# FTAA – Free Trade Area of the Americas

# Draft Agreement

## Chapter on Market Access

- **CHAPTER ON MARKET ACCESS**

## [CHAPTER] ON TARIFFS AND NON-TARIFF MEASURES

### Section One. General Provisions

**Article 1.** Scope of application.

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

1.2. In trade in goods between the Parties, the classification of goods shall be governed by the nomenclature in the updated version of the Harmonized Commodity Description and Coding System.

**Article 2.** National Treatment.

2.1. Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of the General Agreement on Tariffs and Trade of 1994, including its interpretive notes, and to this end, Article III of GATT 1994 and its interpretative notes are incorporated into this Agreement and made integral part of said Agreement. **[**This national treatment shall extend to the sale, offering for sale, purchase, transportation, distribution and use of such goods in the territory of the Parties.**]**

**[**2.2. The provisions of paragraph 2.1 on national treatment shall mean **[**, with respect to a province, **[**or**]** state, **[**department **[**or any other type of political division**]]** of the Parties, a treatment no less favorable than the most favorable treatment that province, **[**or**]** state, **[**department**] [**or any other sphere of political division**]** accords to any like **[,** directly competitive or substitutable**]** goods **[**direct competitors or substitutes of such Party**][**as the case may be, of the Party of which it forms a part**]] [**a binding commitment in the entire national territory**].]**

**[Article 3.** Relationship with trade agreements.**]**

**[**3.1. None of the provisions of this **[**Chapter**]** modifies or alters in any way concessions accorded in relation to customs duties and non-tariff measures in the framework of other trade agreements entered into between the Parties under Article XXIV or the Enabling Clause, both of GATT 1994.**] [**The FTAA Tariff Elimination Program shall not imply any regression in the degree of trade liberalization attained within the hemisphere. The preferences applied in trade between and among the countries of the hemisphere, as well as the tariff elimination programs agreed in bilateral or subregional agreements shall remain in force.**]**

### Section Two. [Customs]Tariffs

**Article 4.** Tariff Elimination Program.

**[**4.1. The Tariff Elimination Program shall apply to trade in originating goods between the Parties.**]**

**[**4.2. The base tariffs on which the tariff elimination process will be initiated appear **[**in Annex **[**…**]** to the present Agreement**] [**and are all expressed in ad valorem **[**and/or applicable specific**]** terms**].]**

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

4.4. **[**Except as otherwise provided in this Agreement, as of the entry into force hereof each Party shall eliminate its customs duties **[**and other import charges**]** on originating goods, in accordance with the terms established in

Annex_____ (Tariff Elimination Program).**]** **[**Tariff eliminations shall be applied using percentage margins of preference that shall be applied on ad valorem, specific and mixed tariffs.**]**

**[**4.5 During the tariff elimination process, the Parties agree to apply to originating goods traded among them the lesser of either the customs duties established under the Tariff Elimination Program, or the applicable rate determined in accordance with Article I of the GATT 1994. **]**

**[**4.6. The Parties do not assume tariff-related commitments on the goods included in the Annex… (Exclusions).**]**

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

**[**4.8. The Parties agree to set the duties on originating goods in the Tariff Elimination Program in ad valorem terms **[**, thus eliminating any type of mixed, specific or variable tariff**]**.**[**The Parties may, however, apply the level of customs duty set in ad valorem or other terms.**]** **[**Specific and ad valorem tariffs found in different FTAA member countries' tariff structures must be honored. Nevertheless, upon beginning negotiations an ad valorem equivalent must be set for the specific tariffs as the ceiling for those tariffs as of that moment and which are found in the Annex to the Agreement.**]]**

**[**4.9 $^{A}$ If a Party were, at any time, to reduce its most-favored-nation customs duties for one or more of the goods covered by this Agreement, the customs duty applicable in reciprocal trade must be adjusted in keeping with the proportionality rules set forth in Annex ___ (Tariff Elimination Program).**]** **[**For cases in which a Party lowers its tariff to a level equal to or less than the existing residual tariff rate, the duty applied to a trading partner shall be determined by the following calculation:

$$Res_{imod} = MFN_i - \frac{(B_o - Res_i)}{B_o} * MFN_i$$

Where: $MFN_{i =}$ mfn tariff applied at that time; $B_o$ = base tariff established in the Tariff Elimination Program; $Res_I$ = residual tariff corresponding to the current tariff reduction period; $Res_{imod}$ = modified residual tariff applied to the preferential partner.**]**

**[**4.9 $^{B}$ If a Party increases the customs duty in relation to the base tariff, preference shall be applied on the base tariff that appears in Annex **[**…**]**. For cases in which a Party reduces the duty in relation to the base tariff, preference shall automatically be applied to the new duty on the date on which it enters into force. The countries may once again increase the duties to the level of base tariff; in this case, the preference will be applied on the base tariff.**]**

**[**4.10. In the case of smaller economies, special, more favorable tariff elimination conditions could be agreed, including longer, differentiated time periods, and a grace period for the initiation of the tariff elimination.**]** **[**When the base tariff from which a small economy initiates the tariff elimination process is lower than that of the other countries, the small economy shall not initiate its tariff elimination process until the residual tariff of the other countries is less than or equal to the base tariff of the small economy.**]**

4.11. A Party may:

> **[**a) increase a customs duty to a level not greater than the one established in the Tariff Elimination Program when that customs duty has previously been unilaterally reduced to a level less than that established in the Tariff Elimination Program.**]**
>
> **[**b) **[**maintain or increase a customs duty when this is permitted pursuant to **[**a dispute settlement provision of the WTO Agreement, or any other agreement negotiated in accordance with the WTO.**]** **[**the **[**dispute settlement**]** provisions of **[**the GATT (1994) and**]** the Marrakesh Agreement establishing the World Trade Organization**]]** **[**or Article VI of GATT 1994 and associated WTO Agreements **]**.**]**

**[**c) create new tariff **[**break-outs**]**, **[**at a more detailed level than that established in the Harmonized System,**]** provided always that the **[**customs tariff**]** **[**margin of preference**]** applicable to the originating goods concerned is not **[**greater**]** **[**lower**]** than the one applicable to the tariff fraction broken down under the Tariff Elimination Program.**]**

4.12. Two or more Parties may carry out consultations to examine the possibility of accelerating the elimination of customs duties set out in the Tariff Elimination Program. **[**Once approved by these Parties and pursuant to their applicable domestic legal procedures, the agreement regarding the accelerated elimination of the customs tariff shall prevail over any agreement on customs duties or applicable reduction category pursuant to the Tariff Elimination Program.**]** **[**These tariff concessions will be extended to the rest of the Parties.**]** **[**These tariff concessions will only be extended to those Parties that agreed to the acceleration.**]**

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

**Article 5.** Provisions on special regimes.

**[[**5.1. Refunds and **[**deferred**]****[**waiver of the**]** payment of tariffs.**]****[**Temporary Admission and **[**Restrictions on**]** Drawback **[**, Duty Deferral and Foreign Trade Zones**]].]**

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

**[**5.1.1[B]. None of the Parties may refund the customs duties paid, or exempt or reduce the amount of customs tariffs owed with regard to a good imported into its territory, **[**on the condition that the good is**]** **[**that is either:**]**

**[**a) subsequently exported to the territory of another Party;**]**

b) used as material in the production of another good subsequently exported to the territory of another Party; or

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

in an amount that exceeds the total of the customs duties paid or owed on that quantity of the imported good that is materially incorporated in the good exported to the territory of the other Party, or replaced by identical or similar goods that are materially incorporated in the good exported to the territory of the other Party, with the due discount for waste.**]**

**[**5.1.2. None of the Parties may, on the condition of export, refund, waive or reduce:

a) the anti-dumping or countervailing duties that are applied in accordance with the domestic laws of the Party and which are compatible with the provisions of **[**Chapter**]** ____, "Unfair Trade Practices";

b) the premiums that are offered or collected on imported goods, arising from any tendering system regarding the application of quantitative import restrictions, tariff rate quotas, or preferential tariff-rate quotas; and

c) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of the other Party.

Sub-paragraphs a) and b) shall enter into force on .... and sub-paragraph c) shall enter into force when this Agreement takes effect.**]**

**[**5.1.3. Paragraph **[**s 5.1.1 and**]** 5.1.2 shall not apply to:

a) a good that, pursuant to the legislation of each Party, entered under bond for transportation and exportation to the territory of the other Party;

b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good is exported. Processes such as testing, cleaning, re-packaging, inspecting, or preserving the good in its same condition shall not be considered as changes in the condition of the good. When a good has been commingled with fungible goods and exported in the same condition, its origin may be established for the purposes of this paragraph using the inventory methods set out in **[**Chapter**]** ___ , "Rules of Origin";

c) a good imported into the territory of a Party, that subsequently is deemed to be exported from its territory or is used as a material in the production of another good that is subsequently deemed to be exported to the territory of the other Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently deemed to be exported to the territory of the other Party, as a result of:

(i) delivery to a duty-free shop, or

(ii) delivery for ship's stores or supplies for ships or aircraft; **[**or**]**

**[**(iii) delivery for use in joint undertakings of two or more of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be imported;**]**

d) a refund made by one of the Parties of the customs duties paid on a particular good imported into its territory and subsequently exported to the territory of another Party, when this refund is granted by reason of the failure of such good to conform to sample or specification, or by occasion of the shipment of such good without the consent of the consignee; or

e) an originating good that is imported into the territory of a Party and subsequently exported to the territory of another Party, or used as material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party.**]**

**[**5.1.4. No Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned on the fulfillment of a performance requirement.**]**

**[**5.1.5. No Party may condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.**]**

**[**5.X.X. Duty-free admission regimes[1]

5.X.X. Parties shall grant duty-free admission to the following goods, in accordance with the procedures set forth in the Chapter on Customs Procedures, Articles XX-XX:

a) goods admitted temporarily to the territory of a Party;

b) goods reentered to the territory of a Party that have been temporarily exported to the territory of another party; and

c) commercial samples of negligible value and printed advertising materials.**]**

[1] Some delegations propose that the current 5.X.X would replace all of the current sub-articles 5.2 and 5.4 as well as Article 6, because these provisions of these articles are repeated in the **[**chapter**]** on Customs Procedures.

**[**5.2. Temporary importation **[**/admission**]** **[**of goods**]**.**]**

**[**5.2.1. **[**The Parties**]****[**Each Party**]** shall grant duty-free temporary importation **[**or**]** **[**/admission**]** for the goods listed below **[**that are imported **[**or admitted**]** from the territory of another Party into their territory**]****[**imported by or for the use of a resident of another Party**]**, **[**regardless of their origin and regardless of whether **[**like goods, direct competitors or substitutes,**]****[**like, directly competitive or substitutable goods**]** are available in the territory of the importing Party:**]**

a) professional equipment **[**including software and broadcasting and cinematographic equipment**]** necessary for carrying out the business activity, trade or profession of a business person, **[**who qualifies for temporary entry pursuant to the laws of the importing country**]**;

**[**b) equipment for the press or for radio or television broadcasting and cinematographic equipment;**]**

**[**c) goods imported for sports purposes or intended for display or demonstration;**]**

**[**d) goods intended for display or demonstration, including**]** commercial samples and advertising films **[**aimed at procuring orders for goods**]**; and

e) containers and **[**similar commercial**]** vehicles for international transport of goods.**]**

**[**5.2.2. **[**Except as otherwise provided in this Agreement, **[**the Parties shall permit the duty-free temporary admission of the goods indicated in Article 5.2.1, solely under the following conditions:**]****[**the**]** Parties may subject the duty-free temporary admission of a good of the type indicated in subparagraphs a), b) or c) of paragraph 1 to any of the following conditions, not being able to adopt additional conditions, when:**]****[**No Party may condition the duty-free temporary admission of a good referred to in Article 5.2.1., other than to require that such good:**]**

**[**a) the good is imported by a national or resident of another Party;**]**

b) **[**the good is**]** **[**be**]** used **[**solely by**]** **[**exclusively by the visiting person,**]** or under **[**his**]** **[**the**]** personal supervision **[**of a resident of another Party in the exercise of the**]**, **[**in the performance of his**]** business activity, trade or profession **[**of that person**]**;

c) **[**the good is not subject to sale, lease or transfer in any other form while it remains in the territory of the Party;**]** **[**not be sold or leased while in its territory**]**;

d) **[**the good is accompanied by a bond or security that does not exceed 110% of the charges that would otherwise be owed, as the case may be, for the entry or final importation, or by another form of security, releasable on re-exportation of the good, except that a bond or security for customs duties shall not be required for an originating good;**]** **[**be accompanied by a security in an amount no greater than 110 % of the charges that would otherwise be owed on entry or final importation, releasable on exportation of the article, except that a security for customs duties shall not be required for an originating good;**]**

e) **[**the good is**]** **[**be**]** capable of identification **[**when exported**]****[**upon its re-exportation abroad**]**;

f) **[**the good is re-exported**]** **[**be exported**]** on the departure of that person or within **[**the**]****[**such other**]** period **[**of time as is reasonably**]** related to the purpose of the temporary **[**importation**]** **[**admission, initially up to one year from the date of importation or such longer period as a Party may establish**]**;

g) **[**the good is**]****[**be**]** imported in no greater quantity than is reasonable for its intended use; and

**[**h) the good complies with the sanitary and phytosanitary measures and with the applicable standardization measures.**]**

**[**i) be otherwise admissible into the Party's territory under its laws.**]]**

**[**5.2.3. Except as otherwise provided in this Agreement, the Parties may subject the temporary import free of customs duty and other charges on imports of a good of the type indicated in subparagraph d) of paragraph 5.2.1, to any of the following conditions, not being able to adopt additional conditions, when:

a) the good is imported only for the purposes of soliciting orders for goods or services that are supplied from the territory of the other Party or from another country that is not a Party;

b) the good is not sold, leased or otherwise transferred, and is used only for demonstrations or exhibitions while in its territory;

c) the good is capable of identification;

d) the good is re-exported within a period of time that is deemed to be reasonable for the purpose of temporary admission;

e) the good is imported in no greater quantity than is reasonable for its intended use;

f) the good is accompanied by a bond or security that does not exceed 110% of the duties that would be owed, as appropriate, for the final importation, or by any other form of guarantee, reimbursable upon re-exportation of the good, except that no bond or security shall be required for the customs duties on an originating good;

g) the good complies with the sanitary and phytosanitary measures and with the applicable standardization measures; and

h) the good undergoes no processing or modification during the authorized period of importation, except for wear and tear due to normal use.**]**

**[**5.2.4. **[**When a good is temporarily imported and does not comply with any of the conditions that a Party imposes in accordance with paragraphs 5.2.2 and 5.2.3, that Party may apply the customs duties and any other charges that would be payable on the entry or final importation thereof.**] [**A Party may impose the customs duty and any other charge on a good temporarily admitted duty-free under Article 5.2.1. that would be owed on entry or final importation of such good if any condition that the Party imposes under Article 5.2.2. has not been fulfilled.**]]**

**[**5.2.5. Each Party shall adopt procedures providing for the expeditious release of the articles described in paragraph 5.2.1. To the extent possible, when such articles accompany a resident of another Party seeking temporary entry, and are imported by that person for use in the exercise of a business activity, trade or profession of that person, the procedures shall allow for the articles to be released simultaneously with the entry of that person.**]**

**[**5.2.6. Each Party shall, at the request of the person concerned and for reasons deemed valid by the national customs authorities, extend the time limit for temporary admission beyond the period initially fixed.**]**

**[**5.2.7. Each Party shall permit temporarily admitted goods to be exported through a customs port other than the one through which they were imported.**]**

**[**5.2.8. Each Party shall relieve the importer of liability for failure to export a temporarily admitted article upon presentation of satisfactory proof to customs authorities that the article has been destroyed within the original time limit for temporary admission or any lawful extension thereof.**]**

**[**5.3. Free trade zones **[**, Export, in-bond assembly, and similar processing zones**] ]**

**[**Each Party will provide that when goods imported into its territory are produced in or shipped from free trade zones in the territory of a Party, those goods shall not benefit from the Tariff Elimination Program provided for in this **[**Chapter**]**.**][**Products manufactured in processing zones shall benefit from the Tariff Elimination Program if they qualify under the rules of origin established in this Agreement.**]**

**[**5.4. **[**Re-importation**][**Goods re-entered after repair or alteration**]]**

**[[**5.4.1. Parties shall authorize the duty-free re-importation of goods that **[**, regardless of their origin,**]** have been temporarily exported to the territory of another Party for repair or alteration.**]**

**[**5.4.2. No Party may apply customs tariffs to goods that **[**, regardless of their origin,**]** have temporarily entered the territory of the other Party to be repaired or altered. **]]**

5.5. Other
…

**[Article 6. [**Duty-free entry of certain**]** Commercial samples **[**of negligible value**][**and printed advertising materials**]] [**Duty-free entry of commercial samples of insignificant value or no commercial value and of printed advertising materials**]**

**[**6.1. **[**Parties**][**Each Party**]** shall grant duty-free entry to commercial samples of no **[**commercial**]** value **[**in accordance with the regulations established**] [**and to printed advertising materials **[**imported**]** from the territory of another Party,**] [**regardless of their origin, but may require that:

a) such samples be imported solely for the solicitation of orders for goods or services provided from the territory of another Party or non-Party; or

b) such advertising materials be imported in no greater quantity than is reasonable for their intended use.**]][**Such printed advertising materials be imported in packets that each contain no more than one copy of each material and that neither the materials nor the packets form part of a larger consignment.**]**

**Article 7.** Customs valuation

7.1. In the reciprocal trade among Parties, the customs valuation of goods shall be **[**governed by the provisions of**] [**determined in accordance with**]** the WTO Agreement on Implementation of Article VII of GATT 1994 **[**without having recourse to the reserves and options provided for under said Agreement**]**.

**[**7.2. Pursuant to Article 13 of the Customs Valuation Code, if, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall be able to withdraw them from customs if, where so required, the importer provides a deposit or other form of security, covering the ultimate payment of customs duties for which the goods may be liable, provided for in the legislation of the Party.**]**

**[**7.3. Each Party shall establish appropriate documentation to certify the accuracy of the customs value, which shall be no more than that which could reasonably be requested pursuant to Article VII of GATT 1994.**]**

**[**7.4. When a Party uses or applies estimated prices, it shall establish mechanisms to waive application of the provisions of paragraphs 7.2. and 7.3. and shall establish measures to facilitate the administration of such a scheme.**]**

**[**7.5. Before a Party adopts or modifies the estimated price referred to in this Article, it shall communicate to the other Parties a description of the good, its tariff item and the proposed estimated price.**]**

**[**7.6. The Parties shall hold consultations among themselves in order to ensure that the above does not represent an obstacle to trade. **]**

**[**7.7. The Parties understand that the estimated price referred to in paragraph 7.4. shall serve only as a reference for cases of valuation, and may not be considered as a base price for determining the domestic taxes of each Party or for the application of customs duties or tariffs.**]**

**Section Three. Non-tariff [measures] [restrictions]**

**Article 8.** Import and export restrictions and **[**licenses**][** prohibitions**]**

8.1. **[**Except as otherwise provided in this Agreement,**]** no Party may adopt or maintain any prohibition or restriction on the importation of any **[**originating**]** good of another Party or on the exportation or sale for export of any **[**originating**]** good destined for the territory of another Party, except **[**: a) as otherwise provided in this Agreement, or**][**b)**]** in accordance with **[**Article XI of**][**the**]** GATT 1994 **[**including**]** **[**and**]** its interpretative notes **[**and other pertinent provisions in the WTO Agreements.**][**For such purposes, Article XI of GATT 1994 and its interpretative notes are incorporated into this Agreement and form an integral part thereof.**]** **[**For agricultural products, the provisions of Article 4.2 of the WTO Agreement on Agriculture shall apply.**]** **[**No Party shall adopt or maintain any restrictions, prohibitions, taxes, duties, or any charges on the export of any good to the territory of another Party, unless such tax or duty or charge is applied temporarily to alleviate acute shortages. For purposes of this paragraph, "temporarily" means up to one year, or a longer period agreed by the Parties.**]**

**[**8.2. In accordance with paragraph 1, no Party may institute or maintain, among others, the following measures:

a) quantitative restrictions on imports;

b) minimum prices or values;

c) export and import price requirements, except as permitted in enforcement of countervailing measures and antidumping duties orders and undertakings;

d) granting of import licensing conditioned on the fulfillment of a performance requirement; or

e) voluntary export restraints not consistent with Article VI of the GATT 1994, as implemented under Article 18 of the WTO Agreement on Subsidies and Countervailing Measures and Article 8.1 of the WTO Agreement on Implementation of Article VI of the GATT 1994.**]**

**[**8.3. In the event that a Party adopts or maintains a prohibition or restriction on the import**[**ation from**]** or export**[**ation to**]** **[**of a good**[**s**]** from or to**]** a non-Party **[**country**][**of a good,**]** no provision of this Agreement shall be construed to prevent the Party from:

a) limiting or prohibiting the importation from the territory of another Party of such goods of that Non-Party; or

b) requiring as a condition for exporting **[**such goods of the Party**]** **[**the goods**]** to the territory of another Party, that the **[**same**]** **[**good**][**s**]** **[**same are**]** not **[**be**]** re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.**]**

**[**8.4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a Non-Party, **[**at the request of any of them,**]** the Parties, **[**on the request of any Party,**]** shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, and distribution arrangements in another Party.**]**

**[**8.5. Upon entry into force of this Agreement, each Party shall notify its import licensing procedures in force to all other Parties, and thereafter shall notify all new import licensing procedures and changes to import licensing procedures within 60 days of publication.**]**

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

a) list of products subject to import licensing procedures;

b) contact point for information on eligibility;

c) administrative body(ies) for submission of applications;

d) date and name of publication where licensing procedures are published;

e) indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3 of the WTO Agreement on Import Licensing;

f) in the case of automatic import licensing procedures, their administrative purpose;

g) in the case of non-automatic import licensing procedures, indication of the measure being implemented through the licensing procedure; and

h) the expected duration of the licensing procedure, if this can be estimated with some probability, and if not, the reason why this information cannot be provided.**]**

**[**8.7. Notification of import licensing procedures and changes to import licensing procedures referred to in paragraph 8.5. is without prejudice to their consistency with the rights and obligations of this Agreement.**]**

**[**8.8. Import licensing procedures and changes to import licensing procedures not notified according to paragraph 8.5. shall not be enforced against the Parties.**]**

**[**8.9. Paragraphs 8.1. through 8.4. shall not apply to the measures set out in Annex ___.**]**

**[Article 9. Remanufactured goods]**

**[**9.1. No Party may adopt or maintain any prohibition or restriction on the importation of any remanufactured good of another Party and shall accord any remanufactured good of another Party no less favorable treatment than that provided to new like goods, regardless of whether the imported good was remanufactured by the original equipment manufacturer and regardless of whether it is offered for sale under warranty, but may require that:

a) remanufactured goods be identified as such; and

b) meet any standard applicable to new like goods.**]**

**Article 10. [**Other administrative procedures**][**Administrative fees and formalities**][**Other Charges that affect reciprocal trade**]**

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

**[**10.2. Notwithstanding the provisions of Paragraph 1, smaller economies shall eliminate such fees no later than 10 years after the entry into force of this Agreement.**]**

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

**[**10.4. Upon entry into force of this Agreement, each Party shall notify its current fees and charges imposed on, or in connection with, importation or exportation to all other Parties, and thereafter shall notify all new fees and charges and changes to fees and charges within 60 days of publication.**]**

**[**10.5. Notification of fees and charges imposed on or in connection with importation or exportation referred to in paragraph 10.4. shall include the following information:

a) description of the fee or charge, including the amount of the fee or charge and the nature of services rendered;

b) contact point for information;

c) administrative body(ies) that collect(s) the fee;

d) date and name of publication where the fee or charge is published;

e) where and how the fee or charge is collected; and

f) the Party liable for payment.**]**

**[**10.6. Notification of fees and charges and changes to fees and charges imposed on or in connection with importation or exportation referred to in paragraph 10.4. is without prejudice to their consistency with the rights and obligations of this Agreement.**]**

**[**10.7. Fees and charges and changes to fees and charges not notified according to paragraph 10.4. shall not be enforced against the Parties.**]**

**[**10.8. From the date of entry into force of this Agreement, each Party shall ensure that a current list of its fees and charges imposed in connection with importation or exportation is published and made available on the Internet.**]**

**Article 11.** Export taxes

**[**11.1. No Party shall adopt or maintain any tax, duty or other charge on the export of **[**a**]** **[**any**]** good to the territory of another Party, **[**unless such tax**[**es**]** **[**or**]** **[**,**]** dut**[**y**]****[**ies**]** **[**or charge is**]** **[**are**]** also adopted or maintained on:

**[**a) exports of any such good to the territory of all other Parties; and

b) any such good when destined for domestic consumption**]** **[**such goods when they are to be used for domestic consumption**]****]**.**]**

**[**11.2. Notwithstanding the contents of 11.1, the Parties reserve the right to impose export taxes on the goods listed in Annex 11.**]**

**Article 12.** Other **[**restrictive**]** export measures

**[Article 13.** Dealer protection laws**]**

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

**Section Four. Other measures**

**[Article 14.** Distinctive products**]**

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

| Party | Distinctive Product |
|---|---|
| United States | Bourbon Whisky and Tennessee Whisky |
| Mexico | Tequila and mezcal |
| Panama | Seco and molas |

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

**Section Five. Institutional provisions**

**[Article 15. Committee on Trade in Goods]**

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

**[**15.2. The Committee shall be established within six months of the Agreement coming into force. Any decision adopted by the Committee shall be by **[**common agreement**] [**consensus**]**.**]**

**[**15.3. The Committee shall have the following duties:

a) To monitor the application and administration by the Parties of the **[**principles**][**rights and obligations**]** contained in this **[**Chapter**]**.

b) To coordinate the activities and ensure the proper functioning of the Non-Agricultural Goods Sub-committee.

c) To examine the proposals regarding **[**accelerated**]** tariff elimination that are submitted by the Parties.

d) To assess any proposed modification, amendment or addition to the relevant provisions in order to improve the application of what is set forth in this **[**Chapter**]** and to recommend the pertinent changes to the Commission.

e) To coordinate the exchange of commercial information between the Parties.

f) To submit an annual report to the Commission regarding its activities.**]**

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

a) To act as a consultation forum for issues relating to market access for agricultural and non-agricultural products.

b) To recommend to the Committee the adoption of measures that encourage free trade between the Parties.

c) To meet at least once a year or at the request of any of the Parties or the Committee.

d) To submit to the Committee any issue over which they have not reached an agreement within sixty (60) days of the date on which they became aware of said issue; and

e) To submit an annual report to the Committee on the agreements reached and activities carried out.**]**

**[Article 16. Publication and Notification]**

**[**16.1 Publication and notification. Each Party shall identify, in terms of tariff classification code and the corresponding nomenclature, measures, restrictions or prohibitions on the import or export of goods for reasons of national security, public health, protection of flora or fauna, environment, sanitary and phytosanitary standards, labeling, technical regulations, international commitments, public order requirements, or any other regulations.**]**

**[**a) Prior to official publication, no Party shall apply any general measure adopted by that Party which has the effect of increasing a customs tariff or other charge on the importation of goods of the other Party by virtue of established and uniform usage, or which imposes new or more onerous measures, restrictions or prohibitions on the importation of goods of the other Party or the transfer of funds for the same.**]**

**[**b) Considering that sudden devaluations and changes in exchange systems and monetary policies may undermine the trade flow and the initiative to establish a free trade area, the Parties undertake to notify each other whenever such events occur.**]**

**[Article 17. Definitions]**

**[**17.1. The following definitions shall be used for the purposes of this **[**Chapter**]**:**]**

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

a) any charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994**],** **[**or any equivalent provision in a successor agreement to which the Parties are signatories**] [**in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

b) any antidumping or countervailing duty that is applied pursuant to a Party's domestic law; and

c) any fee or other charge in connection with importation commensurate with the cost of services rendered.**]**, **[**and

d) any premium offered or collected on imported goods under all systems of tendering, for the administration of quantitative import restrictions or tariff rate quotas or preferential tariff-rate quotas.**]]**

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

**[goods used for display or demonstrations: [**goods used for exhibitions or demonstrations, including their component parts, ancillary apparatus, and accessories.**]]**

**[fungible goods: [**goods that are interchangeable in accordance with the definition in **[**Chapter**]** ___ "Rules of Origin".**]]**

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

**[goods imported or brought in for sports purposes: [**sports equipment for use in competitions, sports events or training in the territory of the Party to which it is imported.**]]**

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

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

**[duty-free**: free of customs duties.**]**

**[material: [**a material in accordance with the definition in **[**Chapter**]** ___ "Rules of Origin".**]]**

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

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

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

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

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

**[performance requirement**: a requirement that:

a) a given level or percentage of goods be exported;

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

c) a person benefitting from a waiver of customs duties or an import license purchase other goods in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

d) a person benefitting from a waiver of customs duties or an import license produce goods in the territory of the Party granting the waiver of customs duties or the import license; or

e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows.**]**

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

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

# [[CHAPTER] ON SAFEGUARD MEASURES]

## [Part I. FTAA Safeguards]

### Article 1. Scope of Application

1.1 [The Parties] [A Party] may, [on a temporary and exceptional basis and [only] on the terms set forth in this [Chapter],] apply an [FTAA][2] safeguard measure, on imports of [goods] [products] benefiting from the tariff elimination program under this Agreement, [at any time that this Agreement is in force] only during the transition period.[3] [Such a measure shall be applied to all imports of such [goods] [products] originating in the territories of the Parties to this Agreement.]

