2-02 and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the General Agreement on Tariffs and Trade 1994.

*Article 11-05*

Balance-of-Payments

The rights and obligations of the Parties relating to balance-of-payments shall be governed by the WTO Understanding on Balance-of-Payments Provisions.

## CHAPTER XII

### Final Provisions

#### *Article 12-01*

#### Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

#### *Article 12-02*

#### Amendments

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement and shall enter in force in accordance to the procedure under Article 12-03.

#### *Article 12-03*

#### Entry into Force

This Agreement shall enter into force 30 days after following the date when the Parties have notified each other that their respective internal requirements for the entry into force of this Agreement have been fulfilled.

#### *Article 12-04*

#### Accession

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each country.
2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.

#### *Article 12-05*

#### Withdrawal

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Party.

#### *Article 12-06*

#### Authentic Texts

The Spanish, Hebrew and English texts of this Agreement are equally authentic. In case of differences of interpretation, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at México City, on the 10<sup>th</sup> day of April of 2000, which corresponds to the 5<sup>th</sup> day of Nisan of 5760.

**For the Government of the  
United Mexican States**

**For the Government of the  
State of Israel**

**Herminio Blanco Mendoza  
Secretary of Trade  
and Industrial Development**

**Moshe Melamed  
Ambassador**

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