[1.2 A customs union [, notwithstanding the provision set forth in paragraph 1.1 of this Article,] may apply safeguard measures as a single entity or on behalf of a State Party:

a) As a single entity, in which case the requirements for the determination of serious injury or threat of serious injury shall be based on the conditions existing in the customs union as a whole.

b) On behalf of one of its States Parties , in which case the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in the State Party of the customs union and the measure shall be limited to that State Party.]

[1.3 A Party may [not] [adopt or] maintain an [FTAA] safeguard measure subsequent to the termination of the transition period, provided that the purpose is to deal with cases of serious injury or threat of serious injury that might arise due to the implementation of this Agreement [and only when the exporting Party expressly authorizes it].]

[1.4 Safeguard measures shall not be applied to a [good] [product] [originating] in a Party when that Party's share of total imports of the [good] [product] in question does not exceed [....] [5] or [....] percent [on the last twelve months previous to the presentation of the request for which information is available][4] in the case of [smaller economies and/or economies in different levels of development] [smaller economies].]

### Article 2. Conditions for Application

2.1 [A Party may adopt and apply [following an investigation] a safeguard measure to the imports of a [product] [good] [that benefits from the tariff elimination program established in this Agreement] [from the other Parties], when [as a result of the tariff preferences granted] [under this Agreement] the imports under the preferential tariffs for this [good] [product] have increased in such an amount, in absolute terms [and] [or] in relation to [the totality of the] [domestic] production [or with the domestic consumption], [and] [or] under conditions such as to [constitute a substantial cause] cause [of] serious injury or threat thereof to the domestic industry producing like or directly competitive [goods] [products].] [In determining whether imports have increased, a Party shall cumulatively consider imports from the territories of all other parties to this Agreement.] [that has determined that they individually represent a substantial share of total imports and that they significantly contribute to the injury caused to the domestic production.]

[2.2 A Party shall apply safeguard measures [prior to an investigation] only to the extent necessary to prevent or remedy serious injury, [or threat thereof], and to facilitate the adjustment [of the domestic industry affected].]

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2 The definition of FTAA safeguard is pending.

3 [The definition of transition period is pending.]

4 The amount of percentages to be differentiated and their levels, as well as countries benefiting from this treatment, will be determined in the course of the negotiating process, taking into account the differences in the levels of development and sizes of the economies of the Hemisphere, including those of the smaller economies.

[2.3 Before [imposing] [applying] a [definitive] safeguard measure, each Party [shall ensure that the domestic industry [benefiting from] [affected by] the measure present an] [shall examine and determine the feasibility of the] [adjustment plan] [presented by the domestic industry] [, provided that these circumstances are variables within the control of the industry involved]. The Party that applies the measure shall provide the other Parties with a non-confidential summary of the plan [and a report on its duly substantiated determination].]

**Article 3. Nature of the Measures**

3.1 The safeguard measures [applied] shall [only] consist of tariff measures [or may consist of quantitative restrictions]. [Neither tariff rate quotas nor quantitative restrictions shall be a permissible form of safeguard measure.]

3.2 Tariff measures shall consist [of]:

a) [the suspension of further reductions of any rate of duty provided for under this Agreement for the [good] [product]] [the suspension of the increase in preferences scheduled in the Agreement]; or

b) [an increase in the rate of duty] [the reduction or suspension of the agreed margin of preference [which corresponds to the [good] [product] according to the tariff elimination program established in this Agreement]] for the [good] [product], to a level not to exceed the lesser of:

i) the most-favored nation applied rate of duty in effect [applied] at the time the measure is [taken] [applied]; [or]

ii) [the most-favored-nation applied] rate of duty [based on paragraph .... of Article....] [in effect on the day immediately preceding the date of entry into force of this Agreement]. [; or]

[c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on the good for the corresponding preceding season or for the corresponding season immediately preceding the date of entry into force of this Agreement, whichever is less.]

[3.3 [When the safeguard measure consists of a quantitative restriction] [The preference applicable] [that corresponds to the good according to the Tariff Elimination Program established in this Agreement] at the time the safeguard measure is [adopted] [applied] [it] shall remain in place for a quota of imports, which shall be the average of imports made over the last [....] [three] representative years [for which statistics are available, unless there is clear justification] [[preceding] [corresponding to] the period during which it was determined there was serious injury or threat thereof, unless [the Parties involved agree that there exists]] [of] the need to set a different [level] [quota] so as to prevent or remedy serious injury [is proven].]

**Article 4. Period of Application of the Measures**

[4.1 Safeguard measures may not be applied before [the preference has been in force for] one year [from the beginning of the tariff elimination established in this Agreement, for the [good] [product] subject to the measure].]

4.2 Safeguard measures may be applied for a maximum period of [....] [one year] [three years] [[and] [or] ….[5] for the smaller economies and/or economies in different levels of development] [which shall include [in both cases] any period in which provisional measures had been in force].

[[In order to facilitate adjustment in a situation where] [Where] the expected duration of an [FTAA] safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of

[5] The differentiated period would be determined in the course of the negotiations, taking into account the differences in the levels of development and sizes of the economies of the Hemisphere, including those of the smaller economies.

application of the safeguard.**]** **[**If the duration of the measure exceeds .... years, the Party applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. The extended measures shall not be more restrictive than they were at the end of the initial period, and should continue to be liberalized.**]**

**[**4.3 Safeguard measures may be extended for a period of **[**....**]** **[**one year**]**, **[**once only **]** **[**and **[**…**]**[6] for the smaller economies and/or economies in different levels of development**]**, when it has been determined that, in accordance with the procedures set out in **[**the first part of**]** this **[**Chapter**]**, it continues to be necessary to prevent or remedy serious injury, and that there is evidence that the domestic industry **[**is adjusting**]** **[**has completed the adjustment program**]**.**]**

**[**4.4 When the safeguard measure is terminated, the **[**rate of duty**]** **[**margin of preference**]** that will apply is the rate that would have been in effect on that date according to the **[**tariff elimination**]** program.**]**

4.5 The following conditions and limitations shall be observed in respect of **[**the**]** **[**any**]** procedure that may result in the application of a safeguard measure, pursuant to the provisions of Article 2:

a) **[[**The period during which the investigation procedures for the application of a safeguard measure takes place may not be longer than**]** **[**Any safeguard measure shall enter into effect no later than**]** one (1) year after the date on which the procedures are initiated;**]**

b) **[**The period during which a provisional safeguard measure is applied shall be computed in order to determine the duration of the definitive safeguard measure; and**]**

c) **[**During the extension period of a safeguard measure, the tariff rate shall be phased out until it reaches the applicable rate, in accordance with the tariff elimination program.**]**

**[**4.6 On the termination of a hemispheric safeguard measure, the rate of duty shall be no higher than the rate that, according to Schedule .... of this Agreement, would have been in effect one year after the initiation of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:

a) apply the rate of duty set out in Schedule .... of this Agreement as if the hemispheric safeguard measure had never been applied, or

b) eliminate the tariff in equal annual stages ending on the date set out in Schedule .... of this Agreement for the elimination of the tariff.**]**

4.7 **[**A Party may **[**not**]** apply a safeguard measure against the same **[**good**]** **[**product**]** more than once during the transition period **[**unless the exporting Parties expressly authorize it**]**.**]** **[**Safeguard measures may be applied to the importation of a **[**good**]** **[**product**]** that has been subject to such a measure, provided that a period equal to that of the previously imposed measure has elapsed.**]**

**[Part II. Global Safeguards]**[7]

[6] The differentiated period would be determined in the course of the negotiations, taking into account the differences in the levels of development and sizes of the economies of the Hemisphere, including those of the smaller economies.

[7] A delegation proposes to move Part II: Global Safeguards, comprising Article 10, Global Safeguards, after Article 4.

**[Part III. Procedures and Common Provisions]**

**[Article 5. Investigation Procedures and Transparency Requirements]**

**[**5.1 **[**A Party may only **[**adopt**]** **[**apply**]** a safeguard measure on the imports of **[**another Party**]** **[**or**]** **[**other Parties**]** **[**a specific **[**good**]** **[**product**]]** after an investigation has been carried out in conformity with the procedures established in this **[**Chapter**]**.**]** **[**A Party **[**may**]** **[**shall**]** apply a safeguard measure only following an investigation by the competent authorities of that Party **[**pursuant to procedures previously established and notified to the other Parties**]** **[**in accordance with Articles 3.1 and 4.2(c) of the WTO Agreement on Safeguards; to this end, Articles 3.1 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made part of this Agreement, mutatis mutandis**]**.**]]**

**[**5.X In the investigation described in paragraph 1, a Party shall comply with the requirements of Article 4.2(a) of the WTO Agreement on Safeguards; and to this end, Articles 4.2(a) is incorporated into and made part of this Agreement, mutatis mutandis.**]**

**[**5.2 Each Party shall **[**establish or maintain transparent, effective, and equitable procedures **[**of investigation**]** for the adoption and**]** **[**ensure the**]** consistent, impartial and reasonable **[**application of the safeguard measures **[**based on the principles of transparency, non-discrimination and due process**]** in its legislation.**]** **[**administration of its laws, regulations, decisions, and rulings governing all proceedings under this **[**Chapter**]**.**]]**

**[**5.3 Each Party shall entrust the investigation to determine serious injury or threat thereof to the competent authority it has designated for that purpose. The purpose of the investigation shall be to:

a) assess the volume of the imports of the **[**good**]** **[**product**]** and the conditions under which they occur;

b) confirm the existence of serious injury or threat thereof to the domestic industry; and

c) confirm the existence of **[**a**]** **[**the**]** **[**direct**]** causal relationship between the increase in the imports of the **[**good**]** **[**product**]** **[**or the conditions under which these imports are made**]** and the serious injury or threat of serious injury to the domestic industry.**]**

**[**5.3 In the investigation to determine whether increased imports constitute a **[**substantial**]** cause of serious injury or threat thereof to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the **[**good**]** **[**product**]** concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.**]**

**[**The determination referred to in the preceding sub-article shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the **[**good**]** **[**product**]** concerned and serious injury or threat thereof.**]**

**[**5.4$^{A}$ Safeguard investigations may be initiated **[**ex officio or**]** at the request of a party. **[**If**]** the petition for an investigation **[**is made at the request of a party, the petition**]** shall be made by **[**or on behalf of**]** **[**companies or entities that represent**]** the domestic industry of the similar or directly competitive **[**good**]** **[**product**]**. **[**Safeguard investigations may be initiated at the request of companies or the entities that represent them.**]** The application shall be considered to have been made by the domestic industry or on its behalf when it is supported by domestic producers whose combined production represents more than **[**....**]** **[**50**]** per cent of the total production of the like or directly competitive **[**good**]** **[**product**]**.**]**

**[**5.4$^{B}$ An investigation may be initiated on the basis of a petition or complaint filed on behalf of a domestic industry. Such petition or complaint shall provide a description of the imported **[**good**]** **[**product**]** concerned and such information with respect to each of the factors as is reasonably available to the petitioner or complainant. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this

paragraph. A Party may also institute a proceeding on its own motion or request the competent authorities to conduct a proceeding.**]**

**[**A public version of any petition or complaint, with any confidential information deleted or summarized in accordance with Article .... of this **[**Chapter**]**, shall promptly be made available for public inspection upon being filed.**]**

**[**5.5 The petition should contain information on the petitioner and his/her representativeness, a description of, and information on, the **[**good**] [**product**]** concerned, data on imports, data on domestic output, data demonstrating injury or threat of injury, and cause of the injury or threat of injury **[**and an adjustment plan proposal**].]**

**[**5.5 The request to initiate an investigation shall include the following data:

a) description of the **[**good**] [**product**]**: name and description of the imported **[**good**] [**product**]** concerned, the tariff subheading under which it is classified and the current tariff treatment, as well as the name and the description of the like or directly competitive domestic **[**good**] [**product**]**;

b) representativeness;

i) the names and domiciles of the entities submitting the request, as well as the location of the establishments where the domestic **[**good**] [**product**]** concerned is produced;

ii) the percentage of the domestic production of the like or directly competitive **[**good**] [**product**]** of such entities and the reasons that lead them to state that they are representative of the domestic industry; and

iii) the names and location of all other domestic establishments where the like or directly competitive **[**good**] [**product**]** is produced.

c) import figures: importation data for each of the three (3) full years immediately preceding the initiation of the procedures for the application of a safeguard measure that constitute the basis for the statement that the **[**good**] [**product**]** in question is imported in increasingly larger amounts, whether in absolute or relative terms, vis-à-vis domestic production, as the case may be;

d) figures on domestic production: data on total domestic production of the like or directly competitive **[**good**] [**product**]**, for each of the last three (3) full years immediately preceding the initiation of the procedures on the application of a safeguard measure;

e) data that demonstrates the injury or threat of injury: quantitative and objective indicators that denote the nature and scope of the injury caused or the threat of injury to the domestic industry in question, such as those that show changes in the levels of sales, prices, production, productivity, utilization of the installed capacity, market share, profits or losses, and employment;

f) cause of injury: a list and description of the alleged causes of the serious injury or threat thereof, and a summary of the basis for alleging that the increase in imports of that **[**good**] [**product**]**, with relation to the domestic industry, is the cause of serious injury or threat of serious injury, supported by pertinent information; and

g) criteria for inclusion: the quantitative and objective information that indicates the share of imports from the territory of another Party, and considerations of the applicant on the degree to which such imports contribute significantly to the serious injury or threat of serious injury.**]**

**[**h) presentation of the adjustment plan proposal.**]**

**[**5.6 When carrying out the investigation to determine whether the increase in **[**preferential tariff**]** imports **[**or the conditions under which these imports are made**]** **[**stemming from the tariff elimination program**]** has caused or threatens to cause serious injury to the domestic industry, the competent authority shall evaluate all objective and quantifiable factors relating to the situation of the affected domestic industry, in particular the following:

a) the rate and amount of the increase in imports of the **[**good**]** **[**product**]** concerned, in **[**absolute**]** **[**and relative**]** terms **[**or in relation to the totality of the production or of the domestic consumption**]**;

**[**b) the ratio **[**between preferential-tariff imports provided for in this Agreement and non-preferential tariff imports of any other origin**]** **[**between the imports of the FTAA member countries and the imports of the other origins**]**, and the increase ratio;**]**

c) the share of the domestic market taken by increased imports;

d) changes in the level of sales, production, productivity, utilization of installed capacity, profits and losses, employment, domestic prices, and market share;

**[**e) specific conditions under which the imports were made that contribute to the injury or threat thereof; and**]**

f) other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital.**]**

**[**5.7 In order to determine the appropriateness of the safeguard measures, the existence of a **[**direct**]** causal link between increased imports of the **[**good**]** **[**product**]** concerned **[**or the conditions under which these imports are made**]** and serious injury or threat thereof to domestic production must be demonstrated, on the basis of objective evidence.**]**

**[**5.8 If there are factors other than the increased importation of the **[**goods**]** **[**products**]** that simultaneously injure or threaten to injure a domestic industry, the injury may not be attributed to imports made under preferential tariffs.**]**

**[**5.9 During the course of each procedure, the **[**investigating**]** **[**competent**]** authority:

a) without prejudice to the provisions of the legislation of the Party, after giving reasonable notice, shall hold a public hearing so that importers, exporters, consumer associations, and other interested parties **[**who demonstrate that they may, in fact, be affected by the findings of the investigation and have special reasons for being heard**]** may appear, in person or through representatives **[**duly accredited in writing**]**, **[**to present evidence and be heard**]** **[**to present and address evidence, respond to the obligation, and express their views**]**, with regard to the serious injury or threat of serious injury, and the appropriate remedy, **[**and as to whether or not the application of a safeguard measure would be in the public interest**]**; and

b) shall give all interested parties the opportunity to appear at the hearing and question the interested parties who present arguments during the hearing.**]**

**[**5.10. **[**Except under critical circumstances and in the case of global safeguard measures for perishable agricultural goods,**]** before issuing an affirmative ruling in a procedure to adopt safeguard measures, the investigating authority shall grant sufficient time to gather and examine the pertinent information, hold a public hearing, and give all interested parties the opportunity to prepare and express their points of view.**]**

**[**5.11 Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information shall be required to furnish non-confidential summaries thereof or, if such party indicates that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its

disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.**]**

**[**5.12 **[**A public file shall be established by the **[**investigating**] [**competent**]** authority.**]** Interested parties may access the information in the administrative records of the investigation, except in the case of confidential information.**[**, in sufficient time to defend their interests.**]]**

**[**5.13 The importing Party shall publish in its official journal **[**or other daily newspaper with national circulation**]][**without prejudice to its publication in other daily newspapers with national circulation**]**:

a) **[**rulings**] [**notices**]** on the opening **[**or**] [**and**]** the conclusion of a **[**procedure for the adoption of a safeguard measure**] [**safeguard investigation**] [**. In the case of the ruling to initiate the procedure, such ruling must be published within thirty (30) days, of the submission of the request**]**;

b) **[**the ruling on the adoption of a**] [**notice of the decision to apply a provisional or definitive**] [**definitive**]** safeguard measure **[**and of a provisional safeguard measure**] [**and the amount and duration of the measure; and**]**;

**[**c) **[**the ruling on**] [**notice of a proceeding relating to**]** the extension of **[**the**] [**a**]** safeguard measure **[**and of any decision to extend a measure**]**.**]]**

**[**The information published **[**in the notice**]** shall contain a summary of the criteria that served as the basis for the corresponding ruling.**]**

**[**5.14 The competent authority shall publish a report setting out its findings and reasoned conclusions on all pertinent issues of law and fact. The report shall be promptly notified to the other Party.**] [**The statement of reasons shall provide a description of the imported good concerned, the standard applied, and the findings made, including the information supporting a finding that each of the requirements for imposing a hemispheric safeguard measure pursuant to Article __ is met.**]**

**[**5.15 The Parties shall guarantee that the decisions of the **[**investigating**] [**competent**]** authorities issued in accordance with the stipulations of this **[**Chapter**]** are subject to judicial or administrative review, as laid down in their domestic legislation.**[**Negative rulings on the existence of serious injury or threat of serious injury may not be modified ex oficio by the **[**investigating**] [**competent**]** authority. The **[**investigating**] [**competent**]** authority authorized by domestic legislation to carry out these procedures shall be given all the means needed to carry out its duties.**]]**

**[Article 6. Notification and Consultations]**

**[**6.1 **[**The importing**] [**A**]** Party shall give **[**prompt**]** written notification **[**to the other Part**[**y**] [**ies**]] [**without delay**]** of **[**its intention to **[**start**] [**initiate**]] [**the initiation of**]** a safeguard investigation **[**under Article ___**]**. The notification shall **[**include**] [**be made in writing by the competent authority in **[**a period of ….**] [**the day following**] [[**after**] [**as of**]** publication**] [**as of the initiation of the investigation**]**. It shall contain **[**the main features of the facts under investigation, such as**] [**sufficient background information to support the **[**application of the measures**] [**opening of the investigation**]**, including**]]**:

**[**a) **[**if the investigation is initiated on the basis of a petition or complaint,**]** the names and available addresses of the applicants **[**,their share in the domestic industry of that **[**good**] [**product**]**,**]** and the reasons leading them to claim that they are representatives of the domestic industry;**]**

**[**b) a clear, comprehensive description of the **[**good**] [**product**]** subject to the proceeding, including its tariff classification, and the current tariff treatment thereof, as well as a description of the like or directly competitive **[**good**] [**product**]**;**]**

**[**c) **[**the**]** import **[**figures**]** **[**data**]** **[**corresponding to each of the .... most recent years**]** supporting the argument that this **[**good**]** **[**product**]** is being imported in ever increasing quantities, **[**either in absolute terms or relative to domestic production**]**;**]**

**[**d) **[**the**]** data on the domestic industry of the like or directly competitive **[**good**]** **[**product**]** **[**corresponding to the last .... years**]**; **]**

**[**e) **[**the**]** **[**other**]** data that **[**demonstrates~~s~~**]** **[[**was were taken into consideration to **[**demonstrate**]** **[**attest**]]** the existence of**]** serious injury or threat of serious injury caused by the imports to the sector concerned, in accordance with the data referred to in subparagraphs c) and d);**]**

**[**f) a list and description of the alleged causes of serious injury or threat of serious injury, based on the information required pursuant to subparagraphs a) through d), and a summary of the basis for claiming that the increase in imports of the **[**good**]** **[**product**]**~~,~~ **[**,in absolute terms or relative to the domestic production,**]**~~,~~ is the cause thereof;**]**

g) the deadline by which interested parties may submit evidence and set forth their opinions in writing, so that they may be taken into consideration during the investigation; **[**and**]**

h) the deadline for holding consultations.

**[**i) the information on the applicable statutes;**]**

**[**j) the date and place of the public hearing;**]**

**[**k) the place where the request and other documents presented during the procedure can be inspected; and **]**

**[**l) the name, domicile and telephone number of the office where more information can be obtained.**]]**

**[**6.2 At any stage during the procedure, the Party receiving the notice may request the additional information it deems necessary from the Party that initiated the investigation. **[**The Party that is conducting the investigation shall, if so requested by the Party whose **[**goods**]** **[**products**]** are under investigation, afford said Party access to the public record, including the non-confidential summary of the confidential information used to initiate the investigation or during the course of same.**]]**

**[**6.3 **[**The Parties**]** **[**A Party**]** may not **[**adopt final measures**]** **[**apply or extend a safeguard measure under this **[**Chapter**]]** **[**initiate an investigation**]** without having afforded an opportunity for consultations, the objective of which shall be a mutual knowledge of the facts, the exchange of opinions, and possible clarification of the problem that has arisen. The time period for such consultations shall be .... .**]**

**[[**The Parties may not apply or extend a safeguard measure without affording adequate opportunity for consultations to determine compensation.**]** **[**The main**]** **[**An**]** objective of the consultations shall be to arrive at an understanding regarding the maintenance of a level of concessions substantially equivalent to the measure applied.**]**

**[**Countries with smaller economies shall not grant any compensation.**]**

**[**6.3' Without prejudice to the obligation to provide adequate opportunity to hold consultations, the provisions on consultations are not intended to prevent the authorities of any Party from proceeding without delay to initiate an investigation or to formulate preliminary or definitive, positive or negative determinations, nor to prevent them from applying measures in accordance with the provisions of this **[**Chapter**]**.**]**

**[**6.4 The **[**ruling by which a decision is made to adopt or extend**]** **[**determination to apply**]** a safeguard measure shall be published **[**, as applicable**]** and the other **[**Party**]** **[**Parties**]** shall be notified within a period of .... The **[**notice**]** **[**notification**]** shall contain **[**the findings of the investigation and the reasoned conclusions regarding all the pertinent questions of fact and law, including a description of**]**:

**[**a) evidence of the existence of serious injury or threat of serious injury;**]**

b) a precise description of the **[**product**] [**good**]** in question (including its tariff classification according to the HS );

c) description of the measure proposed or **[**adopted**] [**applied**]**;

d) date of its entry into force and its duration; **[**and**]**

**[**e) when applicable, the criteria and objective information that show that the circumstances laid down in this **[**Chapter**]** for the application of a measure **[**to the other Party**]** are met; **[**the time period for holding consultations **[**to determine compensation**]**; and in the case of extension of a measure, information should also be furnished to show that the industry in question is adjusting.**] [**has complied with the adjustment program**] [**;**]]**

f) **[**the domestic industry that has suffered or is threatened by serious injury.**]]**

**[**6.5 If a **[**definitive**]** safeguard measure is not called for, the investigation shall be closed, **[**the records thereof shall be filed,**] [**and the temporary measures imposed as provided for in Article .... of this **[**Chapter**]** shall be lifted, and an order issued for the return of amounts **[**with the corresponding interest**]** deposited for such purpose or the respective bonds shall be released, as the case may be**].]**

**[**6.6 If **[**, in a period not exceeding three years,**] [**the importing**] [**a**]** Party determines that the reasons that gave rise to the application of **[**the bilateral**] [**a**]** safeguard measure continue to exist, it shall notify the **[**competent authority of the**]** other Part**[**y**] [**ies**]** of its intention to extend the safeguard measure **[**at least ninety (90) days**]** prior to **[**its**] [**the scheduled**]** expiration **[**date**]**, and it shall provide the evidence that the causes that led to **[**its**]** adoption **[**of the measure**]** persist, with a view to initiating the respective consultations, which shall be conducted pursuant to the stipulations of this article. **[**The notifications of extension and ~~of~~ compensation shall be made pursuant to the terms provided in this Article, prior to the expiration of the measures adopted.**]]**

**[Article 7. Provisional Safeguards]**

**[**7.1 In critical circumstances where delay would cause damage to **[**a**] [**the**]** domestic industry producing a like or directly competitive **[**good**] [**product**]** which it would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that imports have increased **[**or the conditions under which these imports are made**]** as a result of the reduction or elimination of a duty pursuant to this Agreement and are causing or threatening to cause serious injury.**]**

**[**The Parties shall not apply provisional measures to smaller economies.**]**

**[**7.2 A provisional safeguard measure may only be applied after a period of …. has elapsed from the **[**initiation of the investigation**]** receipt of the request from the petitioner.**]**

**[**7.3 The duration of a provisional safeguard measure may not exceed .... .**[**and shall adopt one of the forms provided for in article 3.2**] [**200 days during which time the pertinent requirements of Article 5 shall be met.**]]**

**[**7.4 **[**Immediately after**] [**Before**] [**adopting a**] [**applying**]** a provisional safeguard measure, **[**the other Parties shall be notified**] [**a Party shall notify all other Parties**] [**within a period of ….**]**, and **[**shall begin**]** consultations **[**shall begin **[**immediately**] [**promptly**]** after application of the measure**] [**with any Party that is a substantial supplier of the **[**good**] [**product**]** subject to the measure**]**. Said **[**notice**] [**notification**]** shall include the main features of the facts, including the evidence showing the need for the provisional safeguard, and a precise description of the **[**products**] [**goods**]** subject thereof.**]**

**[**7.5 If the subsequent investigation **[**were to**]** show**[**s**]** that the increase in preferential-tariff imports or the conditions of said imports **[**have not caused or threatened to cause serious injury to the branch of**]** **[**are not a substantial cause of serious injury or threat thereof to the**]** domestic industry in question, the amount received under the temporary measures shall be reimbursed promptly or, when such is the case, the bond posted for the purpose shall be released.**]**

**[**7.6 If the imposition of a provisional safeguard results in the imposition of a rate of duty in excess of the rate of duty pursuant to Schedule .... of this Agreement, the excess duties imposed shall be promptly refunded if the subsequent investigation referred to in Article 5 does not determine that increased imports are a substantial cause of serious injury or threat thereof to a domestic industry.**]**

**Article 8. Rights of the Affected Parties**

**[**8.1 A Party **[**intending to apply**]** **[**applying**]** a safeguard measure **[**will**]** **[**shall**]** **[**accord the affected Party or Parties**]** **[**, in consultation with Parties that are substantial suppliers of the **[**good**]** **[**product**]** concerned, provide to such substantial suppliers mutually agreed trade liberalizing**]** compensation in the form of:

a) **[**tariff**]** concessions having substantially equivalent trade effects, or

b) **[**concessions equivalent to the value of the additional duties **[**resulting from the adoption of the safeguard measure**]** **[**expected to result from the application of the safeguard measure**].]]**

8.2 **[**Compensation shall be determined at the consultation stage.**]** **[**Such consultations shall begin within 30 days of the imposition of the measure. If no agreement is reached within 30 days after these consultations commence, any Party that is a substantial supplier shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.**]**

**[**8.3 If **[**they**]** **[**the Party intending to apply a safeguard measure and the affected Parties**]** are unable to agree on a satisfactory solution, the affected **[**Party or**]** Parties may **[**impose**]** **[**apply**]** tariff measures having substantially equivalent trade effects to the measure adopted.**]**

**[**Any Party that is a substantial supplier of the **[**good**]** **[**product**]** concerned shall provide written notification to the Party applying the safeguard measure at least 30 days prior to exercising the right of suspension referred to in Article .... .**]**

**[**The obligation to provide compensation and the right of suspension of substantially equivalent concessions shall terminate upon the later of: (a) the termination of the safeguard measure, or (b) if the Party applying the safeguard measure terminates such measure in accordance with Article .... ,the date on which the rate of duty returns to the rate of duty set out in Schedule …. .**]**

**[**8.4 The Party applying the tariff measure shall do so only to the extent, and for the minimum period of time necessary, for achieving the objective being pursued.**]**

**[Article 9. Safeguards for Specific Sectors]**
**….**

**[Article X. Review of Actions under this Part]**

**[**Disagreements between the Parties concerning the merits and justification for the application **[**or extension**]** of a safeguard measure shall be analyzed and settled following the procedures established under the framework of this **[**Agreement**]** **[**Chapter**]**, based on information and evidence **[**sent to**]** **[**obtained by**]** the competent authority **[**or any others they deem necessary**]** **[**during the investigation**].]**

**[Part II: Global Safeguards][8]**

**[Article 10. Global Safeguards]**

**[**10.1 Each Party preserves its rights and obligations pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, except those referring to **[**compensation or reprisal and the exclusion of a measure,**]** the period of application of a safeguard measure and to the type of measure, where such rights and obligations are incompatible with the provisions of this Article.**]** **[**This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards.**]**

**[**10.2 The Party that decides to adopt a global safeguard measure may only apply it to the imports of another Party when it determines that said imports, taken individually, represent a substantial share of the total imports and contributes significantly to the serious injury or to the threat of serious injury.**]** **[**When a Party decides, pursuant to this Article, to apply a safeguard measure to goods originating in another Party, the measures applied to said goods shall solely and exclusively consist of ad valorem tariff surcharges.**]**

**[**10.3 No measure applied pursuant to this Article shall be maintained for a period greater than three years.**]**

**[**10.3' In order to make this determination, the following criteria **[**, among others, shall be taken into account**]** **[**shall be observed**]**:

a) imports of **[**originating**]** **[**goods**]** **[**products**]** from the other Party shall be considered substantial if they are included among the **[**....**]** **[**three**]** **[**5**]** main supplier countries of the **[**good**]** **[**product**]** **[**taking as the basis their share of imports during the … immediately preceding years **]**. **[**By way of exception, imports from another Party shall be considered substantial if they are included among the ten main supplier countries of the **[**good**]** **[**product**]** to the importing Party when, as a whole, they account for over 25 percent of said imports;**]**

b) a safeguard measure shall not be applied against imports from **[**developing countries**]** **[**the smaller economies and/or economies in different levels of development**]** where such imports, taken individually, do not account for more than 8% of the imports of that **[**good**]** **[**product**]** into the importing Party;

c) imports of **[**goods**]** **[**products**]** from another Party shall not be considered to contribute significantly to the serious injury or threat of serious injury, if their rate of growth during the period in which the injurious **[**sudden**]** increase thereof took place is **[**appreciably**]** lower than the rate of growth of the total imports over the same period. **[**Similarly, the volume of, and changes in, the Party's share in the total imports shall be taken into account to determine whether the other Party's imports contribute significantly to the serious injury or threat of serious injury.**]]**

**[**10.4 The Party applying the measures and that has initially excluded another Party's **[**good**]** **[**product**]** from it shall be entitled to include it afterwards, if the investigating authority determines that an increase in the imports of said **[**good**]** **[**product**]** from the excluded Party causes or threatens to cause serious injury and as a result reduces the effectiveness of the measure.**]**

**[**10.5 **[**A Party shall notify another Party without delay and in writing of the initiation of a procedure that may result in the application of a safeguard measure pursuant to paragraph 1.**]** Under no circumstances may the importing Party apply a global safeguard measure without prior notification in writing **[**to the FTAA administrative body and**]** to the other Party and without first engaging in **[**prior**]** consultations **[**with the other Party**]**.**]**

[8] A delegation proposes to move Part II: Global Safeguards, comprising Article 10, Global Safeguards, after Article 4.

**[**10.6 The Party intending to apply a global safeguard measure shall provide the Party affected by the measure with mutually agreed compensation, in the form of concessions that have trade effects **[**substantially**]** equivalent **[**to the impact of**] [**or that are equivalent to the value of the additional tariffs expected from**] [**to**]** the safeguard measure.**]**

**[**10.7 Unless the Parties agree otherwise, the compensation referred to in the foregoing paragraph shall be determined at the consultation stage.**]**

**[**10.8 If the Parties do not reach agreement regarding compensation, the Party proposing the adoption of the measure shall be authorized to do so, and the affected Party may impose measures that have trade effects **[**substantially**]** equivalent to those of the measure adopted.**]**

**[**10.9 **[**For the purpose of**] [**Before imposing**]** global safeguard measures, each Party shall **[**ensure that the domestic industry or branch of production benefiting from the measure present an**] [**examine and determine the feasibility of an**]** adjustment plan or a plan to overcome the circumstances alleged to cause serious injury or the threat of serious injury **[**, provided that these circumstances are variables that can be controlled by the industry concerned**]** **[**presented by the branch of domestic industry**]**. The Party applying the measure shall furnish the other Parties with a non-confidential summary of the plan **[**and a duly substantiated report of its determination**]**.**]**

**[**10.10 When a Party decides, pursuant to this article, to apply a safeguard measure to **[**goods**] [**products**]** originating in another Party, the measures applied to said **[**goods**] [**products**]** shall solely and exclusively consist of tariff measures.**]**

**[Article 11. Dispute Settlement for matters related to safeguard measures]**

**[**No Party may request the establishment of an arbitral group, pursuant to the provisions in the **[**Chapter**]** on dispute settlement, when it is a matter of safeguard measures that have merely been proposed.**]**

**Article 12. Definitions**

The following definitions shall apply:

**Agreement on Safeguards**: the Agreement on Safeguards, which forms part of the Agreement Establishing the World Trade Organization (WTO).

**Competent authority**: the authority of a Party listed in Annex ...., or those who succeed them.

**[Critical circumstances**: those circumstances in which a delay in the application of the safeguard measure could cause injury difficult to repair;**]**

**[Directly competitive [good] [product]**: that which, while not **[**necessarily**]** similar to the one that it is compared with, is essentially equivalent for purposes of trade being put to the same use and being interchangeable with the latter. **[**To establish whether a **[**good**] [**product**]** is directly competitive, the competent authority shall also consider whether the **[**good**] [**product**]** makes use of the same distribution channels, is sold in the same market, and is purchased by a similar group of consumers.**]]**

**Domestic industry**: the producers as a whole of **[**the**]** similar or directly competitive **[**products**] [**goods**]** operating **[**in**] [**within**]** the territory of a Party, **[**or those whose collective output **[**of the like or directly competitive**] [**products**] [**goods**]** constitutes a major proportion of the total domestic production of those **[**products**] [**goods**]]**.

**GATT 1994**: the General Agreement on Tariffs and Trade of 1994, which forms part of the Agreement Establishing the World Trade Organization.

**[Interested [parties] [party]**: the petitioner; other **[**domestic**]** producers; commercial, trade or business associations in which the majority of the members are producers of the **[**product**] [**good**]** under investigation; foreign producers;

exporters; importers; governments of the exporting or producing Parties **[**; and consumers or associations representing them**]**.**]**

**[[Like] [Similar] [good] [product]**: **[**includes an identical **[**good**]** **[**product**]** and**]** one that, although not the same in all aspects, has similar features and composition, which enables it to perform the same functions and to be commercially interchangeable with the **[**good**]** **[**product**]** it is compared with.**]**

**[Safeguard measure**: **[**all measures applied in accordance with the provisions of this **[**Chapter**]**. This does not include any safeguard measure derived from a procedure initiated before this Agreement entered into force.**]** **[**a hemispheric safeguard measure described in Article 3.2. A "global safeguard measure" is referred to as such in this **[**Chapter**]**.**]]**

**Serious injury**: a significant overall impairment **[**of the situation of a branch of**]** **[**in the position of a**]** domestic industry.

**[Substantial cause**: a cause which is important and not less than any other cause.**]**

**[Substantial supplier**: any Party that for the three years preceding an investigation described in Article 5 was, on average, the territory of origin of at least ten percent, by value, of imports from the Party of the **[**good**]** **[**product**]** subject to a safeguard measure.**]**

**Threat of serious injury**: **[**the clear imminence of serious injury, determined on the basis of facts and not merely on allegations, conjectures, or remote possibilities.**]** **[**serious injury that is clearly imminent. Such a determination shall be made on the basis of facts and not merely on allegation, conjecture, or remote possibility.**]**

**[Transition period**: **[**the ten-year period beginning on the date of entry into force of this Agreement.**]** **[**the period during which a Party may adopt and maintain safeguard measure that shall cover, for each **[**good**]** **[**product**]**, ....**]****[**the period of tariff elimination applicable to each **[**good**]** **[**product**]** under this Agreement.**]]**

# [CHAPTER] ON ORIGIN REGIME

**[ Basic Principle ]**

[The purpose of the FTAA origin regime is to ensure that only goods that qualify as originating benefit from preferential tariff treatment.]

**1) ORIGINATING GOODS**

[Unless otherwise specified,] for the purposes of the [Chapters] of this Agreement the following goods will be considered as originating in the territory of one [or more] of the Parties:

**1.1 ) Goods wholly obtained or produced entirely in the territory of one [or more] of the Parties**

(a) minerals [and other non-living natural resources] [and other natural substances] extracted or taken from the territory of one [or more] of the Parties;

(b) vegetable [goods] [as such goods are defined in the Harmonized System]] harvested or gathered in the territory of one [or more] of the Parties;

[(c) live animals born and raised in the territory of one [or more] of the Parties ;]

[(d) goods obtained from live animals in the territory of one [or more] of the Parties];

(e) goods obtained from hunting, trapping, fishing or aquaculture [conducted] in the territory [or in the territorial waters and exclusive economic zone] of one [or more] of the Parties;

[(f) [fish, shellfish and other marine life] [products] taken from the sea [[outside territorial waters and maritime zones in which the Parties have jurisdiction,] [in accordance with the United Nations Convention on the Law of the Sea] whether] [, seabed or subsoil outside the territory of one or more of the Parties] by vessels registered [or] [,] recorded [or listed] [in] a Party and [flying] [entitled to fly] its flag or by vessels [leased [or chartered] by enterprises established in the territory of a Party;] [not exceeding [15] tons gross tonnage] [that are licensed by a Party]; ]

[(g) goods produced aboard [factory] ships from the goods referred to in subparagraph (e), provided such [factory] ships are registered, recorded [or listed] [in] one of the Parties [and entitled to fly its flag, or by [factory] ships leased by enterprises established in the territory of a Party];]

[(h) goods [other than fish, shellfish and other marine life,] taken [by a Party or a person of a Party] [or extracted] from [beneath] the seabed or subsoil [outside [the] [its] territorial [and patrimonial] waters [and exclusive economic zones], provided that [one of] [the] [that] Party[ies] [have] [or a person of one of the Parties has] rights to exploit such seabed or subsoil][of the continental shelf or the exclusive economic zone of any of the Parties];]

[(h') goods, other than fish, shellfish and other marine life, taken or extracted from the seabed or the subsoil, in the area outside the continental shelf and the exclusive economic zone of any of the Parties or of any other State, as defined in the United Nations Convention on the Law of the Sea, by a vessel registered, recorded or listed with a Party and entitled to fly its flag, or by a Party or person of a Party;]

[(i) goods taken from [outer] space, provided they are obtained by a Party or a person of one [or more] of the Parties and not processed in a non-Party [country];]

[(j) waste and scrap [derived from the use, consumption or industrial processes carried out in the territory of any of the Parties, that are useable only for the recovery of raw materials; and] [derived from] production in the territory of one [or more] of the Parties, or

**[**waste and scrap **[**derived from the use, consumption or industrial processes carried out in the territory of any of the Parties, that are useable only for the recovery of raw materials; and**]** **[**derived from**]]** used goods collected in the territory of one **[**or more**]** of the Parties, provided such goods are fit only for the recovery of raw materials; and**]**

**[**(k) Goods produced in the territory of one **[**or more**]** of the Parties exclusively from goods referred to in the preceding sub-paragraphs **[**or from their derivatives**]**,**[**at any stage of production**]**.**]**

**1.2) Goods produced in the territory of one or more Parties exclusively from materials originating in the territory of one [or more] of the Parties.**

A good shall originate in the territory of one **[**or more**]** of the Parties when the good is produced **[**entirely**]** in the territory of one **[**or more**]** of the Parties exclusively from materials originating in accordance with **[**this Chapter**]** **[**articles 1.1, and 1.3.1 a), alternative 3 **]**.

**1.3) [Goods produced in the territory of one or more Parties from originating and non-originating materials or exclusively from non-originating materials]**

**Option 1**

**[**1.3.1. **[**Goods produced from originating and/or non-originating materials shall be considered originating if they comply with the following conditions:

(a) they result from a production or transformation process carried out in the territory of one **[**or more**]** of the Parties; and this process vests in them a new individuality requiring different classification in the Harmonized System than the non-originating materials;

(b) goods that do not comply with a change in tariff classification, in which originating and non-originating materials from the territory of the Parties are used in the production or transformation process, provided the CIF value of the non-originating materials does not exceed …. percent of the FOB export value of the product **[**in the case of … or …**]**[9]; and

(c) goods that are assembled, provided that originating and non-originating materials from the territory of the Parties are used in their preparation and that the CIF value of the non-originating materials does not exceed … percent of the FOB export value **[**in the case of … or the …**]**[10]

Goods that comply with the Specific Requirements of Origin described in Annex … of this **[**Chapter**]** shall also be considered to originate in the territory of any of the Parties.**]**

**Option 2**

**[**1.3.1[A] A good shall qualify as originating from the territory of a Party when as a result of production occurring entirely in the territory of one or more Parties, each of the non-originating materials undergoes a change in tariff classification specified in Annex **[**…**]** (Specific Rules of Origin) or the good satisfies the applicable requirements of that Annex where no change in tariff classification is required, and where the good satisfies all other applicable requirements of this Chapter. **]**

**[**1.3.1[B] A good shall be considered to have undergone sufficient production when each of the non-originating materials used in the production of the good satisfies the conditions set out for that good in Annex …(Specific Rules of Origin) and the good satisfies all other applicable requirements of this Chapter.**]**

[9] The percentage differentials and their levels in subparagrahs b) and c) will be determined during the course of the negotiations, and will take into account the countries' different levels of development and the size of the economies.
[10] CIF and FOB values referred to in subparagrahs b) and c) may correspond to their equivalent value according to the used transportation means. In the case of Bolivia, equivalent value means the CIF Port value in cases of imports by sea or CIF Border in cases of imports by other means.

**[**1.3.2 [A] Except as provided in Annex … **[**or except for a good of Chapter ____ of the Harmonised System**]**, where a good and one or more of the non-originating materials used in the production of that good cannot satisfy the conditions in Annex … because both the good and the non-originating materials are classified in the same subheading, or under a heading that is not further subdivided into subheadings, the good shall be considered as having undergone **[**sufficient production**][**substantial transformation**]**, provided that the value of the non-originating materials classified as or with the good does not exceed __ percent of the transaction value of the good.**]**

**[**1.3.2[B]. Where the good is produced wholly in the territory of one or more of the Parties, but one or more of the non-originating materials used in producing the good does not undergo a change in tariff classification because:

i) the good has been imported into the territory of a Party without assembly or disassembled, but has been classified as an assembled good in compliance with rule 2 (a) of the General Rules for Interpretation of the Harmonized System, or

ii) the heading for the good is the same both for the good and for its parts and specifically describes them, and this heading is not divided into subheadings, or the subheading is the same both for the good and for its parts and describes them specifically,

shall be considered as originating provide that the regional content value of the good, determined in compliance with Article ….., is not less than ___ percent and the good meets the other applicable requirements in this **[**Chapter**]**, unless the applicable rule of Annex … under which the good is classified specifies a different regional content value requirement, in which case this requirement should be applied.**]**

1.3.3. **[**Fish, shellfish or other marine life that has been taken from the sea, seabed or subsoil by a vessel of a non-Party to this Agreement and that has undergone substantial transformation on board a factory ship outside the territory of one or more of the Parties shall be considered as originating, provided that such factory ship is registered, recorded or listed with a Party and **[**flying**][**entitled to fly**]** its flag.**]]**

**Option 3**

**[**1.3.1 Goods produced from originating and non-originating materials shall be considered originating if they comply with the following conditions:

a) goods produced in the territory of a Party from non-originating materials that undergo a change in tariff classification and other requirements, as specified in the annex to this article and that fulfill other applicable provisions of this **[**Chapter**]**;

b) goods produced in the territory of a Party from non-originating materials that undergo a change in tariff classification and other requirements, and the goods comply with a regional value content requirement, as specified in the annex to this article, and that fulfill other applicable provisions of this **[**Chapter**]**; or

c) goods produced in the territory of a Party and that meet a regional value content requirement as specified in the annex to this article and that comply with the other applicable provisions of this **[**Chapter**]**.

1.3.2 For the purposes of this **[**Chapter**]**, a good shall be produced entirely in the territory of a Party and all regional value content requirements of a good must be satisfied entirely in the territory of a Party.

1.3.3 For determining the origin of a good in accordance with the provisions of subparagraph a) of paragraph 1.3.1, if the good used materials determined to be originating in accordance with subparagraphs b) or c) of paragraph 1.3.1, the non-originating materials incorporated into them must satisfy the change in tariff classification of the good and other requirements, as specified in the annex to this article.

1.3.4 For determining the origin of a good in accordance with the provisions of subparagraph b) of paragraph 1.3.1, if the good used materials determined to be originating in accordance with subparagraphs b) or c) of paragraph 1.3.1, the non-originating materials incorporated in the latter must satisfy the change in tariff classification of the good and other requirements, as specified in the annex to this article, and the value of said non-originating materials shall be included in the calculation of the regional value content of the good, in accordance with subparagraph 1.4.

1.3.5 For determining the origin of a good in accordance with subparagraph c) of paragraph 1.3.1, if the good used materials determined to be originating in accordance with the provisions of subparagraphs b) or c) of paragraph 1.3.1, the value of said non-originating materials shall be included in the calculation of the regional value content of the good, in accordance with paragraph 1.4.

1.3.6. In establishing whether a good is originating, an exporter or producer may accumulate its production with that of one or more producers in its territory of non-originating materials that are incorporated into the good, so that the production of the materials is considered by the exporter or producer, provided it complies with the provisions of paragraphs 1.1, 1.2 and 1.3.1 to 1.3.5.**]**

**Option 4**

**[**1.3.1 Goods shall be considered as originating in the territory of one of the Parties where they have been produced in one of the Parties wholly or partly from non-originating materials by a process which satisfies the conditions therefor specified in the Annex… to this **[**Chapter**].]**

**1.4) [Regional value content]**

**Option 1**

**[**1.4.1 When regional value content is required under Annex I (Product-Specific Rules of Origin) to determine if a good is originating, each Party shall provide that the regional value content of a good shall be calculated on the basis of either of the following methods:

a) Method Based on Value of Non-Originating materials

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

b) Method Based on Value of Originating Materials

$$RVC = \frac{VOM}{AV} \times 100$$

where,

RVC is the regional value content, expressed as a percentage;
AV is the adjusted value of a good;
VNM is the value of non-originating materials acquired by the producer in the production of the good;
VOM is the value of originating materials acquired by the producer for the production of the good.

1.4.2 Adjusted value of a good:

For purposes of the regional value content formulas and the application of de minimis, adjusted value means the customs value of the good as determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the World Trade Organization Agreement on the Implementation of Article VII of the General Agreement on Tariff and Trade 1994 (WTO Agreement on Customs Valuation), adjusted to exclude the following costs, charges, and expenses, when these are not already excluded pursuant to a Party's national legislation: any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

1.4.3 Value of Materials:

Except in the case of indirect materials and packing materials and containers for shipments, for purposes of calculating the regional value content of a good and for purposes of applying the "de minimis", the value of a material shall be:

a) for a material imported by the producer of the good, the adjusted value of the material; or

b) for a material acquired in the territory where the good is produced, except for materials within the meaning of subparagraph c), the price actually paid or payable by the producer of the good; or

c) for a material where the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of:

(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and
(ii) an amount for profit.

1.4.4 Adjustments to the Value of Materials

a) For originating materials, where not included under paragraph 1.4.3 above, the following expenses may be added to the value of the material:

(i) the costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the Parties to the location of the producer,

(ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable, and

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

b) For non-originating materials, where included under paragraph 1.4.3 above, the following expenses may be deducted from the value of the material:

(i) the costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the Parties to the location of the producer,

(ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product, and

(iv) the cost of processing incurred in the territory of a Party in the production of the non-originating material,

(v) the cost of originating materials used in the production of the non-originating material in the territory of a Party.**]**

**Option 2**

**[**A good shall be considered to be originating when in its production or transformation process originating and non-originating materials from the territory of the Parties are used, provided that the CIF value of the non-originating materials does not exceed….percent of the FOB export value of the product **[** …..percent for smaller economies and/or countries in different levels of development**].]**

**[**1.4.1 **[**Except for the provisions of paragraph 1.4.5**][**For purposes of determining whether a good is originating,**]** 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 the transaction value method **[**established in paragraph 1.4.2**] [**or**] [**with the net cost method**] [**established in paragraph 1.4.4 **].]**

**[**1.4.2 For calculating the regional value content of a good, based on the transaction value method, the following formula will be used:

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

where

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good adjusted on an FOB basis. **[**save for the provisions of paragraph 1.4.3**][**If such value does not exist or cannot be determined according to the principles set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated according to the principles set forth in Articles 2 through 7 of said Agreement**]**; and

VNM **[**is the transaction value of non-originating materials adjusted on a CIF basis. If such value does not exist or cannot be determined according to the principles set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated according to the principles set forth in Articles 2 through 7 of said Agreement**]]**. **[**value of the non-originating materials used by the producer in the production of the good, determined in accordance with the provisions of article 1.5**]**

**[**For purposes of calculating regional value content, the value of non-originating materials used in the production of a good shall not include the value of non-originating materials used in the production of an originating material **[**acquired and**]** used in the production of that good.**]**

**[[**1.4.3. For the purposes of paragraph 1.4.2.**]** If the producer of a good does not export it directly, the **[**transaction**]** value shall be adjusted up to the point at which the purchaser receives the good in the territory where the producer is located. **]**

**[**1.4.4. Each Party shall provide that an exporter or producer calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 1.4.4 when:

a) there is no transaction value because the good is not subject to sale;

b) the transaction value of the good cannot be determined due to existing restrictions on the transfer to or use of the good by the buyer, with the exception of those that:

i) are imposed or required by law or by the authorities of the Party where the buyer of the good is located;

ii) limit the geographic territory where the good can be resold; or

iii) do not noticeably affect the value of the good;

c) the sale or the price depend on a condition or consideration, the value of which cannot be determined for the good;

d) part of the proceeds of the resale of the good or of any subsequent transfer or use of the good reverts directly or indirectly to the seller, unless the due adjustment can be made in accordance with article 8 of the Customs Valuation Code;

e) the buyer and the seller are related and the relationship between them influences the price, except as provided in article 1.2 of the Customs Valuation Code;

f) the producer sells the good to a related person and the volume of sale in units of quantity of identical or similar goods sold to related persons during the six-month period immediately preceding the month in which the producer sold the good is greater than 85% of the producer's total sales of said goods during the period; and

g) the good is designated as an intermediate material pursuant to article 4.8 and is subject to a regional value content requirement.**]**

**[**1.4.5. To calculate the regional value content of a good on the basis of the net cost method, the following formula shall be used:

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

where

RVC is the regional value content, expressed as a percentage.

NC is the net cost of the good.

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with article 1.5.**]**

**[1.5) Value of the materials**

1.5.1. For purposes of calculating the regional value content, the value of non-originating goods used by the producer in the production of the good shall be the sum of the values of the non-originating materials, determined in accordance with this article, imported from outside the territory of the Party and that are used in the production of the good or are used in the production of any material used in the production of the good.

1.5.2 Determination of the value of the materials

a) this shall be the transaction value of the material, or

b) in the event there is no transaction value or the transaction value of the material cannot be determined pursuant to the principles of Article 1 of the Customs Valuation Code, shall be calculated in accordance with the principles of Articles 2 to 7 of that Code.

1.5.3 When not considered in subparagraphs a) or b) of paragraph 1.5.2, the value of a material shall include:

a) freight, insurance, packing and all other costs incurred in transporting the material to the port of importation in the Party where the producer of the good is located, except as provided for in paragraph 1.5.4; and

b) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the recovery of these costs, provided recovery does not exceed 30% of the value of the material determined in accordance with paragraph 1.5.2**]**

1.5.4 **[**If the producer of the good acquires a non-originating material in the territory of the Party in which it is located, the value of the non-originating material shall not include freight, insurance, costs of packaging and any other costs incurred in transporting the material from the supplier's warehouse to the place where the producer is located.**]**

1.5.5 **[**The value of an indirect material shall be based on the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.**]**

**1.6) [Specific transformations]**

**[**The determination of requirements for specific transformations shall be established on the basis of **[**compliance with productive processes and/or**]** exclusive use of regional inputs, materials, parts or components.**]**

**[2) SPECIFIC REQUIREMENTS OF ORIGIN]**

**[2.1 Determination and revision.]**

**[**For the determination of specific requirements, consideration may be given to change in tariff classification on the basis of criteria other than general criteria, **[**compliance with basic productive processes,**]** exclusive use of inputs, the accumulation or combination of criteria established in Article 1.3.**]**

**[**Specific Requirements of Origin shall be established in exceptional, duly justified cases. They shall not be restrictive in nature, in terms of constituting obstacles for the competition to equitably tap the advantages stemming from the application of the Liberalization Program of this Agreement.**]**

**[**The specific requirements of origin shall prevail over general criteria for the qualification of origin **[**and shall be adopted when strictly necessary.**]]**

**[**The provisions in the preceding paragraph shall not apply to products wholly produced in the territory of any of the Parties, when only and exclusively originating materials of the Parties were used in their production.**]**

**[**The specific requirements of origin may be amended by the agency in charge of administering the Agreement.**][**The Parties shall define, by common consent **[**and of the agency in charge of administering the Agreement**]**, the procedures, terms and requirements for establishing and revising the Specific Requirements of Origin. In this regard, the level of development of the Parties shall be taken into consideration.**]**

**[**The Parties may request review of a specific requirement of origin **[**by the entity in charge of administering the Agreement,**]** which should examine the Requirement and the reasons justifying its review, and adopt a final decision within six **[**6**]** months of the request for the review.**]**

**[2.2 Cases of non-compliance for justified reasons.]**

**[**The Parties establish the Committee for Regional Integration of Inputs (CRII), the aim of which is to assess cases of non-compliance with a rule of origin, because of the inability of a producer of goods to obtain in the territory of Parties under conditions of timeliness, volume, quantity and price, the materials used by the producer in the production of a good.

The Committee for Regional Integration of Inputs shall be formed and shall be subject by the procedures stipulated in Annex 2.2 and the Regulations thereunder**]**.

**3) TREATMENT OF ACCUMULATION**

**Option 1**

3.1. **[** For determining the origin of a good, materials originating in the other Parties shall be considered as originating in the territory of a Party**] [**and processing carried out in the territory of a Party shall be considered as taking place in the Party in which final production takes place, provided that the materials or goods are transported in accordance with Article 6**]**.

**Option 2**

**[**3.1 For purposes of determining whether a good is originating, **[**the production of the good in the territory of one or more of the Parties by**] [**the exporter or producer of the good may accumulate its production with that of**]** one or more **[**other**]** producers **[**shall be considered to have been performed**]**, in the territory of **[**one or more**] [**any**]** of the Parties, **[**so that the production of the materials is considered as if performed by that producer, provided that **[**the good complies with the provisions of Article 1.3**]]**.**]**

> **[**(a) all non-originating materials used in the production of the good undergo **[**sufficient production**]][**substantial transformation**]** within the meaning of Article 1.3 of this **[**Chapter**]**, entirely in the territory of one or more of the Parties; and
>
> (b) the good satisfies all other applicable requirements of this **[**Chapter**].]**

**Option 3** [11]

**[**3.1. For purposes of determining whether a good is originating, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, the materials originating in the territory of one or more of the Parties incorporated or used in the production of the good shall be considered originating, provided:

a) they are considered originating pursuant to the provisions of article 1.1;

b) they are considered originating pursuant to the provisions of article 1.2; or

c) they are considered originating pursuant to the provisions of subparagraph a) of article 1.3.1.

3.2. For determining whether a good is originating, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, the materials originating in the territory of one or more of the parties incorporated or used in the production of the good shall be considered in the following manner:

[11] Citations to Art. 3.1 mentioned in this alternative refer to the Alternative 3 in Art. 3.1 ("Goods Produced From Originating and Non-Originating Materials")

a) If, for determining the origin of the good in accordance with subparagraph a) of Article 1.3.1, this good used materials that qualify as originating pursuant to subparagraphs b) or c) of article 1.3.1, the non-originating materials incorporated in the latter must undergo the change in tariff classification corresponding to the good and meet other requirements, as specified in the annex to article 1.3;

b) if for determining the origin of the good in accordance with subparagraph b) or article 1.3.1, the good used materials that qualify as originating in accordance with subparagraphs b) or c) of article 1.3.1, the non-originating materials incorporated in the latter must undergo the change in tariff classification corresponding to the good and other requirements, as specified in the annex to article 1.3, and the value of said non-originating materials shall be considered in the calculation of the regional value content of the good, pursuant to article 1.4; or

c) if for determining the origin of the good in accordance with subparagraph c) of article 1.3.1, this good used materials that qualify as originating in accordance with subparagraphs b) or c) of article 1.3.1, the value of the non-originating materials incorporated in the latter shall be considered in the calculation of the regional value content of the good, pursuant to article 1.4.

3.3. For the purpose of establishing whether a good is originating, an exporter or producer may accumulate its production with that of one or more producers, in the territory of one or more Parties, of non-originating materials that are incorporated in the good, so that the production of said materials is considered as if performed by that exporter or producer, provided that the good complies with the provisions of paragraphs 3.1 and 3.2 of this article.**]**

**4) QUALIFICATION OF SPECIFIC TYPES OF GOODS AND MATERIALS**

**4.1) "De Minimis"**

**[**4.1.1 **[**Notwithstanding Article 1.3,**]** a good that does not comply with a change in tariff classification **[**in accordance with Annex …**]** shall be considered as originating if the **[**CIF**]** value of all non-originating materials that do not comply with the requirements of a change in tariff classification does not exceed ___ percent **[**of the adjusted value of the good**] [**of the transaction value of the good pursuant to Article 1.4.2**]][**of the total FOB cost of the good in conformity with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,**]][**provided that:

(a) **[**if the rule of Annex … applicable to the good contains a percentage for the maximum value of non-originating materials, the value of such non-originating materials shall be included in calculating the value of non-originating materials; and**]**

(b) the good satisfies all other applicable requirements of this **[**Chapter**].] [**and**]**

(c) **[**Annex…..(Specific Rules of Origin) does not specifically exempt the good from this provision**]**.

**[**In the case**]** of countries included in Annex XXX (smaller economies) **[**and/or economies at different levels of development**] [**the following percentages shall apply: once the Agreement enters into force, … %, and from 2010 on, … %.**]**

**[**4.1.2 **[**A good that is subject to a regional value content requirement established in Annex … shall not be required to satisfy such requirement if the value of all non-originating materials is not more than (___%) of the transaction value of the good, adjusted on the basis indicated in paragraph 1.4.2 or 1.4.3, as the case may be, or in the cases referred to in subparagraphs a) through f) of paragraph 1.4.5, if the value of all the aforementioned non-originating materials does not exceed (___%) of the total cost of the good.**]]**

4.1.3 **[**Article 4.1.1 does not apply to:

a) goods provided for in chapters 50 through 63 of the Harmonized System; or

b) a non-originating material used in the production of a good provided for in chapters 01 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this article.**]**

4.1.4 **[**In the case of goods classified in Chapters 50 through 63 of the Harmonized System, that do not originate because the fibers and yarns used in the production of the material that determines the tariff classification of the good do not undergo a change in tariff classification as stipulated in Annex … , they shall nonetheless be considered as originating if the total weight of such fibers and yarns in that component is not more than (___%) of the total weight of that component.**]**

**[**In the case described in the previous paragraph, the producer shall not be obligated to comply with any other rule of origin.**] [**This Article shall not apply to goods that member countries wish to except.**]**

**[4.2) Fungible materials and goods]**

**[**4.2.1. For purposes of determining whether a material or a good qualify as originating, the following shall be taken into account:

(a) where originating and non-originating fungible goods and materials are commingled or physically combined in inventory and prior to their export to the territory of another Party do not undergo any productive process or any other operation, the origin of the good may be determined on the basis of any of the applicable inventory management methods **[**agreed between the Parties**][**that are set out in article 4.2.2**.]**

(b) where originating and non-originating fungible materials are used in the production of a good, and are commingled or physically combined in inventory, the origin of the materials shall be determined on the basis of any of the applicable inventory management methods **[**agreed between the Parties**][**that are set out in article 4.2.2.**]**

(c) **[**Once one of the inventory management methods has been selected, it shall be used for the entire period or fiscal year.**]**

4.2.2. The inventory management methods applicable to fungible goods or materials shall be the following:

a) "f-i-f-o" (first in-first out) is the inventory management method by which the origin of the number of units of fungible materials or goods that are first received in inventory are considered the origin, in like number of units, of the fungible materials or goods that first leave inventory;

b) "l-i-f-o" (last in-first out) is the inventory management method by which the origin of the number of units of fungible materials or goods received last in inventory is considered the origin, in like number of units, of the fungible materials and goods that first leave inventory;

c) "averages" is the inventory management method by which, except as provided in subparagraph d), the determination as to whether the fungible materials or goods are originating is made by applying the following formula:

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

where

AOM average of originating fungible materials or goods.

TOM total units of originating fungible materials or goods that are a part of inventory before exiting.

TONM sum total of units of originating and non-originating fungible materials and goods that are part of the inventory before exiting.

d) in the case of a good subject to a regional value content requirement, the following formula is used for determining non-originating fungible materials:

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

where

ANM average non-originating materials.

TNM total value of non-originating materials that are a part of the inventory before exiting.

TONM total value of originating and non-originating fungible materials that are a part of the inventory before exiting.**]**

**4.3) Sets [and][or] assortments.**

**[**4.3.1. **[**Sets **[**and**]** **[**or**]** assortments of goods **[**classified pursuant to rule 3 of the General Rules of Interpretation of the Harmonized System,**]** **[**as well as goods whose description conforms to the Harmonized System Nomenclature, whether specifically that of a set or assortment,**]** shall qualify as originating, provided that:

(a) all the component goods in the set or assortment, including packaging materials and containers, are originating; or

(b) where a set or assortment contains non-originating component goods, including packaging materials and containers:

**Option 1**
(i) each of the goods contained in the set or assortment complies with the corresponding specific rule of origin**]**

**Option 2**
(i) at least one of the component goods, or all the packaging materials and containers for the set or assortment, is originating, and

(ii) **[**a set or assortment of goods shall be considered originating if the value of non-originating goods used in the formation of the set or assortment **[**, adjusted on a CIF basis,**]** does not exceed ____ percent of the value of the set or assortment **[**.**]] [**, adjusted on a FOB basis**]]**, or **[** when a set or assortment of goods is comprised of originating and non-originating goods shall be considered originating if the value of non-originating goods used in the formation of the set or assortment including any non-originating packaging materials and containers for the set, does not exceed __ percent of the transaction value of the set, adjusted on the basis indicated in paragraph 1.4.2 or 1.4.3, as appropriate, or in the cases referred to in subparagraphs a) through f) of paragraph 1.4.5, if the value of all the aforementioned non-originating goods does not exceed (___%) of the total cost of the set or assortment.**]**

The provisions of this section shall prevail over the specific rules set forth in Annex … of specific rules.**]**

**4.4) Accessories, spare parts and tools.**

4.4.1. Accessories, spare parts and tools delivered with the good that **[**usually**]** form part of the same shall be considered as originating if the good originates and shall be disregarded in determining whether all the non-originating materials used in the production of a good undergo the applicable change of tariff classification set out in Annex … provided that:

**[**a) the accessories, spare parts and tools are not invoiced separately from the good, irrespective of whether each is broken down or detailed in the actual invoice; **[**and**]]**

**[**b) the quantity and value of the accessories, spare parts and tools are customary for the good being classified.**]**

4.4.2. **[**Where the good is subject to a **[**value consideration**] [**regional value content requirement**]**, the accessories, spare parts and tools shall be considered to be originating or non-originating materials, as appropriate, for calculating the **[**regional value content of the good.**] [**value of the non-originating materials,**]**

4.4.3. **[**Accessories, spare parts and tools, imported with a piece of equipment, machine, apparatus or vehicle which are part of the normal equipment and which are included in the price thereof or are not invoiced separately, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle.**]**

4.4.4. **[**The corresponding rule of origin shall be applied separately to each of the accessories, spare parts and tools that do not meet the above conditions.**]**

**4.5) Packaging materials and containers for retail sale.**

4.5.1. **[**Except as provided in Article 4.3**,] [**p**]** Packaging materials and containers in which a good is packaged for retail sale shall **[**, if classified as one with the good,**][**in accordance with General Rule 5 b of the Harmonized System,**]** be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification or fulfil any other condition established in Annex …

**[**4.5.2. However, **[**where the good is subject to a regional value content requirement**]**, if the rule of Annex … applicable to the good contains a percentage for the maximum value of non-originating materials, the value of any non-originating packaging materials and containers shall **[**be disregarded in determining the origin of the goods, where the packaging materials and containers are those used usually, and they are classified as one with the goods and are not priced separately.**] [**be taken into account as originating or non-originating, as the case may be, in calculating the **[**value of non-originating materials**] [**regional value content of the good**].] ]**

**4.6) [Packaging] [Packing], materials and containers for shipment**.

**[**4.6.1 **[**Packaging**]** **[**Packing**]** materials and containers in which a good is packed for transport shall be disregarded for the purpose of determining **[**the origin of the good**]** **[.]** whether **[**all**]** the non-originating materials used in the production of the good comply with the applicable change in tariff classification required.

4.6.2 If the good is subject to the regional value content requirement, the value of the **[**packaging**]** **[**packing**]** materials and containers for transport of the good **[**shall be disregarded when determining the origin of the goods.**]** **[**shall be considered to be originating or non-originating, as appropriate, for calculating the regional value content of the good and the value of that material shall be the cost thereof reported in the accounting records of the producer of the good.**]** **]**

**4.7) Indirect materials used in production**

4.7.1. **[**An indirect material shall be considered to be an originating material without regard to where it was produced **[[**and the value of that material shall be the cost thereof reported in the accounting records of the producer of the good**]** **[**or other evidence providing a reasonable indication of its value**]]**.**]**

**[**Indirect materials may include, among others, all those used in the production, verification or inspection of a good but that are not physically incorporated into it; or goods used for the maintenance of buildings or for operating equipment related to the production of the good, including, but not limited to:

(a) fuel and energy;

(b) machines, 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/or buildings;

(e) gloves, glasses, footwear, clothing, safety equipment and safety supplies;

(f) equipment, devices and supplies used for testing or inspecting goods;

(g) catalysts and solvents; and

(h) any other goods not incorporated into the good but whose use in the production of the good can be reasonably demonstrated.**]**

**4.8) Intermediate materials used in production.**

**Option 1**

4.8.1. **[**An intermediate material is defined as a material that is self-produced that contains non-originating inputs and satisfies the conditions required to qualify as originating, and which subsequently is used in the production of final goods in a Party. Non-originating inputs of intermediate materials shall be disregarded for classification of the origin of the final goods of which they are a part.**]**

**Option 2**

**[**4.8.1. For the purposes of determining the origin of a good, a producer of a good may, at the producer's choice, designate any self-produced material used in the production of the good as an intermediate material to be taken into account as an originating or non-originating material, as the case may be, in determining whether the good satisfies the applicable requirements of the rules of origin.**]**

**Option 3**

**[**4.8.1. For purposes of calculating the regional value content in accordance with article 1.4, the producer of a good may designate as an intermediate material any self-produced material used in the production of the good, provided said material complies with the provisions of Articles 1.1 to 1.3 and Article 3.

4.8.2. When the intermediate good is subject to a regional value content requirement in accordance with Annex… , it shall be calculated on the basis of the net cost methods established in article 1.4 and the good must satisfy all other applicable requirements of this **[**Chapter**]**.

4.8.3. For purposes of calculating the regional value content of the good, the value of the intermediate material shall be the total cost that can be reasonably allocated to such intermediate material in accordance with the annex to article 1.4; moreover, the value of the intermediate goods used by the producer in the production of the good shall be the sum of the values of the non-originating materials, determined in accordance with article 1.5, imported from outside the territory of the party and that are used in the production of the good or that are used in the production of any material used in the production of the good.

4.8.4. If a material designated as an intermediate material is subject to a regional value content requirement, no other self-produced material subject to a regional value content used in the production of such intermediate material can, in turn, be designated by the producer as an intermediate material.**]**

**5 ) OPERATIONS THAT DO NOT CONFER ORIGIN**

**[**5.1. When non-originating goods or materials are used, the following operations or processes, **[**among others,**]** shall be considered insufficient to confer origin:

**[**a) the mere dilution with water or another substance that does not materially alter the characteristics of the good.**]**
**[**b) simple operations for conserving the goods during transport or storage, such as airing, refrigeration, removal of damaged parts, drying or the addition of substances;
c) dusting, screening, peeling, classification, selection, washing, cutting;
d) packing, repacking, division into lots or packaging for retail sale;
e) the collection of goods to make sets or assortments;
f) the application of marks, labels or other distinguishing signs;
g) cleaning, including the removal of rust, grease, paint or other coverings;
h) the slaughtering of animals;
i) the application of oils; and
j) the accumulation of two or more of these operations.**]**

**[**A good shall not be considered as originating merely by reason of a change in tariff classification that is the result of:

(a) disassembly of the good into its parts;
(b) a change in the end use of the good;
(c) the mere separation of one or more individual materials or components from an artificial mixture.**]**

**[**Minimal processing operations or a combination of such operations shall not prevent the conferring of origin to a good if it has been sufficiently transformed as a result of other operations or processes.**]**

**[**5.2. Any pricing activity or practice, the objective of which it can be sufficiently demonstrated is to circumvent the provisions of this **[**Chapter**]**, shall not confer origin on a good.**]**

**[**5.3. The provisions of this article shall prevail over the specific rules established in Annex …**] ]**

**6) DIRECT SHIPMENT, TRANSIT AND TRANSSHIPMENT**

**Option 1**

6.1 **[**In order for originating goods to receive preferential treatment, they must have been shipped directly from the exporting Party to the importing Party. For such purpose, direct shipment shall be considered:

a) Goods transported without passing through the territory of a State not a Party to the Agreement; or

b) Goods in transit through one or more States that are not Party to the Agreement, with or without transshipment or temporary warehousing, under the supervision of the competent customs authority, provided that:

i) the transit is justified for geographical reasons or considerations related to transport requirements;

ii) they are not destined for commercial trade or use in the transit State;

iii) they do not undergo, during their transport or warehousing, any operation other than **[**packing**]** **[**packaging**]** loading, unloading or **[**handling**]** **[**or operations**]** to keep them in good condition or ensure their conservation.**]**

**Option 2**

**[**6.1. A good shall not be considered to be originating even when it has been produced in accordance with the requirements of article 1 if, subsequent to its 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.**]**

**[7) INVOICING CARRIED OUT BY THIRD PARTIES]**

7.1 **[**Pursuant to the provisions of this **[**Chapter**]**, goods that are originating shall receive tariff preferences, irrespective of the form or destination of the payment made by the importing Party. In this respect, the commercial invoice may be issued by a third Party, **[**whether or not a member of the Agreement,**]** provided that the goods are shipped directly pursuant to the provisions of article 6.**]**

**[8) DIFFERENTIAL TREATMENT]**

**[9) GENERAL PROVISIONS]**

**[9.1) Application]**

**[**For purposes of this **[**Chapter**]**:

a) the basis for tariff classification is the Harmonized System;

b) the transaction value of a good or material shall be determined in accordance with the principles of the Customs Valuation Agreement ; **[**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.**]]**

**[9.2) Interpretation]**

**[**For the purpose of this **[**Chapter**]** in applying the Customs Valuation Agreement for determining whether a good is originating:

a) the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions; and

b) the provisions of this **[**Chapter**]** shall take precedence over the Customs Valuation Agreement to the extent of the incompatibility.**]**

**[10. DEFINITIONS]**

**[**For the purpose of this **[**Chapter**]**,

**aquaculture:** the farming of aquatic organisms including fish, mollusks, crustaceans and aquatic plants, throughout their rearing or growth period, by effecting change in the rearing or growth process to enhance production, such as regular stocking, feeding, protection from predators, etc.;

**customs authority:**: as defined in the **[**Chapter**]** on Customs Procedures;

**customs value:** the value as determined in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Agreement on Customs Valuation);

**direct production costs and expenditures:** the costs and expenditures incurred during a period in which they are directly to the good, other than the cost or value of direct materials and the cost of direct labor;

**f.o.b.:** free on board;

**fungible goods:** means goods that are interchangeable for commercial purposes, whose properties are essentially identical and for which it is impractical to differentiate one from another by a mere visual examination;

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

**generally accepted accounting principles** the recognized consensus to the substantial authoritative support in the territory of a party, with regard to the recording of income, expenditures, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards can include both broad guidelines for general application and detailed practical standards and procedures.

**good** any merchandise, product, article or material;

**goods wholly obtained or produced entirely in the territory of a party** :

a) mineral goods extracted in the territory of a party;

b) vegetables harvested in the territory of a party;

c) live animals born and raised in the territory of one a party;

d) goods obtained from hunting or fishing in the territory of a party;

e) fish, shellfish and other marine life taken from the sea by vessels registered or recorded with a party and flying its flag;

f) goods produced on board factory ships from the goods referred to in subparagraph (e) provided such factory ships are registered or recorded with a party and flying 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 a party, or

ii) used goods collected in the territory of a party, provided such goods are fit only for the recovery of raw materials; and

i) goods produced in the territory of one or more of the parties exclusively from goods referred to in subparagraphs a) through h), or from their derivatives, at any stage of production;

**identical or similar goods** "identical goods" and "similar goods", respectively, as defined in the WTO Agreement on Customs Valuation ;

**indirect material** 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 production costs and expenditures**: the costs and expenditures incurred during a period, other than the direct production costs and expenditures, direct cost of labor, and the cost or value of direct materials;

**intermediate material**: a material that is self-produced and used in the production of a good, and designated pursuant to Article ro-a.4.8;

**material**: a good that is used in the production of another good **[**and includes a part or ingredient**]**;

**net cost**: total cost minus sales promotion, marketing and aftersales service costs, royalties, shipping and repacking costs, and nonallowable interest costs, in accordance with the provisions in the annex to this article;

**non-allowable interest costs**: interest costs incurred by a producer on its financial obligations that exceed 10 percentage points above the highest interest rate of the debt obligations issued by the central or federal government of the party in which the producer is located, in accordance with the provisions of the annex to this article;

**non-originating good or non-originating material**: a good or material that does not qualify as originating under this “Chapter”;

**packing containers and materials for shipment**: goods used to protect another good during transportation, other than the containers and materials for retail sale;

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

**producer's location**: with respect to a good, the production plant of that good.

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

**related person**: 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 percent or more of the outstanding voting stock or shares of each of them;

e) one of them directly or indirectly controls the other;

f) both of them are directly or indirectly controlled by a third person;

g) together they directly or indirectly control a third person; or

h) they are members of the same family (children, brothers, sisters, parents, grandparents, or spouses);

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

a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials, exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after sales service literature (product brochures, 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, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and aftersales service personnel;

d) recruiting and training of sales promotion, marketing and aftersales service personnel, and aftersales training of customers' employees;

e) product liability insurance;

f) office supplies for sales promotion, marketing and aftersales service of goods;

g) telephone, mail and other communications for purposes of sales promotion, marketing and aftersales service;

h) rent and depreciation of sales promotion, marketing and aftersales service offices and distribution centers;

i) property insurance premiums, taxes, cost 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**: a material that is produced by the producer of a good and used in the production of that good;

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

**total cost**: the sum of the following elements, in accordance with the provisions in the annex to this article:

a) the cost or value of direct materials of production used in producing the good;
b) the cost of direct labor used in producing the good; and
c) an amount for direct and indirect production costs and expenses of the good reasonably allocated to same;

**transaction value:** the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the WTO Agreement on Customs Valuation to include, inter alia, such costs as commissions, production assists, royalties or license fees;

**transaction value of a good:** the price actually paid or payable for a good with respect to a transaction of the producer of the good, in accordance with the principles of article 1 of the Customs Valuation Code, adjusted in accordance with the principles of articles 8.1, 8.3 and 8.4 of said Code, regardless of whether the good is sold for export. For the purpose of this definition, the seller referred to in the Customs Valuation Code shall be the producer of the good;

**transaction value of the good:** including for purposes of this definition sets or assortments of Article 4.3 and of Annex …, means

a) the transaction value of a good when sold by the producer at the place of production,
b) the customs value of that good**,**

adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight or insurance*;*

**transaction value of a material**: the price actually paid or payable for a material with respect to a transaction of the producer of the good, in accordance with the principles of article 1 of the Customs Valuation Code, adjusted in accordance with the principles of articles 8.1, 8.3 and 8.4 of said code, regardless of whether the material is sold for export. For the purpose of this definition, the seller referred to in the Customs Valuation Code shall be the supplier of the material and the buyer to which the customs valuation code refers to shall be the producer of the good;

**used**: used or consumed in the production of goods;

**value of non-originating materials**, including for purposes of this definition non-originating component goods as referred to in Article 4.3 and in Annex …, non-originating accessories, spare parts and tools as referred to in Article 4.4 and non-originating packaging materials and containers as referred to in Article 4.5, means:

i) the transaction value or the custom value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or

ii) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the WTO Agreement on Customs Valuation in the same manner as international transactions, with such modifications as may be required by the circumstances.**]**

**[11) CONSULTATION AND MODIFICATIONS]**

**[**11.1. The Parties create the Rules of Origin Committee, comprising representatives from each Party, which shall meet at least twice a year, and at the request of any Party.

11.2 The Committee shall:

a) ensure effective implementation and administration of this **[**Chapter**]**;

b) reach agreement on the interpretation, application and administration of this **[**Chapter**]**;

c) in relation to non-allowable interest costs, revise on an annual basis, the percentage points on the highest interest rate of the debt obligations issued by the central or federal government, and

d) address any other matter agreed to by the Parties.

11.3. The Parties shall consult regularly to ensure that this **[**Chapter**]** is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this **[**Chapter**]**.

11.4.1 Any Party that considers that this **[**Chapter**]** requires modification to take into account developments in production processes or other matters may submit to the consideration of the Committee a proposed modification along with supporting rationale and any studies that support it. The Committee shall present a report to the Commission for making the pertinent recommendations to the Parties.**]**

**[ANNEX TO ARTICLE 1.3**

**SPECIFIC RULES OF ORIGIN**
**(to be defined)]**

# [CHAPTER] ON CUSTOMS PROCEDURES

## SECTION A. GENERAL PRINCIPLES [AND OBLIGATIONS]

### Article 1.

Each Party shall ensure that the preparation, adoption and application of their laws and regulations related to customs [procedures][matters] do not constitute unnecessary [procedural] obstacles to international trade.

### Article 2. Transparency and dissemination

2.1. Each Party shall make known in a prompt manner to the other Parties and to the general public through the Internet or other [broad] means of dissemination the laws, [regulatory][procedures] [provisions], [general] administrative [rulings], [and guidelines] in force, including their modifications, governing customs [matters][procedures] and in a manner that is accessible [given the legislation [and resources] of each Party].

2.2. Each Party shall promptly [and directly] communicate administrative decisions affecting individuals in a manner established in the legislation of each Party.

2.3. Each Party shall designate [or maintain], one or more points of contact to address and to respond to inquiries from interested persons pertaining to customs [matters][procedures], and shall publish on the Internet or by other [broad] means of dissemination information concerning steps for making inquiries.

[2.4. Each Party shall [inform][publish][notify] in advance any [general provision][regulation] pertaining to customs [matters][procedures] that it proposes to adopt, [and shall provide interested persons and interested Parties a reasonable opportunity to comment on such proposed regulations.][In exceptional circumstances, where a Party may need to adopt regulations on a provisional or interim basis without first providing an opportunity for comments from interested persons and Parties, a Party shall provide interested persons and Parties with a reasonable opportunity to comment before adopting the final regulations. Parties shall issue and [publish] written responses to the comments received from interested persons and Parties.]]

[2.5. Nothing in this article shall require a Party to make available on the Internet or other [broad] means of dissemination administrative rulings issued prior to the entry into force of this Agreement.]

2.6. Nothing in this Article shall require a Party to publish law enforcement procedures and internal operational guidelines related to [methods for inspecting goods,] conducting risk analysis and targeting, if the Party determines that such publication would interfere with law enforcement.

### [Article 3. Facilitation and Simplification [of Customs Procedures]]

[Each Party should establish simplified customs procedures and [customs] legislation that facilitate and simplify the administration of the different customs regimes [based on the best practices agreed upon and generally recognized], [while fostering compliance with tax obligations], [monitoring of customs regimes] [and the protection of the interests of the States]. Their objective shall be to thus establish [harmonized][compatible] [customs] procedures, [of easily understood and readily applied], based on facilitation and simplification of these procedures [to reduce the administration and costs charged to the trading community].]

### [Article 4. Effectiveness and Efficiency]

[4.1. Each Party through their Customs Administration shall establish [or maintain] efficient and effective customs procedures.]

[4.2. Each Party shall use appropriate inspection methods [and appropriate risk control techniques] that will enable monitoring to focus specially on high-risk goods.]

**[**4.3. Each Party **[**will increase the**] [**shall **[**introduce and**]**[**foster greater**]]** effectiveness and efficiency of their controls, by upgrading their infrastructure, training human resources, improving awareness among users, and making use of information technology and electronic media in their communications and establishing mechanisms of coordination between State institutions involved in foreign trade.**]**

**[**4.4. The Parties shall develop **[**and maintain**]** standard methodologies **[**and benchmarks**]** for periodically measuring and evaluating progress to fulfill these objectives.**]**

**Article 5. Automation**

**[**5.1. Each Party **[**shall**]**[**should**]** encourage the use of automation in their customs procedures and controls taking into account the internationally accepted standards **[**in order to facilitate trade among the Parties**]**.**]**

**[**5.2. Each Party **[**shall**]**[**should**] [**adopt**]**[**encourage the establishment of**]** compatible electronic data interchange systems between **[**authorized**]**[**users**]**[**agents**]** and its customs administrations that foster expedited **[**customs clearance**]** procedures.**]**

**[**5.3. Each Party **[**shall**]**[**should**] [**adopt**]**[**encourage the adoption of**]** a uniform core set of data elements required for the administration of national customs regulations and requirements associated with the customs clearance of goods.**]**

**[**5.4. Each Party **[[**shall**]**[**should**]** establish**]**[**shall encourage the establishment of**]** compatible electronic data interchange systems between customs administrations that foster increased cooperation and facilitate information exchange between the customs administrations.**]**

**[**5.5. In adopting and maintaining electronic data interchange systems, each Party **[**shall**]**[**should**] [**foster**]**:

**[**a) **[**make**]** electronic systems accessible to the **[**trading community**]**[**authorized**]**[** users**]**;**]**

**[**b) provide for electronic **[**submission**]**[**presentation**]** and processing of information and data prior to arrival of the goods to allow for release thereof upon arrival;**]**

**[**c) operate electronic/automated customs systems work **[**in conjunction with risk analysis and targeting**]**;

**[**d) provide for the electronic exchange of information for the purposes of, inter alia: tariff classification, proof of value **[**, verification of origin**]** and prevention of illicit customs activities.**]**

**[**e) work toward developing of a set of common data elements for the customs clearance of goods and a compatible electronic systems among customs administrations.**]]**

**[Article 6. Cooperation]**

6.1. The Parties recognize the need for effective and efficient administration of customs administration and undertake to collaborate and cooperate for their mutual benefit.

**[**6.2. The Parties shall foster greater mutual cooperation on issues relating to information exchange **[**, especially electronically**]** and data enhancement. Likewise, the Parties shall establish mechanisms and procedures to prevent, investigate and prosecute illicit customs related activities occuring in their territories.**]**

**[**6.3. Each Party shall inform the other Parties of any conduct or actions that could affect the legitimate interests of another Party, as per **[**a Memorandum of Understanding**] [**Customs Mutual Assistance Agreements**]**.**]**

**[**6.4. The Parties shall establish mechanisms and procedures to provide for effective mutual cooperation, in order to provide Parties needing it with technical assistance with customs modernization, which involves to infrastructure,

technological development, automation, communications, training, combating fraud and illicit customs activities.In pursuit of this objective, the Parties shall afford each other mutual assistance, through the exchange of their experience in, and knowledge of customs.**]**

**[**6.5. The Parties should develop parameters for the bilateral or plurilateral exchange of information related to compliance with customs regulations and requirements.**]**

**[**6.6. The Parties recognize the increasing use of automation and technology in customs operations and they note the varying degrees of development of this capabilities among them. They also recognize that some Parties will need technical and financial assistance to achieve such development. **]**

**Article 7. Integrity**

**[**7.1. Each Party shall implement procedures for the recruitment, training and management of personnel to ensure a high standard of customs service to the trading community and shall ensure compliance with national standards of professional integrity.**]**

**[**7.2. Each Party shall adopt **[**and implement**] [**in their legislation**]**, policies or regulations applicable **[**specifically**]** to **[**customs**]** officials **[**responsible for customs related matters**]** **[**that include provisions on**],** codes of conduct and conflict of interest. **[**Likewise, **[**each Party**]** shall establish internal staffing control system that includes sanctions and disciplinary action.**]]**

**[**7.3. Persons authorized by customs administrations to use the computer systems or means of electronic data transmission shall comply with the security measures established by the customs authorities, including those related to the use of bar codes and confidential or security passwords. Violation of security measures and improper use of those systems shall be punished, pursuant to the national legislation of each Party.**]**

**[Article 8. Combating fraud and other illicit customs-related activities]**

**[**Each Party **[**recognize the importance of**] [**shall adopt **[**and maintain**]]** clear and effective provisions in their **[**customs**] [**and**] [**internal**]** legislation for **[**preventing**] [**and**] [**detecting**]**, combating and sanctioning fraud and other illicit activities and will update it to keep pace with procedural and technological changes.**]**

**[Article 9. Administration]**

**[**9.1. Each Party shall administer in a **[**uniform**] [**consistent**]**, impartial, and reasonable manner all its laws, regulations, and administrative decisions governing customs matters.**]**

**[**9.2. Each Party shall be a member of the World Customs Organization by the second year of entry into force of this Agreement.**]**

## [B. OTHER CUSTOMS PROCEDURES RELATED TO THE ENTRY OF GOODS][12]

**[**Article 10. Advance Rulings**]**

**[**10.1. Each Party shall provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, whether at the request of an importer in its territory or by an exporter or producer in the territory of another Party. Advance rulings shall issued on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning the application of its customs **[**laws and regulations**]** **[**legislation**]**, including classification, **[**origin qualification**] [**valuation,**]** country of origin **[**, or eligibility for preferential treatment under this Agreement**].]**

[12] One delegation requests including section B prior to Article 10.

**[**10.2. Each Party shall adopt procedures for the issuance of advance rulings, including a detailed description of the information required to process an application for a ruling **[**and the procedures for claiming that information contained in that application is business confidential information**]**.**]**

**[**10.3. Each Party shall **[**provide**]** that its respective customs administration:

a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;

b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling **[**no more than**][**in**][**90**]** **[**120**]** days, **[**, extensions may be obtained, in qualified cases,**]** including a **[**full**]** explanation of the reasons upholding the ruling**,** upon request of the person who requested it.**]**

**[**10.4. Each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling, except where there is a request for immediate application of a modified ruling under Article 10.6 of this **[**Chapter**]**.**]**

**[**10.5. Each Party shall provide to any other person **[**requesting an advance ruling**]** the same treatment as it provides to a person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.**]**

**[**10.6. The issuing Party may modify or revoke an advance ruling upon a determination that:

a) the ruling was based on an error:

i) of fact or law, or

ii) in the classification, **[**value or**]** origin of the good or material that is the subject of the ruling;

b) there is a change in law, material fact, or circumstances on which the ruling is based;

c) the ruling is at variance with a judicial decision; or

d) the ruling is at variance with a modification to the applicable rules of origin under this Agreement.**]**

**[**Each Party shall provide that a modification or revocation of an advance ruling shall take effect no less than 60 days after it is **[**issued**][**published**]**, **[**except with respect to any**][**unless the**]** person who **[**received the ruling**]** requests that it be applied upon its publication.**][**The issuing Party shall postpone the effective date of such modification or revocation for a period not less than 90 days if the person to whom the advance ruling was issued has relied in good faith **[**to his detriment**]** on that ruling.**]**

**[**10.7. Each Party may apply such measures as the circumstances may warrant when it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based or that has failed to act in accordance with the terms and conditions of the ruling.**]**

**[Article 11. Review and appeal]**

**[**11.1. With respect to determinations relating to customs matters, each Party shall provide that importers in its territory have access to:

a) at least one level of administrative review independent of the official or office responsible for the decision under review; and

b) judicial **[**or quasi-judicial**]** review of the decision taken at the final level of administrative review.**]**

**[**11.2. Each Party shall grant to any person who has received an advance ruling the same rights of review and appeal of any advance ruling issued by its customs administration that it provides to importers in its territory.**]**

**[Article 12. Confidentiality]**

**[**12.1. Each Party shall maintain the confidentiality of business confidential information provided in connection with the administration of its customs laws, and shall not disclose such information **[**without the specific permission of the person or government providing such information**]**, except to the extent that it may be used or disclosed for law enforcement purposes or in the context of judicial proceedings **[**in accordance with its national legislation and international agreements it has signed on confidentiality**]**.**]**

**[**12.2. **[**Each Party shall specify procedures by which persons or governments may claim that information provided in connection with administration of Customs laws is entitled to treatment as business confidential information under this **[**Chapter**][**Agreement**]**.**][**The information provided on a confidential basis by a Party shall be treated as such by the other Party.**]]**

**[**12.3. Nothing in this Article shall be construed to limit the collection and publication of aggregate import and export statistics.**]**

**[**12.4. Nothing in this Article shall preclude the Parties from sharing information between governments for law enforcement and customs administration purposes **[**as per an appropriate **[**Memorandum of Understanding**][**Customs Mutual Assistance Agreements**]** and **[**as provided for in the Party's national legislation**]]**.**]**

**[Article 13. Penalties]**

**[**Each Party shall maintain measures imposing civil or administrative penalties **[**and, where appropriate, criminal penalties**]**, for violations of its customs laws, regulations and other customs rules governing classification, valuation, country of origin **[**, origin regime**]** and eligibility for preferential treatment, **[**in accordance with this Agreement, **[**and other national customs legislation and international treaties**]]**.**]** **[**Customs administrations shall establish monitoring mechanisms that minimize the opportunity for the commission of unlawful acts.**]**

**[Article 14. [Release][Clearance] and security]**

**[**14.1. Each Party shall adopt procedures providing for the **[**release**][**clearance**]** of goods within a period of time no greater than that required to ensure compliance with its **[**customs**][**domestic**]** legislation.**]**

**[**14.2. Each Party shall adopt procedures allowing goods, to the extent possible, to be **[**released**][**cleared**]** within **[**48**][**24**]** hours of **[**arrival**][**presentation to customs**]**.**]**

**[**14.3. Each Party shall adopt procedures allowing goods, to the extent possible, to be **[**released**][**cleared**]** at the point of arrival, without interim transfer to customs warehouses or other locations.**]**

**[**14.4. Each Party shall adopt procedures allowing for deferred payment of duties arising from the entry of goods.**]**

**[**14.5. Each Party shall adopt procedures allowing **[**importers**][**exporters**]** to withdraw goods from customs prior to the final computation or ascertainment of the duties accruing on entry of the goods **[**subject to acceptance of the applicable security**]**.**]**

**[**14.6. Each Party may require **[**importers**][**exporters**]** to provide security as a condition for the release of goods, when such security is required to ensure that obligations arising from the entry of the goods will be fulfilled **[**in accordance with the provisions of their national legislation**]**.**]**

**[**14.7. Each Party shall ensure that the amount of the security required to ensure payment of duty and taxes shall not exceed the amount chargeable, based on tariff rates under domestic and international law, including this Agreement,

and on valuation in accordance with the Agreement on Implementation of Article VII of GATT 1994.**]** **[**No security shall be required for: (list to be established - e.g.: commercial samples, business traveler goods).**]**

**[**14.8. Each Party shall ensure that any security shall be **[**discharged**][**returned**]** as soon as possible after its customs administration is satisfied that the obligations under which the security was required have been fulfilled.**]**

**[**14.9. Each Party shall adopt procedures allowing:

a) importers to provide security in the form of bonds or other non-cash financial instruments;

b) importers that regularly enter goods to provide security in the form of continuous bonds or other non-cash financial instruments covering multiple entries; and

c) importers to provide security in any other forms specified by the customs administration.**]**

**[**14.10. The Parties shall also provide mechanisms for the cancellation of such security and the **[**timely**]** refund to the importer of any amount found to be in excess of duty actually paid when the customs authorities have received and reviewed all the necessary documentation and have assessed and collected the actual amount due and payable.**]**

**[Article 15. Harmonized System]**

**[**15.1. Each Party shall ensure that its customs tariff and statistical nomenclatures are in conformance with the Harmonized System established pursuant to the International Convention on the Harmonized Commodity Description and Coding System, as provided in Article 3 of the Convention.**]**

**[**15.2. The application by each Party of the Harmonized System does not impose obligations in relation to rates of customs duty. The tariff concessions and rules of origin under this Agreement are expressed in terms of the customs classifications and interpretations of tariff nomenclatures applicable to each Party at the time of the entry into force of this Agreement.**]**

**[Article 16. Risk analysis/targeting methodology]**

**[**Each Party shall **[**employ**]** **[**design**][**foster the development of**]** **[**adopt**]** customs procedures and processing and clearance systems that include risk analysis and targeting methodologies for identifying high and low-risk goods, in order to focus customs enforcement activities on high-risk or **[**unknown risk**]** goods **[**and travelers**]** while facilitating clearance and movement of low-risk goods **[**and travelers**]**. **[**To this end,**]** customs authorities shall **[[**conduct**][**include**]** risk analysis **[**and targeting**]** **[**through processing**]** prior to the arrival of goods **[**and travelers**][**by processing advance**]** **[**of**]** information and data **[**when available**]** to identify those that will be subject to inspection and/or other customs procedures.**]**

**[Article 17. Preshipment inspection]**

**[**No Party shall engage in pre-shipment inspection activities carried out on the territory of a Party, whether such activities are contracted or mandated by the government, or any government body, of a Party.**]**

**[SECTION B. OTHER CUSTOMS PROCEDURES RELATED TO THE ENTRY OF GOODS][13]**

**[Article 18. Temporary [admission][importation] of goods]**

**[**18.1. The Parties shall include in their national legislation procedures allowing for the temporary **[**admission**][**importation**]** of goods, in order to facilitate international trade operations.**]**

**[**18.2. For the purpose of qualifying the temporary **[**admission**][**importation**]** of goods referred to in Article ___ of the **[**Chapter**]** on National Treatment and Market Access of this Agreement:

a) such entry shall be requested by a national or resident of another Party, except when this involves goods indicated in paragraph ___ (advertising films) of said Article; and

**[**b) the good should:

i) be used by the visitor, or under the visitor's supervision, in the exercise of his activity, trade or profession, or for display or demonstration in the case of commercial samples and advertising films;

ii) not be sold or leased or **[**further manufactured or processed**]** while in the territory;

iii) be identifiable;

iv) be presented in quantities no larger than reasonable, given their intended use; and

v) leave the territory within the authorized time period.

**[**c) security shall be posted for the charges that would be owed in the case of final importation, which shall become reimbursable when the good leaves.**]** No security shall be required when the good is originating, or in the case of goods indicated in article…**]]**

**[**18.3. Each Party shall grant duty-free temporary **[**admission**][**importation**]** for the following articles, imported by, or for the use of, a resident of another Party:

a) professional equipment, including software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade or profession of a business person that qualifies for temporary admission pursuant to the laws of the importing country; and

b) articles intended for display or demonstration, including commercial samples, product or service literature and advertising films.**]**

**[**18.4. No Party may condition the duty-free temporary **[**admission**][**importation**]** of a good referred to in the preceding Article, other than to require that such good:

a) be used solely **[**by or under**]** the professional supervision of a resident of another Party in the exercise of the business activity, trade or profession of that person, or for display or demonstration in the case of commercial samples, product or service literature and advertising films;

b) not be sold or leased while in its territory;

**[**c) be accompanied by a security in an amount no greater than **[**x% of **]** the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good. **[**No security shall be required in the case of goods indicated in paragraph ___ (advertising films) of Article ___, cited above**]**;**[**No security shall be required when the good is originating, or in the case of goods indicated in Article XX…**]]**

[13] One delegation requests moving Section B prior to Article 10.

**[**d) be identifiable at the time of its exportation;**]**

e) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission, initially up to one year from date of importation or such longer period as a Party may establish;

f) be imported in no greater quantity than is reasonable for its intended use; and

g) be otherwise admissible into the Party's territory under its laws. **]**

**[**18.5. When the requirements for temporary **[**admission**][**importation**]** are not met, the Parties **[**shall**] [**may**]** apply the corresponding tariffs and any other charges that would apply in the case of final importation of the good, and penalties pursuant to national legislation.**]**

**[**18.6. In the case of temporary **[**admission**][**importation**]** of containers and vehicles for the international transport of goods, the Parties shall authorize their exit by any rapid and economical route. Said containers or vehicles may exit through ports other than the port of entry without any charge, condition, or bond being imposed as a result thereof. The vehicle or carrier removing a container from the territory of a Party may be different from that used to bring it into the territory. For these purposes, a vehicle shall be understood to mean: a truck, tractor truck, tractor-trailer, or tractor-trailer unit, locomotive, railcar or other railroad equipment.**]**

**[**18.7. Each Party, through its customs administration, shall adopt procedures providing for the expeditious **[**release**] [**clearance**]** of the articles subject to temporary admission. To the extent possible, when such goods accompany a resident of another Party seeking temporary **[**entry**][**admission**][**importation**]** of them, and are imported by that person for use in the exercise of a business activity, trade or profession of that person **[**or for personal use as household effects for that person**]**, the procedures shall allow for the articles to be **[**released**] [**cleared**]** simultaneously with the entry of that person.**]**

**[**18.8. Each Party shall, at the request of the person concerned and for reasons deemed valid by the national customs authorities, extend the time limit for temporary **[**admission**][**importation**]** beyond the point initially **[**fixed**][**fixed to a maximum established in the Party's legislation or regulations on temporary importation**]**.**]**

**[**18.9. Each Party shall permit temporarily **[**admitted**][**imported**]** goods to be exported through a customs port other than the one through which they were imported.**]**

**[**18.10. Each Party shall relieve the importer of liability for failure to export a temporarily **[**admitted**][**imported**]** good upon presentation of satisfactory proof to customs authorities that the good has been destroyed **[**under customs supervision**]** within the original time limit for temporary **[**admission**][**importation**]** or any lawful extension.**]**

**Article 19. Reimportation of goods**

**[**19.1. The Parties shall include in their national legislation procedures allowing for duty-free reimportation of goods provided that these goods were declared to the Customs Authorities upon exportation and returned in the same state or condition in which they were exported.**]**

**[**19.2. For purposes of qualifying the duty-free reimportation of goods the repairs or alterations shall not destroy the essential characteristics of the good or change it into a new or commercially different good. Operations to transform an unfinished good into a finished good shall not constitute repair or alteration, without prejudice to a part of the good undergoing repair of alteration.**]**

**[Article 20. [Importation of][Duty-free [entry] of certain] commercial samples and printed advertising materials]**

**[**20.1. The Parties shall promote inclusion in their national legislation of procedures that allow for the importation of commercial samples and printed advertising materials, in order to facilitate and streamline clearance processes, while maintaining, customs control activities.**]**

**[**20.2. **[**Each Party shall grant duty-free entry to commercial samples of negligible value and printed advertising materials imported from the territory of another Party, regardless of their origin, but may require that**] [**For purposes of qualifying for the duty-free importation of commercial samples, the following requirements shall be met**]**:

a) **[**such samples be imported solely for the solicitation of orders**][**shall only be for the purpose of gaining orders for goods or services from the other Party, regardless of whether the goods are originating or whether the services are being**]** provided from the territory of another Party or **[**from a**]** non-Party **[**country**]**; **[**or**][**and**]**

**[**b) **[**they may not be valued at more than xx, nor may they be marked, broken, perforated, or treated in any way other than for purposes of sale or use as samples**] [**such advertising materials be imported in no greater quantity than is reasonable for their intended use**]**.**]]**

**[**20.3. For purposes of qualifying for the duty-free importation of printed advertising materials, the following requirements shall be met:

a) the materials shall correspond to those classified in Chapter 49 of the Harmonized System;

**[**b) the materials shall be imported in packages that do not contain more than one copy of each printed item;**]** and

c) the materials and packages may not be part of a larger shipment.**]**

**[Article 21. Express shipments][Express shipments clearance]**

**[**Each Party shall adopt **[**and maintain**]** procedures to facilitate and expedite clearance procedures for express shipments, while maintaining the appropriate customs control and customs selection activities.**][**Such procedures shall:

**[**a) be consistent and as common as possible between the Parties;**]**

b) provide for separate expedited customs processing for express shipments;

c) provide for pre-arrival processing of information and data related to express shipments;

d) permit submission of a single manifest covering all of the goods in the shipment by the express service company, through, if possible, electronic means;

e) where possible, and with the appropriate guarantees, provide for the release of certain goods through submission of minimal documentation **[**and deferred payment**]**; and

f) provide, in normal circumstances, for the release of express shipments within 6 hours of the submission of necessary customs documentation for release, provided the shipment **[**has been presented to customs**][**arrived at the customs facilities**]**.**]**

**[**The Parties shall provide procedures for accelerated release of goods consigned to courier services and like entities.**]**

**[Article 22. Low value shipment transactions]**

**[**22.1. Each Party shall adopt **[**and maintain**]** simplified, streamlined and expedited procedures for the importation of low value shipments, while maintaining the appropriate customs control and selection. Such procedures shall:

a) establish minimal documentation, data and procedural requirements;

**[**b) permit and encourage the electronic submission of information prior to arrival of the goods;**]** and

c) allow importation without the use of a customs broker.**]**

**[**22.2. The Parties shall provide that, to the extent possible and as appropriate, low-value **[**goods**]** be admitted free of duty.**]**

**[Article 23. Clearance for domestic use]**

**[**23.1. The Parties will provide for the refund of duty and shall publish the circumstances in which such refund may be granted.**]**

**[**23.2. Each Party will maintain legislation and administrative methods which provide for procedures regarding:

a) the presentation by importers of declarations related to entry of goods along with the required supporting documentation; and

b) the expeditious assessment of those declarations by the customs authorities.**]**

**[Article 24. Definitions]**

**[Confidential information***:* information that, if disclosed, would have an adverse effect on the person providing the information or for a third person that had received it from.**]**

**[Business confidential information***:* information that is, by nature, confidential and which is not already published, generally available to third parties, or **[**otherwise**]** in the public domain. **[**Business confidential information includes information the disclosure of which would provide a significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information. Examples of such information may include **[**but is not limited to**]**:

- the terms of sale or contracts relating to importations, including information with respect to transaction quantities and prices;

- internal costs and prices, including manufacturing costs;

- manufacturing processes; and

- profit margins.**]]**

**[Preshipment inspection activities***:* all activities related to the verification of classification, valuation, country of origin, and eligibility for preferential treatment under this Agreement of goods to be exported to the territory of a Party that contracts for or mandates the use of such activities.**]**

**[Customs matters***:* matters pertaining to the classification and valuation of goods for customs purposes, to rates of duty, border taxes and all other import and export charges, to origin determination and eligibility for preferential treatment under this Agreement, and to all other procedural and substantive requirements, restrictions and prohibitions on imports and exports, including such matters pertaining to goods imported or exported by or on behalf of travelers.**]**

**[Customs procedures***:* the set of rules that regulate customs activities, formalities and requirements applied or controlled by Customs Administrations.**]**

**[Low value shipments**: importations whose value does not exceed the amount of **[**(US)$1,000**]** or its equivalent amount in the country's currency or such higher amount as a Party may establish, provided that such importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of meeting the minimum value requirement, and subject to the exceptions listed in Annex …**]**

# [CHAPTER] ON [CUSTOMS] PROCEDURES RELATED TO RULES OF ORIGIN

## 1. DECLARATION AND CERTIFICATION

### [1.1 Certification]

[The [certificate][certification] of origin is [the document], [in written] or [electronic form] [with the handwritten signature of the authorized issuer] [accrediting][certifying] that the goods are in compliance with the provisions governing origin set forth in [this Agreement] [[Chapter] on Rules of Origin]. [The certificate referred to in Annex 1 shall be used to certify that a good exported from the territory of a Party into the territory of another Party qualifies as originating.]]

### 1.2 [Issuance of the Certificate of Origin][[Declaration][Certification] of Origin]

1.2.1[A]. The [certificate][certification] of origin will be issued [to][by] [the producer] [and/or] [the exporter] [and/or] [the entities authorized by the exporting Party for such purpose] [and/or] [the importers]. [[The [certificate][certification] of origin shall be done in the country of final production.]

[1.2.1[B]. Each Party shall allow an importer to make a claim for preferential tariff treatment under this Agreement, based on:

a) a written or electronic certification by the exporter or producer, or

b) the importer's knowledge of whether the good qualifies as an originating good, including reasonable reliance upon information in the importer's possession that the good qualifies as originating .]

[1.2.2[A]. When the exporter is not the producer of the good, the [exporter][competent government authorities or the authorized entity][the importer] shall be the one to draw up and sign [the certificate][the certification], based on [some of][all of] the following alternatives:

a) [their knowledge of whether the good qualifies as originating;][and][or]

b) [[reasonable reliance on] a [representation] [sworn, written] [declaration] by the producer, to the effect that the good qualifies as originating;][and][or]

c) [a [certificate][certification] of origin issued by the producer.]

[The producer of the good shall voluntarily provide the exporter with the corresponding documentation.]

[Nothing in Articles 1.2.1 and 1.2.2 shall be construed to require an exporter or producer to provide a written certificate to any other person.]

[1.2.2[B]. Such certification by the producer or exporter of the good may be completed on the basis of:

i) the producer's or exporter's knowledge of whether the good qualifies as an originating good, or

ii) in the case of the exporter, reasonable reliance upon the producer's written certification that the good qualifies as originating.]

[1.2.3. The certificate referred to in paragraph 1.1 shall contain a sworn declaration by the exporter of the good, attesting to total compliance with the origin provisions of the Agreement and the truthfulness of the information contained therein.]

1.2.4. The **[**certificate**] [**certification**]** of origin shall cover **[**a single importation of one or more goods**]****[**or**]****[**multiple importations of identical goods by the same importer, within a specific period not to exceed **[[**1**]** year**]****[**… months**]** into the territory of one of the Parties.**] [**The **[**certificate**]****[**certification**]** of origin shall cover a single exportation and may not be issued prior to the date on which the commercial invoice is issued.**] [**The commercial invoice shall be presented in every case along with the **[**certificate**]****[**certification**]** of origin**].[**The description of the good shall match the code of the nomenclature recorded on the invoice and shall be presented upon requesting customs clearance.**]**

1.2.5 **[**For the purposes of its presentation for customs clearance:**]**

a) The **[**certificate**]****[**certification**]** of origin shall be valid **[**for …. days**] [**for …years**]** from the date it was issued.

b) The declaration of origin shall be valid for a maximum of **[**….years**]** from the date it was issued, **[**unless there is a change in the conditions of production before then**]**.

1.2.6. The **[**certificate**]****[**certification**]** of origin shall be filled out in the language of the importing Party or the exporting Party. **[**In the latter case, the competent authority of the importing Party may require that the document be translated.**]**

**[**1.2.7. In the event that the goods are temporarily cleared, admitted or stored under control of the customs authority of the Party of destination, the **[**certificate**]****[**certification**]** of origin shall remain in effect for the additional amount of time the customs administration has established for such operations or regimes.**]**

**[**1.2.8. When the goods being traded are invoiced from a third country, regardless of whether or not it is a Party to the Agreement, the producer or exporter of the country of origin shall declare that the goods will be marketed by a third party, and provide the name and other information of the firm that ultimately invoices the operation to its final destination .**]**

**1.3 Formats of the [certificate][certification] of origin [and of the producer's [representation][declaration] of origin]**

**Option 1:**

**[**Once the Agreement has entered into force, the Parties shall adopt a single format for the **[**certificate**]****[**certification**]** of origin and a single format for the declaration of origin of the producer, which may be modified **[**by the agency responsible for administering the Agreement**]**, subject to agreement of the Parties**]**.

**Option 2:**

**[**The **[**certification**]****[**certificate**]** of origin is not to be limited to a prescribed format, but a Party may require that it contain the following core set of data elements (to be determined by the Parties within the framework of the negotiations).**]**

**Option 3:**

**[**For the purposes of this **[**Chapter**]** the Parties shall identify a necessary core set of data elements to certify the origin of the goods.**]**

**[1.4 Issuance of the certificate of origin by certifying entities]**

**[**1.4.1. For the **[**certificate**]****[**certification**]** of origin to be issued, the certifying authority shall be presented with the corresponding request, along with, where applicable, the declaration of origin as described in Article 1.2.2 and all the background information necessary to document that the good meets the applicable requirements, such as:

a) name, corporate name, or commercial name of the requesting party;

b) legal domicile for tax purposes;

c) name of the good to be exported and its tariff classification under the H.S. The description of the good shall match the description in the tariff classification under the H.S. and with the one recorded on the exporter's commercial invoice;

d) evidence showing that the good to be exported complies with the provisions of Articles of the **[**Chapter**]** on Rules of Origin and with the other conditions under this Agreement;

e) evidence for the following components of the good:

i) national materials, components, and/or parts and pieces,

ii) materials, components, and/or parts and pieces originating in other Party,

iii) non-originating materials, components, and/or parts and pieces, indicating origin, tariff classification under the H.S., and, where applicable, value pursuant to Article of the **[**Chapter**]** on Rules of Origin and the percentage they represent in the value of the final good,

f) descriptive summary of the production process; and,

g) sworn statement attesting the truthfulness of the information provided.**]**

**[**1.4.2. The issuance of the **[**certificate**][**certification**]** of origin shall be the responsibility of the certifying authorities of each Party. Each Party shall designate one or more certifying authorities to be responsible for issuing **[**certificates**][**certifications**]** of origin. The certifying authorities may act under federal, national, state or departmental jurisdiction, **[**or any other political type of administrative division that the Parties have**]** having due regard to their requirements for standing technical capacity and suitability for providing such service. The certifying authority established by each Party shall be responsible for monitoring the issuance of the **[**certificate**][**certification**]** of origin.**]**

**[**1.4.3. Requests for the issuance of the **[**certificate**][**certification**]** of origin shall be made by the final producer or exporter of the good in question. The **[**certificate**][**certification**]** of origin shall be issued no later than five (5) working days after submission of the corresponding request, in accordance with the stipulations of this Article. Certificates shall not be valid unless all their fields are duly filled out.**]**

**[**1.4.4. The requesting party shall keep the necessary background information documenting compliance of the good with the prescribed requirements and make it available to the certifying authority that is to issue the **[**certificate**][**certification**]** or to the customs authority of the importing Party when so requested.**]**

**[1.5 Subsequent issuance of the [certificate][certification] of origin]**

**[**1.5.1. Without prejudice to the above provisions on the issuance of certificates, the certifying authority may issue a **[**certificate**][**certification**]** of origin on an exceptional basis after the good or goods in question have been exported, if:

a) it was not issued at the time of export on account of errors, involuntary omissions, or special circumstances; or,

b) it can be shown to the satisfaction of the certifying authority that a **[**certificate**][**certification**]** of origin was issued but was not accepted at the time of importation for technical reasons.

1.5.2. For the purposes of implementation paragraph 1.4.1, in its request, the exporter or producer shall indicate where and when the goods covered by the corresponding **[**certificate**][**certification**]** of origin were exported and the reasons for the request.

1.5.3. The certifying authority may subsequently issue a **[**certificate**][**certification**]** of origin only after verifying that the information provided by the exporter or producer in the request matches the information in the corresponding file, and in the case of the goods referred to in paragraph 1.5.1 a) it shall be accepted by the customs authority of the importing Party within 180 days following the date on which importation into that Party occurred.

1.5.4. A certificate of origin issued subsequently shall be endorsed with the following phrase: "ISSUED SUBSEQUENTLY", and recorded in the "Comments" field on the certificate of origin.**]**

**[1.6 Issuance of duplicate [certificate][certification] of origin]**

**[**1.6.1 Should a **[**certificate**][**certification**]** of origin be stolen, lost, or destroyed, the exporter may request a duplicate from the issuing certifying authority that issued it. Said duplicate shall be issued on the basis of the export documents that it already has, pursuant to the terms of issuance of the certificates.

1.6.2. A duplicate issued in this fashion shall be marked with the word "DUPLICATE" in the "Comments" field of the duplicate certificate of origin for the good.

1.6.3. The duplicate, on which the issue date of the original **[**certificate**][**certification**]** of origin shall appear, shall be valid as of that date**]**.

**1.7 Exceptions**

**[**The Parties shall not require a **[**certificate**][**certification**]** of origin in the following instances:

a) for commercial or non-commercial importation of goods **[**as low value shipments**] [**whose customs value does not exceed **[**1,000**]** U.S. dollars or its equivalent in the domestic currency of the importing Party **[**or a greater value established by each Party**]]**;

b) for importations of goods for which the importing Party has waived the requirement to present a **[**certificate**][**certification**]** of origin.

These exceptions shall only apply in the event that the importation is not part of a series of importations made for the purpose of evading compliance with the certification of origin requirements.**]**

**[1.8 Certificate of provenance]**

**[**The Parties establish the certificate of provenance for the purpose of identifying those goods that are re-exported from a duty-free area of one of the Parties to the territory of another Party, as goods from a third country, provided that the following is observed:

a) the goods have remained under Customs supervision by the re-exporting Party;

b) the goods have not undergone subsequent transformation or any other operation, except commercialization, unloading, reloading, or whatever other operation deemed necessary for the adequate maintenance of those goods; and

c) there is documentary evidence to that effect.

The certificate of provenance shall be filled up and signed by the re-exporter located in the duty-free zone and shall be approved by the **[**competent**][**customs**]** authorities.

Each Party may require that importers within their territory, when importing, from duty-free zones, goods for which they are requesting tariff preferences, must present the corresponding certificate of provenance and the corresponding **[**certificate**][**certification**]** of origin for goods that qualify as originating, under the **[**Chapter**]** on Rules of Origin of this Agreement.

Each Party shall establish, through their duty-free zones, a mechanism for administration and control of such goods, for the purposes of applying this point.**]**

**[1.9 Obligations of certifying entities]**

**[**1.9.1. Each Party shall establish an official body which shall be responsible for issuing **[**certificates**][**certifications**]** of origin and shall coordinate all matters relating to the actions of the certifying authorities.**]**

**[**1.9.2 Each Party shall notify to the other Parties the names of the certifying entities, as well as the registry of the signatures of the officials accredited to issue **[**certificates**][**certifications**]** of origin and shall maintain an up-to-date record of the names, signatures and seals of the officials who are authorized to issue them. Each Party shall send to the agency responsible for administering the Agreement, with sufficient advance notice, any changes to the record, indicating the dates as of which the officials are authorized or no longer authorized to issue **[**certificates**][**certifications**]** of origin.**]**

**[**The entity responsible for administering the Agreement shall maintain an up-to-date record of the certifying entities authorized by each Party to issue **[**certificates**][**certifications**]** of origin. In addition, it will maintain a list of the names, signatures and stamps of the officials authorized to sign the **[**certificates**][**certifications**]** of origin**]**.**[**The entity responsible for administering the Agreement shall communicate the changes to the other Parties no later than … calendar days after the date that the notification is received. Such changes shall take effect once they are received by the Parties. In addition, by the end of each year, the agency responsible for administering the Agreement shall consolidate the record and circulate it among the Parties.**]**

**[**1.9.3 The certifying entities of each Party shall:

a) number consecutively the **[**certificates**][**certifications**]** issued and file a copy for a minimum period of ….years, as of the date of issue thereof. Such file shall also include all the records that serve as a basis for the issue of the **[**certificate**][**certification**]**.

b) maintain a permanent record of all the **[**certificates**][**certifications**]** of origin issued, which shall contain, at a minimum, the number of the certificate, the name of the applicant, and the date it was issued.**]**

**[**1.9.4. The competent government agency in matters of origin of each Party, shall have the following functions and obligations:

a) to verify, where necessary, the declarations of origin presented;

b) to supervise the certifying entities authorized to issue **[**certificates**][**certifications**]** of origin;

c) to follow the procedures referred to in this **[**Chapter**]**; and

d) to provide the Parties and the entity responsible for administering the Agreement with information and cooperation in relation to the matters covered in this **[**Chapter**]**.**]**

**[**1.9.5. The competent government agency in matters of origin shall require that the agencies authorized to certify the origin of goods comply with the following obligations:

a) verify the truth of the declarations of origin presented;

b) present reports on compliance with this **[**Chapter**]**;

c) provide the means necessary for supervising their actions; and

d) provide the other Parties with the administrative co-operation required for the control of proof of origin.**]**

**1.10 Obligations relating to importations**

**[**1.10.X. Each Party shall grant any claim for preferential tariff treatment under the Agreement made in accordance with its provisions, unless it possesses information that the claim is invalid.**]**

1.10.1 Each Party **[**shall require**][**may require**] [**that**]** an importer who applies for preferential tariff treatment for a good imported into its territory from the territory of another Party to:

a) declare in the import document required by its law, **[**based on a valid **[**certificate**][**certification**]** of origin,**]** that the good qualifies as originating;

**[**b) have the **[**certificate**][**certification**]** of origin **[**issued by another person**]** in its possession at the time the declaration referred to in sub-paragraph a) is made; **[[**except**]** in those circumstances where such certification **[**forms the basis for a claim**] [**is not required**]**;**]]**

c) provide a copy of the **[**certificate**][**certification**]** of origin when its customs authority so requests;

**[**d) submit without delay a corrected import document and pay the corresponding customs duties when the importer has reason to believe that the **[**certificate**][**certification**]** of origin on which its import declaration is based contains inaccurate information. When the importer **[**voluntarily**]** complies with the above obligations, it shall not be penalized; **[**and**]]**

**[**e) prove to the customs authority, when appropriate, that the requirements **[**have been met**]** for **[**re-exportation,**]** direct shipment, transit and transshipment established in the **[**Chapter**]** on Rules of Origin.**][**, when its customs authority so requests.**]]**

**[**f) in those cases where an importer is making a claim for preferential treatment on the basis of certification by a producer or exporter, that the importer, at the importer's option, either provide or have in place an arrangement to have the producer or exporter provide, at the request of that Party's customs administration, all information relied upon by such producer or exporter in making such certification;

g) in those cases where an importer is making a claim for preferential treatment on the basis of information in its possession, that the importer provide substantiating information upon request.**]**

**[**1.10.2 Each Party **[**shall**][**may**]** provide that, when an importer fails to meet any of the requirements established in this **[**Chapter**]**, in the **[**Chapter**]** on Rules of Origin or in the **[**Chapter**]** on National Treatment and Market Access, the preferential tariff treatment being requested for the good imported from the territory of another Party **[**shall**][**may**]** be denied.**]**

**[**1.10.3 An importer requesting preferential tariff treatment shall keep the **[**certificate**][**certification**]** of origin and all documentation relative to the importation for a period of **[**5**][**6**]** years from the date of the importation.**]**

**[**1.10.4 Each Party shall provide that, where, at the time of importation, an importer has not requested preferential tariff treatment for a good that would have qualified as originating, the importer may **[**request that its customs authority**]** refund the excess customs duties paid**]**, make a claim for preferential treatment and apply for a refund**]** within **[**4**][**1**]** …year**[**s**] [**180 days**]** from the date of the importation, provided that the request is accompanied by:

a) a written declaration, stating that the good did qualify as an originating good at the time of importation;

b) a copy of the valid **[**certificate**][**certification**]** of origin **[**covering the imported goods, issued in accordance with the terms of Article 1.2;**]** and,

c) any other documentation relating to the importation of the goods as that Party's customs authority may require.**]**

**[**1.10.5. If the Customs Authorities of the importing Party for any reason do not consider the **[**certificate**][**certification**]** of origin presented by the importer to be adequate or accurate, it may not interrupt the process of importation of the merchandise. In such case, the customs authorities of the importing Party may take any action necessary to safeguard the fiscal interests of the importing Party, in addition to requesting the appropriate information from the authorized body in the exporting Party.**]**

**1.11 Obligations relating to exportations**

**[**1.11.1 Each Party shall require that its exporter or producer, **[**who has **[**filled out**][**provided**]** and signed a **[**certificate**][**certification**]** or **[**declaration**]** of origin**] [**that has presented a request to the certifying authority on the basis of which a **[**certificate**][**certification**]** of origin was issued,**]**, shall deliver a copy to its **[** customs authority**][**the customs authority of the importing country**] [**when the latter so requests**].]**

**[**1.11.2 Each Party shall stipulate that when an exporter or producer who **[**has **[**filled out and signed**][**executed**]** a **[**certificate**][**certification**]** or a **[**declaration**][**representation**]** of origin**] [**has presented a request to the certifying entity on the basis of which a **[**certificate**][**certification**]** of origin was issued**]** has reason to believe that it contains incorrect information must act without delay to notify in writing any change that could affect the accuracy or validity of the certificate **[**the request submitted to the certifying authority that issued the certificate of origin so that, if deemed necessary,**]** a corrected **[**certificate of origin must be**] [**certificate**][**certification**]** or **[**declaration**][**representation**]** of origin may be issued to all persons to whom it may have delivered as well as **[**the competent authority**][**its customs administration**]**. In these cases, the exporter or producer **[**can not be**]** penalized for having submitted an incorrect **[**certification**] [**request**][**declaration**].]**

**[**1.11.3 The customs administration of the exporting Party shall communicate in writing to the customs administration of the importing Party regarding the notification referred to in Article 1.11.2. When the customs administration of the importing Party learns of the use of false **[**certificates**][**certifications**]** of origin, the customs administration of the exporting Party shall be promptly notified.**]**

**[**1.11.4 Each Party shall stipulate that the delivery of a false **[**certificate**][**certification**]** or declaration of origin by an exporter or producer, or any false documents presented by the exporter or producer for the issuance of the corresponding **[**certificate**][**certification**]** of origin, indicating that a good that is to be exported to the territory of another Party qualifies as originating, shall have the same legal consequences, with the appropriate modifications as required by the circumstances, as would apply to an importer in its territory who made false statements or representation in contravention of its customs laws and regulations. In addition, it may apply such measures as warranted by the circumstances, when the exporter or producer fails to comply with any of the requirements of this **[**Chapter**].]**

**1.12 Record keeping requirements**

**[**1.12.1 Each Party shall stipulate that:

a) **[**The exporter, the producer**][**The certifying entity**]** that issues a **[**certificate**][**certification**]** or a **[**declaration**]** of origin shall maintain, for a **[**minimum**]** period of **[**5**] [**6**]** years from the date the **[**certificate**][**certification**]** or **[**declaration**]** of origin was **[**issued**] [**signed**]**, all records and documents related to the origin of the good required to demonstrate that a good qualifies as originating, including records associated with:

i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory;

ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and

iii) the production of the good in the form in which the good is exported from its territory.

In an origin verification process, when requested, the exporter or producer shall provide the customs authority of the importing Party with the records and documents referred to. If the records and documents are not in the possession of the exporter or producer, he may ask the producer of the good or supplier of the materials to furnish the records and documents so that, with the latter's authorization, he can deliver them to the customs authority conducting the verification;**]**

**[**1.12.X. Each Party may stipulate that:**]**

**[**b)**]** The importer claiming preferential tariff treatment **[**into the territory of the importing Party**]** shall maintain and make available to the customs administration in that territory, for a **[**minimum**]** period of **[**5**][**6**]** years from the date of importation of the good, a copy of the **[**certificate**] [**certification**]** or **[**declaration**]** of origin **[**, if applicable,**]** and all other documents required by the importing Party relating to the importation of the good. **]**

**[**1.12.2. The competent government authorities of the Parties may examine the **[**certificates**][**certifications**]** of origin after entry for consumption or customs release of the good and, if relevant, apply the corresponding sanctions in accordance with their national legislation.**]**

**2. ADMINISTRATION OF THE RULES OF ORIGIN**

**[2.1 Competent authorities]**

**[**The competent authority of the FTAA on Administration of the Rules of Origin shall be a **[**Committee**] [**Working Group**]** that shall be responsible for the application, interpretation, administration and modification of this Rules of Origin Regime and Customs Procedures, which shall be subordinate to the TNC and shall be composed of a representative of the competent authority of each Party, is hereby established. It shall meet at least once a year, or at the request of any of them.**]**

**[2.2 Uniform and consistent interpretation and application]**

**[**For the purposes of this **[**Chapter**]**:

a) The Harmonized System **[**in force and effect as of the date of this **[**Agreement**]** shall be the basis for the tariff classification in this **[**Chapter**]**.**]**

**[**b) The determination of whether a heading or subheading under the Harmonized System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the General Rules of Interpretation, the Chapter Notes or the Section Notes of the Harmonized System.**]**

**[**c) The Customs Valuation Agreement **[**of the WTO**]** shall be used **[**as a basis**]** for determining the value of a good or a material, and it shall be considered that:

i) the principles of the Customs Valuation Agreement shall apply to domestic transactions, with the changes required by the circumstances, as they would be applied to international transactions;

ii) the provisions of this **[**Chapter**]** shall prevail over those of the Customs Valuation Agreement;

**[**iii) one Party may only accumulate origin with goods originating from countries to which this Agreement applies;**]**

**[**iv) in cases where there is no specific common rule of origin with regard to a good for all the Parties, the rules of origin of this **[**Chapter**]** shall apply only between the exporting Party and the importing Party, considering the other Parties that do not have said specific common rule of origin as non-Party countries.**]]**

**[2.3 Incorporation of modifications]**

**[**2.3.1. The **[**Committee**] [**Working Group**]** on Rules of Origin and Customs Procedures, established by the Parties shall present a report on the proposed modifications to the entity responsible for the administration of the Agreement, which shall issue any rulings it may consider pertinent.**]**

**[**2.3.2. The **[**Committee**][**Working Group**]** on Rules of Origin and Customs Procedures, shall have the following functions, inter alia:

a) propose to the TNC amendments to this **[**Chapter**]**, as required;

b) endeavor to agree on:

i) the interpretation, application, and administration of this **[**Chapter**]**;

ii) tariff classification and valuation matters relating to rulings to determine origin;

iii) modifications to the **[**certificate**][**certification**]** or **[**declaration**]** of origin referred to in Article 1.1;

iv) any other matter referred to it by a Party;

c) examine proposals for customs-related administrative or operational modifications related to this section that could affect trade flows among the Parties.**]**

**[**Any Party considering that this **[**Chapter**]** needs to be modified to take into account changes in productive processes or other issues may submit the modification proposal to the other Parties, together with the supporting reasons and studies, for examination and adoption of such measures as appropriate in accordance with this **[**Chapter**].]**

**[**No provision in this **[**Chapter**]** shall be construed as preventing a Party from issuing a ruling to determine origin or from taking such other action as it considers necessary because it is awaiting resolution of a matter submitted to this Committee.**]**

**[2.4 Advance rulings]**

**Option 1:**

**[**The Parties agree that advance rulings on origin may be issued, at the request of an exporter from a third country, an importer or any person having a good reason to do so, in keeping with the legal requirements set forth in the national legislation of the respective countries.**]**

**Option 2:**

**[**2.4.1 Each Party shall stipulate that, through its **[**competent **][**customs **]** authorities, advance rulings shall be promptly issued, in writing, prior to the importation of a good into its territory. These advance rulings shall be issued by the **[**competent**][**customs**]** authorities of the territory of the importing Party at the request of the importer, or of the exporter or producer of the other Party, on the basis of the facts and circumstances stated by them, and with regard to:

a) whether the good qualifies as originating, in accordance with the **[**Chapter**]** on Rules of Origin;

b) **[**whether the method applied by the exporter or producer in the territory of another Party, in accordance with the principles of the Customs Valuation Agreement to calculate the value of a good or of the materials used in the production of a good, for which the advance ruling is requested, is appropriate for determining whether the good satisfies the regional value content, in accordance with the **[**Chapter**]** on Rules of Origin;**]**

c) **[**whether a good that re-enters its territory after having been exported from its territory to the territory of another Party for the purposes of repair or alteration qualifies to receive duty-free treatment, in accordance with the article on goods re-imported after being repaired or altered in the **[**Chapter**]** on…;**]**

d) **[**whether the marking of the country of origin made or proposed for a good meets the requirements established in the article on country of origin marking; and**]**

e) other issues agreed by the Parties.**]**

**[**2.4.2 Each Party shall adopt procedures for issuing advance rulings, to include:

a) information reasonably required in order to process the request;

b) the power of its **[**competent authority**][**customs administration**]** to at any time request additional information from the person requesting the advance ruling during the process of evaluating the request;

c) the obligation of the **[**competent authority**][**customs administration**]** to issue the advance ruling in a complete, substantiated and reasoned **[**manner**]**, once it has obtained all the necessary information from the person requesting it.**]**

**[**2.4.3 Each Party shall apply advance rulings to imports to its territory, as of the date of the issuance of the ruling, or as of a later date indicated therein, unless the advance ruling is amended or repealed, pursuant to the provisions of paragraph 2.4.5.**]**

**[**2.4.4 Each Party shall grant **[**any**] [**other**]** person requesting an advance ruling the same treatment, interpretation, and application of the provisions of the **[**Chapters**]** on Market Access and Rules of Origin as it has granted to **[**any**] [**other**]** person to whom it has issued an advance ruling, when the facts and circumstances are identical in all essential respects.**]**

**[**2.4.5 The advance ruling may be amended or repealed by the **[**competent **][**customs**]** authorities in the following cases:

a) when the advance ruling was based on an error:

i) of fact;

ii) in the tariff classification of the good or of the materials that are the object of the ruling;

iii) **[**in the application of the regional value content, pursuant to the **[**Chapter**]** on Rules of Origin;**]** or

iv.) **[**in the application of the rules for determining whether a good that re-enters its territory after having been exported from its territory to the territory of another Party for repair or alteration qualifies to receive duty-free treatment, pursuant to the **[**Chapter**]** on National Treatment and Market Access;**]**

b) **[**when the ruling is not consistent with an interpretation that the Parties have agreed upon, with regard to the **[**Chapter**]** on **[**National Treatment and Market Access**] [**Rules of Origin**]** or an amendment regarding the country of origin marking;**]**

c) **[**when there is a change in the circumstances or facts on which it was based;**]**

d) **[**for the purpose of applying an amendment to the **[**Chapter**]** on National Treatment and Market Access, to **[**Chapter**]** on Rules of Origin, to this **[**Chapter**]**, or to the Uniform Regulations;**]** or

e) **[**for the purpose of enforcing an administrative or judicial decision or adapting to a change in the legislation of the Party that has issued the advance ruling.**]]**

**[**2.4.6 Each Party shall stipulate that any amendment or repeal of an advance ruling shall take effect on the date it is issued or on a later date established therein, and may not be applied to importations of goods made prior to these dates, unless the person to whom it was issued failed to act in accordance with its terms and conditions.**][**Nevertheless, if an importer requests retroactive application of an amendment or repeal of such a ruling, a Party may grant retroactive application.**]**

**[**2.4.7 The Party issuing an advance ruling may review it to establish that it is still valid. **[**Nevertheless, the Party issuing the advance ruling shall postpone the date of the entry into force of the amendment or repeal for a period not exceeding **[**90**][**30**]** days, when the person to whom the advance ruling was issued has relied on it in good faith **[**and to his detriment**]**.**]]**

**[**2.4.8 Each Party shall stipulate that in examining the regional value content of a good for which an advance ruling was issued, its **[**competent authority**][**customs administration**]** shall assess whether:

a) the exporter or producer is complies with the terms and conditions of the advance ruling;

b) the operations of the exporter or of the producer are consistent with the circumstances and essential facts on which that ruling is based;

c) the substantiating data and calculations used in applying the criterion or the method for calculating the value are correct in all essential respects.**]**

**[**2.4.9 Each Party shall stipulate that, when its **[**competent authority**][**customs administration**]** determines that any of the requirements established in the above **[**Article**][**Paragraph**]** have not been met, it **[**may**][**shall**]** amend or repeal the advance ruling, as circumstances warrant.**]**

**[**2.4.10 Each Party shall stipulate that, when its **[**competent authority**][**customs administration**]** determines that the advance ruling is based on incorrect information, the person to whom it has been issued shall not be sanctioned if that person shows that he/she acted with reasonable care and in good faith in representing the facts and circumstances that gave rise to the advance ruling.**]**

**[**2.4.11 Each Party shall stipulate that, when an advance ruling is issued to a person who has falsely represented or omitted substantial circumstances or facts on the basis of which the advance ruling was issued, or who has not complied with the terms and conditions thereof, the **[**competent authority**][**customs administration**]** issuing the advance ruling **[**may**][**shall**]** apply the measures, **[**as the circumstances warrant,**]** including sanctions, established in its legislation.**]**

**[**2.4.12 The Parties shall stipulate that the holder of an advance ruling may use it only while the facts and circumstances on the basis of which it was issued continue to exist. Otherwise, the holder of the ruling may present the necessary information so that the issuing authority may proceed pursuant to the provisions of paragraph 2.4.5.**]**

**[**2.4.13 No advance ruling shall be issued for a good that is subject to a verification of origin procedure or to any review or appeal proceeding in the territory of any of the Parties.**]**

**2.5 Review and [appeal]**

**[**2.5.1 Each Party shall grant exporters or producers of another Party **[**substantially**]** the same rights of review and appeal of **[**origin decisions, determinations, rulings**]****[**origin determinations**]** and advance rulings provided for their importers.**]**

**[**2.5.2 These rights referred to include access to at least one administrative process of review, independent of the official or entity responsible for the ruling to determine origin or the advance ruling subject to review, and access to a judicial **[**or parajudicial review process of the decision made in the last instance of administrative review, pursuant to the legislation of each Party.**]**

**[2.6 Regulations]**

**[[**The Parties**]** **[**The Administrative Commission**]** shall establish regulatory standards for interpretation, application, and administration of the **[**Chapters**]** on National Treatment and Market Access for Goods, of the **[**Chapter**]** on Rules of Origin, and of this **[**Chapter**]**, which may be amended at any subsequent time.

Topics that shall be regulated through regulatory standards are:

a) format and instructions for completing the **[**certificate**]****[**certification**]** and **[**declaration**]** of origin;

b) deadline for providing the customs authority with a copy of the **[**certificate**]****[**certification**]** of origin ;

c) opportunity to correct import documents because of errors in the **[**certificate**]****[**certification**]** of origin;

d) Time period for which the importer must keep the **[**certificate**]****[**certification**]** of origin and any other documentation relating to the importation;

e) requirements that the importer must meet in order to apply, after importation, for a refund of customs duties due to prior failure to apply for preferential tariff treatment;

f) time period during which the exporter must keep records and documents related to the origin of the good and manner in which they are to be kept;

g) definition of imports exempted of the **[**certificate**]****[**certification**]** of origin requirement;

h) regulation of other means of verification of origin that may be agreed upon by the Parties (verification services);

i) requirements for validity of notifications of means of verification;

j) general or specific verification questionnaire;

k) deadline for responding to the questionnaire;

l) possibility for the exporter to request an extension of the deadline for responding to the verification questionnaire;

m) authorities and persons who must be notified of the verification visit;

n) communication between customs administrations to determine which authority should be notified of the verification visit;

o) contents of the notice of verification visit;

p) amendments to the above notice;

q) request to the importer for information on the origin of the goods;

r) deadline for consenting to the visit;

s) deadline for requesting postponement of the verification visit;

t) procedure for issuing advance rulings;

u) powers of the customs authority to reject on the grounds that it lacks a request for an advance ruling due to a lack of sufficient information**]**;

v) **[**other topics as the Parties agree.**]**

## 3. VERIFICATION [AND CONTROL] OF ORIGIN

### 3.1 Procedures for verifying origin

**[**3.1.1 The **[**competent**][**customs**]** authority of the importing Party may not prevent customs clearance of the goods solely on the basis of doubt as to the authenticity of the **[**certificate**][**certification**]** of origin**]**, or when the **[**certificate**][**certification**]** of origin is not presented, contains errors, or is incomplete or presumption of non-compliance with the rules established in this **[**Chapter**]**. In such situations, a bond for the value of the duties applicable to third countries may be required, pursuant to the domestic legislation of the Parties and the importing Party may decide to open an investigation, and shall notify the **[**competent**][**customs**]** authority of the exporting Party.**]**

**[**3.1.2 The **[**competent**][**customs**]** authorities of the Parties may carry out verification of origin procedures at random or when they have reasonable doubt as to the authenticity of the **[**certificate**][**certification**]** of origin or the truth of the information regarding the origin of the goods.**]**

3.1.3 **[**Where a claim for preference is properly made, it may not be denied without first commencing the process of verifying the claim.**] [**Once an investigation has been opened, the importing Party shall adopt any measures it considers necessary to guarantee fiscal interest, but under no circumstances shall it halt the process of importing the goods.**] [**Any dispute between the importer and the Customs Authorities of the importing Party will be settled in accordance with the legislation of the importing Party.**]**

**[**3.1.4. As part of an investigation to determine whether a good imported from the territory of another Party that has preferential tariff treatment qualifies as originating, the importing Party may, through its **[**competent**][**customs**]** authority, verify the origin of the good by the following means **[**only**]**:

a) written questionnaires and requests for information sent to **[**exporters or producers of the exporting Party**] [**or importers**]**; **[**or requiring the certifying authority of the exporting Party to furnish**]** the information needed to verify the authenticity of the **[**certificate**][**certification**]** of origin, the truth of the information contained therein, or the origin of the goods. Should the information furnished by the exporting Party be insufficient, the importing Party may request additional information.

b) verification visits to the facilities of the exporter or producer in the territory of the exporting Party in order to examine the productive processes, accounting records and the documents that demonstrate compliance with the rules of origin and to examine the facilities and materials or products used in the production of the goods and the materials;

c) **[**a request asking the **[**competent**][**customs**]** authority of the exporting Party to perform certain operations or procedures for the purpose of verifying the origin of the goods; **]**

d) **[**other procedures agreed to by the Parties**]**.**]**

**[**3.1.5 For the purposes of section a) of Article 3.1.4, the **[**competent**][**customs**]** authority of the importing Party shall indicate on the request the number and date of the **[**certificates**][**certification**]** of origin for which verification is sought, together with the purpose and scope of the request. For these purposes, **[**the certifying authority of the exporting Party shall furnish the required information, in the terms set forth in section a) of paragraph 3.1.4, within a period of no more than one hundred and twenty (120) days following the date on which the corresponding request was received.**]** **[**The exporter or producer who receives a questionnaire under paragraph 3.1.4 section a) shall respond to and return said questionnaire within a period of … **[**30**]** days from the date it was **[**received**][**notified**]**. During this interval, the exporter or producer may apply **[**in writing**]**, only once, to the importing Party requesting an extension, which can not exceed ….**[**30**]** days.**]]**

**[**In the event that the information requested under section a) is not delivered in the time stipulated, or if the reply does not provide sufficient information to determine the authenticity or truth of the **[**certificate**][**certification**]** of origin or the origin of the goods, the **[**competent**][**customs**]** authority of the importing Party may deny preferential tariff treatment for the goods covered by the certificates subject to the verification procedure by means of a written resolution that includes the factual and legal grounds on which the resolution is based.**]**

3.1.6 **[**Where the **[**competent**][**customs**]** authorities of the importing Party wish verification of origin to be carried out, they shall communicate with the **[**competent**][**customs**]** authority in the exporting Party, setting out the substance of the enquiry. The **[**competent**][**customs**]** authority in the exporting Party shall respond to the enquiry within a period of ... days, providing the information requested as fully as possible. Where the **[**competent**][**customs**]** authority in the exporting Party considers it appropriate, it may invite the **[**competent**][**customs**]** authorities of the importing Party to participate in the investigation.**]**

**[**Before making a verification visit in accordance with the provisions of paragraph 3.1.4 b), the importing Party shall be required to notify in writing **[**at least 30 days in advance**]**, through its **[**competent**] [**customs**]** authority, its intention to make the visit.**]** **[**The notification shall be sent to the exporter or producer who is to be visited, the **[**competent**] [**customs**]** authority of the Party in whose territory the visit will take place and, if the latter so requests, the embassy of this Party in the territory of the importing Party. The **[**competent**] [**customs**]** authority of the importing Party shall obtain the written consent of the exporter or producer to be visited.**]**

**[**3.1.7. The verification procedure set forth in section c) of the article 3.1.4. shall only be used in the case of commercial operations worth US$50,000 (fifty thousand United States dollars) or more and in the event that the origin of the goods cannot be with certainty determined using the method provided for in section a).**]**

**[**In the event that the information requested under section c), is not delivered in the deadline provided for or if the reply does not contain sufficient information to determine the origin of the goods, the **[**competent**][**customs**]** authority of the importing Party may deny preferential tariff treatment for the goods covered by the certificates subject to the verification procedure by means of a written resolution that includes the factual and legal grounds on which the resolution is based.**]**

**[**3.1.8 The notification referred to in paragraph 3.1.6 shall contain:

a) an identification of the **[**competent**][**customs**]** authority making the notification;

b) the name of the exporter or producer to be visited;

c) the date and place of the proposed verification visit;

d) the purpose and scope of the proposed verification visit, with specific mention of the goods that are subject to verification;

e) **[**identification**][**name, personal data**]** and titles of the officials who will make the verification visit; and

f) the legal grounds for the verification visit.**]**

**[**Any modification to the information referred to in sections a), c), and e) shall be notified in writing to the exporter or producer and to the **[**competent**][**customs**]** authority of the exporting Party prior to the verification visit. Any modification to the information referred to in sections b), d), and f) shall be notified pursuant to the terms of article 3.1.6.**]**

**[**3.1.9 If during the **[**30**][**45**][**days following receipt of the notification of the proposed verification visit, the exporter or producer does not give his written consent for said visit, the importing Party may deny preferential tariff treatment to the good(s) that is (are) the subject of the verification visit.**]**

**[**3.1.10 Each Party shall stipulate that, when the **[**exporter or producer**][**the customs authority**]** receives a notification of a verification visit, it may request, within **[**15**]** days after the date the notification is received, a one-time postponement of the proposed verification visit, for a period not to exceed **[**60**]** days as of the date the notification is received, or for a longer period agreed to by the Parties. The **[**competent**][**customs**]** authority of the importing Party and of the exporting Party may be notified of the postponement of the visit. The importing Party may not deny preferential tariff treatment based solely on the request to postpone the verification visit.**]**

**[**3.1.11 Each Party shall allow the exporter or producer whose goods are the object of a verification visit, to designate up to two observers who will be present during the visit, provided said observers intervene solely in that capacity. If the exporter or producer does not designate observers, this shall not result in the postponement of the visit.**]**

**[**3.1.12 When conducting a visit of verification of origin, **[**each Party**]** the **[**competent**][**customs**]** authority shall verify compliance with the requirements of the **[**Chapter**]** on Rules of Origin, **[**through its **[**competent**][**customs**]** authority**]**, in accordance with Generally Accepted Accounting Principles and Generally Accepted Auditing Standards which apply in the territory of the exporting or producer Party from which the good was exported or produced.**]**

**[**3.1.13 After concluding the visit, the **[**competent**][**customs**]** authority shall provide the exporter or producer with a written ruling in which it is determined whether or not the good qualifies as originating; said ruling shall also include the findings of fact and the legal grounds of the determination. This ruling shall be presented in ….days as of the initiation of the process of verification of origin, it may be extended for a period of ….days with previous notification to the exporter or producer. A ruling on the determination of origin issued outside the aforementioned period or its extension shall have no effect whatsoever.**]**

**[**3.1.14 If the ruling of origin determination is not satisfactory, the exporting Party may appeal to the dispute settlement system of the Agreement.**]**

**[**3.1.15 If one of the Parties believes that another Party is importing from third Parties in which there are doubts regarding compliance with the present Rules of Origin, it may request, through the entity responsible for the administration of the Agreement, that consultations be held to ascertain the real production conditions of such goods, so that the Party requesting the consultation may assess the advisability of requesting that an investigation into the originating nature of the good(s) be opened .**]**

**[**The Party consulted shall provide appropriate consideration and respond within ... days, at the most. The consultations shall be carried out in a place agreed to by the Parties and both their proceedings and their conclusions shall be reported to the entity responsible for the administration of the Agreement. The Administrative Commission shall keep an updated record of the rulings adopted by the Parties on the determination of origin.**]**

**[**3.1.16 When the verification conducted by a Party indicates that an exporter or producer has certified more than once and in a false or unfounded manner, that a good qualifies as originating, the importing Party may suspend preferential tariff treatment for identical goods that said person exports or produces until the person proves that the good complies with the stipulations of the **[**Chapter**]** on Rules of Origin**]**

**[**3.1.17 Each Party shall stipulate that when the **[**competent**][**customs**]** authority determines by means of a resolution that a good imported into its territory does not qualify as originating in accordance with the tariff classification, or

with the value applied by the Party to one or more of the materials used in the production of the good, and that this differs from the tariff classification or value applied to the materials by the exporting Party, the ruling of the importing Party shall not take effect until both the importer of the good and the exporter or producer who filled out and signed the **[**certificate**][**certification**]** of origin or the declaration of origin covering that good have been notified in writing.**]**

**[**3.1.18 The Party shall not apply the ruling issued in accordance with the preceding paragraph to an importation made prior to the date on which the ruling enters into force, provided that:

a) the **[**competent**][**customs**]** authority from the exporting Party has issued a ruling on the tariff classification or value of the materials, **[**or has given consistent treatment to the entry of the materials under the tariff classification or value at issue,**]** on which one could rely in accordance with its laws and regulations;

b) the rulings described in section a) are issued prior to the notification of the initiation of the verification of origin.**]**

**[**3.1.19 If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 3.1.17, it shall postpone the effective date of the denial for a period not exceeding **[**90**][**30**]** days after the date of the determination or notification that the issue is being revised, where the importer of the good, or the person who completed and signed the **[**certificate**][**certification**]** of origin or the declaration of origin for the good, demonstrates that he has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the Party from whose territory the good was exported.**] [**Likewise, a Party shall not apply such a determination of origin arising from a verification to an importation made before the effective date of the determination, provided that the importer has demonstrated that prior to making the claims at issue it has relied upon either:

a) **[**a ruling on the tariff classification or on the eligibility for tariff preference of such materials by the customs administration of the Party into whose territory the material was imported;**]**

b) **[**the consistent treatment of the material in question in terms of classification or valuation, as demonstrated by importations of the material into that territory.**]]**

**[**3.1.20 When a **[**certificate**][**certification**]** of origin is not presented, the **[**competent**][**customs**]** authorities of the importing Party shall provide a 15 calendar-day period, as of the date of entry for consumption or customs release of the good, for due presentation of the document. After that period, the bond will be collected or the corresponding levies charged.**]**

**[**3.1.21 In the event bonds are set, they shall have an initial maximum duration of 40 calendar days as of the date of entry for consumption or customs release of the good, which may be extended for another 40 calendar days if, during the first bond period, compliance with the provisions of this **[**Chapter**]** is not established.**]**

**[**3.1.22 **[**Competent**][**Customs**]** authorities shall notify the exporting Party and the agency responsible for administering the Agreement that a bond has been set within 3 working days of the adoption of the measure, and shall include antecedents, developments or the justifications for same.**]**

**[**3.1.23 It shall be incumbent on the exporting Party to clarify the situation to the **[**competent**][**customs**]** authorities of the importing Party and, if necessary, to furnish proof demonstrating compliance with the rules of origin. If no clarification or demonstration is made regarding the measure adopted within thirty (30) calendar days of the adoption of the measure, or if such action has not led to a solution of the problem, any of the Parties involved may request the intervention of the agency responsible for administering the Agreement, providing it with all the information at its disposal.

The agency responsible for administering the Agreement shall issue its ruling on compliance or non-compliance with the provisions of this **[**Chapter**]** within 30 calendar days of receiving the request.

If it is established that the **[**certificate**][**certification**]** of origin is not authentic, or if the good does not qualify as originating, the importing Party may collect the bond.**]**

**3.2 Confidentiality**

**[**3.2.1 Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of business information collected pursuant to this **[**Chapter**]** the release of which could prejudice the competitive position of the persons providing the information.

Examples of such information may include but are not limited to:

a) the terms of sale or contracts relating to imports, including information regarding transaction prices;

b) internal costs and prices, including manufacturing costs;

c) manufacturing processes; and

d) profit margins.**]**

3.2.2 Confidential information may only be made known to the authorities responsible for the administration and application of the rulings to determine origin **[**and of customs or fiscal matters, as applicable**]**.

**[**3.2.3 Nothing in these articles shall preclude the parties from sharing information between governments that would enhance the enforcement of the obligations of this **[**Chapter**]**. The confidential business information collected pursuant to this **[**Chapter**]** may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters.**]**

**3.3 Cooperation**

**[**3.3.1 The Parties are to cooperate and consult as deemed necessary for the effective and uniform application and interpretation of administrative or operational provisions on matters relating to this **[**Chapter**]**, and may have common understandings related to the interpretation and application of the provisions of this **[**Chapter**]**. The consulted Party shall give prompt and full consideration to any inquiries received.**]**

**[**3.3.2 Creation of an Assistance Fund for the Verification of Origin for small economies. The funding shall be obtained by ….% of unpaid import tariffs by the more developed countries to the smaller economies.**]**

**[**3.3.3 To the extent feasible, each Party shall notify the others of the following measures, rulings, or determinations **[**, including those in the process of being applied**]**:

a) a determination of origin **[**ruling**]** issued as the result of a verification of origin visit made pursuant to Paragraph 3.1.4 b), once the review and challenge rights referred to in Article 2.5 have been exhausted;

b) a determination of origin ruling that a Party considers contrary to a ruling issued by the **[**competent**][**customs**]** authority of another Party regarding tariff classification or the value of a good, or of materials used in the production of a good, or the reasonable allocation of costs when calculating the net cost of a good for which a determination of origin has been made;

c) a measure that establishes or significantly modifies an administrative policy that could affect future determination of origin rulings; and

d) an advance ruling or its amendment, pursuant to Paragraph 2.4.5.

Each Party shall ensure that its laws and regulations implementing this **[**Chapter**]** are promptly published **[**and made available on the Internet**]**. Each Party shall ensure that advance rulings, amendments of advance rulings, or repeals of advance rulings interpreting or implementing this **[**Chapter**]** are **[**promptly**]** published **[**and made available on the Internet**]**. When such published rulings or modifications thereto are drafted such as to protect confidential business information, Parties shall make the complete determination available to **[**competent**][**customs**]** authorities from the other Parties, upon request.**]**

**[**3.3.4 The **[**Parties **][**Customs authorities**]** shall cooperate:

a) in the enforcement of their respective customs-related laws or regulations for implementing this Agreement, and any mutual assistance agreement or other customs-related agreement to which they are party;

b) for purposes of facilitating commerce between their territories, in such customs-related matters as the collection and exchange of statistics on the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax, and the exchange of information;

c) in the exchange of customs-related regulations;

d) in the verification of origin of a good, to which end the customs authority of the importing Party may request the customs authority of the other Party to conduct in its territory certain investigations for that purpose, and forward the relevant report to the customs authority of the importing Party; and

e) in the joint organization of training programs on customs-related topics, to include training of officials and users who participate directly in customs procedures.**][**Likewise, each Party, at the request of any other Party, may provide technical advice, information and assistance, with a view to training officials so that they acquire technical expertise and are able to implement technologies that promote improved compliance and control of the certification of origin process.**]**

## 4. PENALTIES

**[**4.1 Each Party shall establish or maintain criminal, civil, or administrative penalties for violations of its laws and regulations as related to the provisions of this **[**Chapter**]**.**]** **[**The Parties shall maintain legislation providing for penalties against persons who, furnish or cause to be furnished any document which is untrue in a material particular in support of a claim for preferential treatment under this Agreement.**]**

**[**4.2 Each Party shall stipulate that a false **[**certificate**][**certification**]** or **[**declaration**]** of origin, to the effect that a good to be exported to the territory of the other Party qualifies as originating, shall have the same legal consequences, with any changes required by the circumstances, as those that would be applied to its own importer making false declarations or representations in contravention of its customs regulations and laws. It may also apply such measures as the circumstances warrant when the exporter or producer fails to meet any of the requirements in this **[**Chapter**]**.**]**

**[**4.3 When it has been established that a **[**certificate**][**certification**]** of origin is not authentic or that the good does not qualify as originating, the exporting and/or importing Parties shall apply the appropriate measures and/or sanctions under their national legislation.**]**

**[**4.4 Without prejudice to the above, **[**the exporting Party shall suspend the granting of **[**certificate**][**certification**]** of origin**]** to the final producer or exporter for a period of **[**6**]** months and in the event of a recurrence, said suspension shall be for a period of **[**18**]** months.**]**

**[**The entities authorized by each Party to issue certificates of origin shall share responsibility with the producer or exporter, in regard to the authenticity of the information given in the declaration of origin of the goods.**]**

**[**The competent government authorities of each Party shall disqualify officials of non-governmental certifying entities who have issued **[**certificates**][**certification**]** of origin in an improper manner. If, within a period of one year, any corresponding non-governmental certifying entity repeats such improprieties, it shall be suspended permanently from issuing **[**certificates**][**certifications**]** of origin. When governmental certifying entities are involved, the Parties shall adopt measures and/or sanctions provided by their domestic legislation.**]**

**5. INSTITUTIONAL ARRANGEMENTS**

**6. DEFINITIONS**

**[**6.1. For the purposes of this **[**Chapter**]**, the following terms shall have the meanings indicated:

**customs authority:** the authority that, under the domestic law of each Party, is responsible for the administration of customs laws and regulations;

**certifying authority:** the **[**government**]** authority that, under the domestic law of each Party, is responsible for issuing, verifying, and controlling certificates of origin;

**identical goods:** goods that are the same in all respects, including physical characteristics, quality, and commercial reputation. Minor differences in appearance shall not prevent goods that in all other ways fit this definition from being considered identical;

**CIF:** inclusive of cost, insurance, and freight;

**exporter:** an exporter located in the territory of a Party from which the good is exported who, pursuant to this **[**Chapter**]**, is obliged to maintain, in the territory of that Party, the records referred to in Article 1.12.1 a);

**importer:** an importer located in the territory of a Party into which the good is imported who, pursuant to this **[**Chapter**]**, is obliged to maintain, in the territory of that Party, the records referred to in Article 1.12.1 b);

**producer:** in addition to the stipulations of the **[**Chapter**]** on "Rules of Origin", the person who is obliged to maintain, in the territory of that Party, the records referred to in Article 1.12.1 a);

**ruling to determine origin:** a ruling issued as a result of a verification of origin that establishes whether a good qualifies as originating, in accordance with the RO **[**Chapter**]** "Rules of Origin";

**preferential tariff treatment:** the application of the duty rate applicable to an originating good, in accordance with the Tariff Elimination Program.**]**

6.2. Except for terms defined in this Article, the definitions set forth in Article … **[**Definitions**]** and the provisions of Article …. **[**Enforcement Instruments**]** of the **[**Chapter**]** on "Rules of Origin" are incorporated into this **[**Chapter**]**.

**[Annex 1 to Article 1.3**

**Option 1:**

The Parties establish the following common form for the "certificate of origin":

**Options 2 and 3:**

The Parties establish that the "certification of origin" may contain the following common set of data elements: **]**

**[Annex 2 to Article 1.3**

The Parties establish the following common form for the "declaration of origin":**]**

# [[CHAPTER] ON STANDARDS AND TECHNICAL BARRIERS TO TRADE

## Article 1. Scope and Coverage

1.1 The provisions of this [Chapter] apply to [standards -related [measures][activities],] [of the Parties, meaning by this] [standards, technical regulations, [and] conformity assessment procedures [including accreditation and authorization procedures][ and metrology]] [, as well as to measures related to these that could directly or indirectly affect trade among the Parties].

1.2 All products shall be subject to the provisions of this [Chapter].

[1.3 The provisions of this [Chapter] [do not] apply to services.]

1.4 The provisions of this [Chapter] do not apply to sanitary and phytosanitary measures.

[1.5 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this [Chapter] but are addressed in the [Chapter] on Government Procurement, according to its coverage.]

[1.6 Each Party shall take such reasonable measures as may be available to it to ensure the adoption of all measures necessary to fulfill the provisions of this [Chapter] at the [central,] national and subnational levels [and any other level of political division that the Parties may have].]

[1.6 *bis*. The Parties shall take all reasonable measures available to them to ensure the adoption of all measures necessary to fulfill the provisions of this [Chapter] at the national or federal, state, and municipal level] [and any other level of political division that the Parties may have].

[1.7 The activities referred to in Article 1.1 shall be carried out by bodies that may be organized at the national, subregional or regional level.]

[1.8 General and specific agreements, memoranda of understanding, recognition agreements, regional, subregional, and bilateral cooperation initiatives, as well as other bilateral and multilateral agreements signed in the various fields under consideration that are related to the [measures][activities] described in Article 1.1, shall facilitate the attainment of the objectives of this [Chapter].]

## [Article 2. Objectives and General Principles]

[2.1 The objective of this [Chapter] is to prevent the preparation, adoption, and application of standards, technical regulations, conformity assessment procedures, accreditation, and metrology measures from becoming unnecessary barriers to hemispheric trade.]

[2.2 The objective of this [Chapter] is to strengthen national systems of standardization, conformity assessment, including accreditation, authorization procedures and metrology. Its purpose is also to promote the strengthening and participation in regional organizations relating to standards, accreditation and metrology: the Pan-American Standards Commission (COPANT), the Inter-American Accreditation Cooperation (IAAC), and the Inter-American Metrology System (SIM), respectively.]

## WTO Agreement on Technical Barriers to Trade (TBT)

2.3 The Parties reaffirm their existing rights and obligations under the WTO Agreement on Technical Barriers to Trade.

**[Right to Adopt Standards-Related Measures]**

**[**2.4 Each Party may prepare, adopt, apply, and maintain measures related to standardization, authorization procedures and metrology that enable them to ensure fulfillment of their legitimate objectives.**]**

**[Non-discrimination]**

**[**2.5 With respect to standards-related measures, authorization, and metrology procedures, each Party shall accord to goods and to service providers from other Parties, national treatment and treatment no less favorable than that given to like goods and to suppliers of like services in any other country.**]**

**[Identification of Technical Barriers to Trade]**

**[**2.6 The Parties undertake to identify and permanently eliminate unnecessary technical barriers to hemispheric trade.**]**

**[**2.7 **[**To this end,**]** the Parties **[**shall endeavour to adopt**] [**shall adopt**] [**compatible methodologies**] [**harmonized procedures**]** for identifying **[**reporting and eliminating**]** **[**unnecessary technical**]** barriers to hemispheric trade.**]**

**[**2.8 Each Party **[**shall**] [**endeavour to**]** set up information systems that include data on technical barriers that have been identified and measures that have been taken to overcome them.**]**

**[**2.9 Efforts shall be made to ensure that the information systems and data banks used in the process of identifying technical barriers to trade are designed so that countries can use them as broadly, openly and transparently as possible, in order to fully comply with the commitments undertaken in this **[**Chapter**]**.**]**

**[Article 3. Standards]**

**[**3.1 The Parties shall encourage, whenever possible, the adoption of existing international standards, or, where none exist, the use of regional or subregional standards.**]**

**[**3.2 The Parties shall support the strengthening of standardization activities and structures at the national, subregional and regional levels.**]**

**[Participation in International Fora]**

**[**3.3 The Parties shall take reasonable measures available to them to ensure that the international standardizing bodies of which they or the competent institutions in their territories are members or participants have a **[**more effective**]** established process to take into account the opinions of all of the interested Parties and to reconcile opposing arguments.**]**

**[**3.4 The Parties shall endeavour to increase their effective participation in international standard-setting fora.**]**

**[**3.5 Parties shall endeavour to coordinate their positions for presentation in international standardizing fora.**]**

**[**3.6 This coordination effort should, where necessary, make use of the Pan American Standards Commission (COPANT), in its role as a regional standardizing body.**]**

**[**3.7 Parties shall encourage the cooperation of the region's standardization bodies at the regional, subregional, and national levels with bodies from other regions.**]**

**[Article 4. Technical Regulations]**

**[**4.1 Without detracting from the rights conferred to them under this **[**Chapter**]**, **[**and while taking into account international standardization activities,**]** Parties **[**shall**]**, as far as possible, **[**make**]** their respective technical regulations compatible, without lessening standards regarding safety or protection of human, animal or plant life or health, the environment or consumers.**]**

**[**4.2 The Parties shall give favourable consideration to the possibility of accepting as equivalent technical regulations of other Parties, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.**]**

**[Use of International Standards]**

**[**4.3 Where relevant international standards exist or their completion is imminent, Parties shall use these international standards or relevant parts of them or, where international standards do not exist, regional or sub-regional standards as a basis for their technical regulations, except in cases of unique geographical, climatic or other factors, as established in the WTO Agreement on Technical Barriers to Trade.**]**

**[Equivalence]**

**[**4.4 Each Party shall accept a technical regulation adopted by another Party as equivalent to its own when the exporting Party, in cooperation with the other, demonstrates to the importing Party that its technical regulations fulfill the importing Party's legitimate objectives.**]**

**[**4.5 At the request of the exporting Party, the importing Party shall notify in writing its reasons for not accepting a technical regulation of the exporting Party as equivalent. The Parties may, in addition, hold discussions to facilitate its acceptance.**]**

**[**4.6 The Parties shall prepare and adopt common criteria for the region for the establishment and equivalence of technical regulations.**]**

**[Structure and][Updating][Maintenance] [of Technical Regulations]**

**[**4.7 Technical regulations shall specify the products to which they apply, classified by tariff subheading of the Harmonized Commodity Description and Coding System, identifying mandatory requirements; conformity assessment procedures; the agencies responsible, authorized or accredited to conduct said assessment; national authorities responsible for monitoring compliance; risks they intend to counteract and the manner in which the regulation achieves this.**]**

**[**4.8 The right to raise an objection to a technical regulation may not be subject to statutory limitations nor barred by administrative actions; therefore, failure or refusal to reply or other similar actions shall not be included in efforts to resolve disputes.**]**

**[Risk Assessment ]**

**[**4.9 In pursuing its legitimate objectives, each Party may conduct risk assessments. In doing so, a Party shall take into account**:**

**[**a) risk assessments conducted by international bodies;**]**

**[**b) available scientific evidence or technical information;**]**

**[**c) related processing technology;**]**

**[**d) the intended end uses;**]**

**[**e) related processes or production methods provided that they affect the characteristics of the goods;**]**

**[**f) operating, inspection, sampling or testing methods;**]**

**[**g) environmental conditions.**]]**

**[**4.10 A Party shall, upon request, provide to the other Parties, the relevant documentation regarding its risk assessment procedures, as well as the factors considered in carrying out the assessment **[**and establishing protection levels, in accordance with Article 2**]**.**]**

**[Article 5. Conformity Assessment]**

**[**5.1 The purpose of conformity assessment activities shall be to verify and demonstrate the conformity of products, processes, systems and other results of productive activities with specific technical requirements. The Parties shall endeavor to ensure the consistency and transparency of conformity assessment activities, as a means of preventing unnecessary barriers to trade within the scope of application of this **[**Chapter**]**.**]**

**[**5.2 Recognizing that it should be to the mutual benefit of all Parties concerned, each Party shall accredit, approve, or otherwise recognize conformity assessment bodies in the territory of another Party on terms no less favourable than those accorded to conformity assessment bodies in its territory.**]**

**[**5.3 The Parties shall ensure, whenever possible, that results of conformity assessment procedures in other Parties are accepted, even when those procedures differ from their own, provided they are satisfied that these procedures offer an assurance of conformity with relevant technical regulations or standards equivalent to their own procedures. At the request of the exporting Party, the importing Party shall explain in writing the reasons for not accepting the results of the conformity assessment procedures. Consultations may be held in order to arrive at a mutually satisfactory understanding regarding, in particular:**]**

**[**5.3.1 adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Party, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditations, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;**]**

**[**5.3.2 limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Party. **]**

**[**5.4 The Parties shall, to the extent possible, adopt the ISO/IEC Guidelines and standards for conformity assessment procedures.**]**

**[**5.5 The Parties shall carry out actions necessary for the creation and strengthening of domestic conformity assessment systems based on the recommendations of specialized hemispheric organizations, such as the Inter-American Accreditation Cooperation (IAAC), the Pan-American Standards Commission (COPANT) and the Inter-American Metrology System (SIM), as well as specialized international organizations, such as the International Organization for Standardization (ISO) and other fora for accrediting entities, among them the International Accreditation Forum (IAF) and the International Laboratory Accreditation Cooperation (ILAC), in order to sustain mutual/multilateral recognition of conformity assessment systems.**]**

**[**5.6 The Parties undertake to strengthen their conformity assessment systems and structures and to promote the participation of their official accreditation agencies in the Inter-American Accreditation Cooperation (IAAC).**]**

**[**5.7 Upon entry into force of this Agreement, the Parties shall inform the agency responsible for administering this **[**Chapter**]** of the institutions responsible for accreditation in their respective countries. They shall also communicate the list of public and private institutions authorized to issue conformity certificates, inspection reports and laboratory

test and calibration reports, as well as of other institutions making up their conformity assessment systems. The Parties shall also report on any changes to said lists.**]**

**[[Equivalence and] Mutual Recognition Agreements]**

**[**5.8 The Parties agree to participate in the definition and adoption of recommendations and to establish and promote Mutual/Multilateral Recognition Agreements under the Inter-American Accreditation Cooperation (IAAC) and at the international level, with a view to recognizing the results of conformity assessment procedures.**]**

**[**5.9 Parties shall support cooperation among testing laboratories, certification bodies **[**, accreditation bodies**]** and inspection bodies **[**in order to foster mutual acceptance of each others' conformity assessments and**]** the results thereof.**]**

**[**5.10 The Parties are encouraged, at the request of other Parties, to be willing to enter into negotiations for the mutual recognition of the results of each others' conformity assessment procedures. Parties may require that such agreements fulfill the criteria of Article 5.10 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned. If an importing Party refuses to engage in or conclude negotiations designed to reach agreements for mutual recognition of the results of their respective conformity assessment procedures, it shall explain in writing to whoever so requests its reasons for doing so. They may, in addition, hold consultations to this end.**]**

**[**5.11 Parties are encouraged to permit participation of conformity assessment institutions located in the territory of other Parties in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located in their own territories or that of any country. If an importing Party refuses to authorize the conformity assessment institutions of another Party to participate in its conformity assessment procedures, it shall explain in writing to whomever so requests the reasons for its objections. It may, in addition, hold consultations to this end. If the reasons are due to restrictions in the laws of the importing country, it shall make all necessary efforts to adapt its laws accordingly.**]**

**[**5.12 Parties are urged to accept, where possible, suppliers' declaration of conformity.**]**

**[Conformity Assessment Procedures]**

**[**5.13 With regard to their conformity assessment procedures, each Party shall:

> **[**a) not adopt or maintain conformity assessment procedures that are stricter, nor apply the procedures more strictly than necessary, in order to be certain that a good **[**or a service**]** conforms to the technical regulation or applicable standard, taking into account the risks that non-conformity would create;**]**
>
> **[**b) initiate and complete the procedure as expeditiously as possible;**]**
>
> **[**c) establish a non-discriminatory order **[**for the processing of the application**]**;**]**
>
> **[**d) publish the process and the normal duration of each of these procedures or, upon request, inform the applicant of said information;**]**
>
> **[**e) grant to originating goods **[**and services**]** of the other Party national treatment and treatment no less favourable than that granted to its own like goods **[**and services**]** or those of any other country;**]**
>
> **[**f) ensure that the competent national body **[**or authority**]**
>
> > i) on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiencies, it being the responsibility of the applicant to correct such deficiencies in the applicable time frame;

ii) transmits to the applicant as soon as possible the results of the conformity assessment procedure in a form that is precise and complete so that the applicant may take any necessary corrective action;

iii) where the application is deficient, proceed as far as possible with the procedure where the applicant so requests, and

iv) informs the applicant of the reasons for any delay and, on request, of the status of the application;**]**

**[**g) limit the information the applicant is required to supply to that necessary to conduct the conformity assessment procedure and to determine the appropriate fees;**]**

**[**h) accord confidential or proprietary information arising from, or supplied in connection with, the conduct of the procedure for a good **[**or service**]** of the other Party:

i) the same treatment as that accorded to information with respect to a good **[**or service**]** of the Party, and;

ii) treatment that protects the applicant's **[**legitimate**]** commercial interests;**]**

**[**i) ensure that any fee charged for assessing the conformity of a good **[**or service**]** exported from another Party, are equitable in relation to the fee collected for assessing the conformity of an identical or similar good **[**or service**]** of the Party, taking into account communication, transportation and other costs;**]**

**[**j) ensure that the location of facilities for the conformity assessment procedure and the selection of samples do not cause unnecessary inconvenience to applicants or their agents;**]**

**[**k) whenever necessary and possible, ensure that the procedure is carried out at the premises where the good is produced **[**and the conformity mark is granted, if warranted**]**;**]**

**[**l) limit the conformity assessment procedure to that necessary to determine that a good **[**or service**]** that has been subsequently modified still meets the **[**applicable**]**technical regulations or standards, provided that prior to its modification the good **[**or service**]** met the pertinent requirements established by that technical regulations or standard;**]**

**[**m) limit any requirement regarding samples of a good to that which is reasonable, and ensure that the selection and collection of samples does not cause unnecessary inconvenience applicants or their agents;**]**

**[**n) determine the size of the sample by **[**international guides or recommendations**] [**standards**]**;**]**

**[**o) have in place a procedure for examining complaints regarding the application of a conformity assessment procedure, and adopt corrective measures when such a complaint is justified.**]]**

**[**5.14 For the purposes of this **[**Chapter**]**, the following fields of conformity assessment shall be taken into account:

**[a) Obligatory Conformity Assessment:** The Parties shall, to the extent possible, adopt the ISO/IEC guidelines and standards for obligatory conformity assessment procedures.**]**

**[b) Voluntary Conformity Assessment** The Parties shall encourage the adoption of ISO/IEC guidelines and standards for voluntary conformity assessment.**]]**

**[**5.15 In conducting conformity assessment procedures, the Parties may utilize the technical capacity and infrastructure of accredited bodies established in the territory of the other Parties.**]**

**[Authorization Procedures]**

**[**5.16 The Parties shall endeavour to assure that the **[**mechanisms**][**procedures**]** used in accreditation **[**, as well as in other authorization procedures,**]** are consistent with international provisions accepted in corresponding technical fora.**]**

**[**5.17 With regard to their authorization procedures, each Party shall:

**[**a) not adopt or maintain approval procedures that are stricter, nor apply the procedure more strictly than necessary taking into account the risks that non-conformity would create;**]**

**[**b) initiate and complete the procedure as expeditiously as possible and in a non-discriminatory order;**]**

**[**c) inform the applicant, upon request, of the approximate duration of the procedure;**]**

**[**d) ensure that the competent national body

i. on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiencies, it being the responsibility of the applicant to correct such deficiencies within the applicable time frame;

ii. transmits to the applicant as soon as possible the results of the conformity assessment procedure in a form that is precise and complete so that the applicant may take any necessary corrective action;

iii. where the application is deficient, proceeds as far as possible with the procedure where the applicant so requests, and

iv. informs the applicant of the reasons for any delay and, on request, of the status of the application;**]**

**[**e) limit the information the applicant is required to supply to that necessary to conduct the procedure and to determine appropriate fees;**]**

**[**f) accord confidential or proprietary information arising from, or supplied in connection with, the conduct of the procedure for a good **[**or service**]** of the other Party.

i. the same treatment as that accorded to information with respect to a good **[**or service**]** of the Party, and;

ii. treatment that protects the applicant's commercial interests;**]**

**[**g) ensure that any fee charged for the procedure is equitable in relation to the fee collected for the procedure for an identical or similar good **[**or service**]** of the Party, taking into account communication, transportation and other related costs;**]**

**[**h) limit any requirement regarding samples of a good to that which is reasonable.**]]**

**Article 6. Metrology**

**[**6.1 Metrological activities shall be guided by the Metric Convention, the International System of Units (SI), and by any subsequent provisions of agreements adopted in the context of the **[**International Bureau of Weights and Measures (BIPM)**][**International Committee of Weights and Measures (CIPM)**]** and of the International Organization of Legal Metrology (OIML), securing the organization of measurement systems according to a traceability structure at the international level.**]**

**[**6.2 The Parties undertake to adopt the International System of Units (SI). In this regard, they shall establish time frames and develop the instruments and strategies necessary for adapting national structures to the technological changes that must result from the adoption of this system.**]**

**[**6.3 For activities related to legal metrology, Parties shall adopt the recommendations and documents of the International Organization of Legal Metrology (OIML).**]**

**[Use of International Patterns]**

**[**6.4 The Parties undertake to safeguard, preserve and disseminate their national patterns and measuring instruments, maintaining the traceability thereof, based on international patterns.**]**

**[**6.5 The Parties shall, insofar as possible, **[**make compatible**][**guarantee**][**the traceability of**]** their metrology standards **[**based on international standards**]** **[**in accordance with the recommendations of the International Bureau of Weights and Measures (BIPM) and the International Organization of Legal Metrology (OIML).

**[Cooperation]**

**[**6.6 The Parties shall support cooperation between and among their national metrology laboratories, calibration laboratories and members organizations of **[**legal**]** metrology networks in order to establish a technical foundation for implementing the provisions of this **[**Chapter**]**.**]**

**[**6.7 Parties shall carry out efforts to support the participation of their national metrology laboratories in relevant technical fora at the subregional, regional and international levels.**]**

**[**6.8 Parties shall, through their national metrology laboratories, support the activities carried out by the Inter-American Metrology System (SIM), **[**primarily**]** through its subregional networks.**]**

**[**6.9 **[**Where possible,**]** Parties shall explore opportunities to share metrology laboratory infrastructure as a way of taking optimal advantage of installed capacity and minimizing the investment needed to organize these activities.**]**

**[**6.10 Parties shall **[**ensure**]** **[[**promote the establishment of**][**seek to establish**]**, to the extent possible**]** common procedures for **[[**establishing**][**approving**]** **[**metrological control**]** **[**of measurement models and methods for the metrological verification of pre-measured products**]** in order to facilitate trade in the region.**]**

**Article 7. Transparency Requirements and Information Systems**

**[Notifications]**

**[**7.1 Parties shall provide the other Parties to this Agreement with information on standards **[**-related **[**activities**][**measures**]]** **[**technical regulations, conformity assessment procedures**][**, accreditation and metrology measures**]**, particularly those that influence trade among the Parties.**]**

**[**7.2 The Parties shall report, through their designated authorities, the notifications they make to the WTO, pursuant to the TBT Agreement, especially those specified in Articles 2.9, 2.10, 5.6 and 5.7, to the Committee on Technical Barriers to Trade set out in Article 10. These notifications shall be made according to the formats established in the WTO TBT Agreement.**]**

**[**7.3 The Parties shall notify the other Parties, through the entity responsible for administering this **[**Chapter**]**, of any draft standardization, accreditation and metrology measures they intend to adopt as mandatory, no less than 90 days prior to the adoption of such measures.**]**

**[**7.4 Each Party shall give the other Parties annual written notice of its standardization plans and programs and shall promptly forward such notices to the other Party's enquiry point.**]**

**[**7.5 Once a standardization, accreditation, or metrology measure has been adopted, each Party shall provide a copy to the other Parties through their enquiry points. When a measure is no longer in effect, the Party will notify the other Parties.**]**

**[**7.6 The Parties shall notify the Committee on Technical Barriers to Trade as to their updating procedures.**]**

**[**7.7 The Parties, with the participation of the relevant hemispheric entities, commit to **[**collaborating in the development of and**]** maintenance **[**of hemispheric information systems on **[**standards, technical regulations, conformity assessment procedures**]****[**standards-related**]**, **[**accreditation**]** and metrology **[**measures**]** in a manner that serves the interests of hemispheric trade.**]**

**[**7.8 The designated authorities shall inform the Committee of the export products about which they are particularly interested in keeping informed, with regard to standards-related measures that could affect these products. The Committee shall only notify the Parties regarding standards-related measures affecting the above-mentioned products.**]**

**[**7.9 When a Party rejects a shipment **[**or service delivery**]** through administrative channels, due to noncompliance with a standards-related or metrology measure, it shall promptly notify the owner of the shipment **[**or the service provider**]** in writing of the technical justification for the refusal.**]**

**[Enquiry Points]**

**[**7.10 Within thirty (30) days following the entry into force of this agreement, each Party shall inform the other Parties of the entity or entities it has designated as enquiry points in its territory, which shall be responsible for responding to all reasonable requests and questions from other Parties or interested persons, as well as for providing pertinent current documentation concerning any measures related to standardization, authorization procedures, and metrology adopted or proposed within its territory by government or nongovernmental bodies.**]**

**[**7.11 Parties shall endeavor to develop and improve their information systems and enquiry points involved in activities related to standards, technical regulations, conformity assessment procedures **[**and**]****[**,**]** metrology **[**and authorization procedures**]**.**]**

**[**7.12 When an enquiry point **[**requests copies**]****[**receives requests**]** for **[**copies**]** of **[**documents**]****[**technical regulations**]** **[**these shall be provided free of charge.**]** **[**T**]****[**t**]**he interested **[**Parties**]****[**persons**]** **[**shall be provided with these at the same prices as nationals**]** **[**may receive them at the same cost as that offered to nationals**]** plus the actual cost of shipment.**]**

**Article 8. Technical Cooperation and Assistance**

**[**8.1 **[**With a view to full compliance with this **[**Chapter**]]** The Parties agree that there is a need for structured action in the field of cooperation and technical assistance taking as a starting point the different levels of development in the standardization, **[**conformity assessment,**]** accreditation, certification, testing and metrology institutions in each of the Parties **[**, through specific programs to meet their needs and establish ties of technical confidence among countries of the region**]**.**]**

**[**8.2 On receiving a request to that effect, a Party shall offer, to the extent of its abilities, technical assistance **[**with regard to standardization infrastructure and measures**]** with the aim to help implement the provisions of this **[**Chapter**]** and to strengthen the requesting Party's standardization and metrology **[**technical regulations, conformity assessments**]** activities **[**processes, systems and measures**]**.**]**

**[**8.3 The Parties shall develop technical cooperation programs with a view to achieving full and effective compliance with the obligations established in the WTO *Agreement on Technical Barriers to Trade.* To this end, the Parties shall encourage their respective competent authorities in the areas covered under this **[**chapter**]**, to take part in the following activities for the purpose of strengthening their processes and systems in this area:

a) the fostering of hemispheric exchanges of institutional and regulatory information and technical cooperation; and

b) the fostering of hemispheric coordination by the appropriate agencies in multilateral and international fora.**]**

**[**8.4 Parties shall urge their national **[**standardizing**][**standardization**]** bodies **[**with a presence**][**to be represented**]**, in international **[**standardizing**][**standardization**]** bodies whenever possible, to foster the search for common positions in developing international standards, whether through regional **[**standardizing**][**standardization**]** bodies or with the national **[**standardizing**][**standardization**]** bodies of the other Parties.**]**

**[**8.5 On receiving a request to such effect, a Party shall, to the extent of its abilities, assist another Party in enabling the requesting Party to participate in international standardizing bodies.**]**

**[**8.6 Specific **[**assistance and cooperation**]** programmes in the areas of **[**standards**][**standardization**]**, conformity assessment, **[**authorization procedures**] [**accreditation**] [**and**]** metrology could be conducted by specialized regional bodies, **[**such as**]** COPANT, SIM and the IAAC. **[**Such programs could, as appropriate, involve international and multilateral entities.**]]**

**[**8.7 The Parties may undertake joint efforts for the purpose of organizing technical cooperation received from non-Party countries. Such programs could, as appropriate, involve international and multilateral entities.**]**

**[Article 9. Special and Differential Treatment]**

**[**9.1 It is recognized that some countries of the hemisphere may face special problems of lack of infrastructure and human and technical resources in the field of standards. The special development and trade needs of these countries limit their ability to meet their obligations under the WTO Agreement on Technical Barriers to Trade on which this Agreement is based.**]**

**[**9.2 The Parties shall accord to countries with smaller economies within this Agreement, differential and more favourable treatment with respect to the preparation, adoption and application of measures related to standardization, authorization procedures, and metrology.**]**

**[**9.3 Special and differential treatment in the areas of technical barriers to trade shall include:

**[**a) flexibility vis-à-vis bilateral agreements between countries that are Parties to this Agreement**]**

**[**b) gradual implementation of the **[**Chapter**]** for countries not possessing the adequate **[**standards infrastructure**][**infrastructure for standards-related measures**].]**

**[**c) giving priority to technical assistance for those countries that participate in training and cooperation programmes aimed at enhancing their ability to participate in regional trade.**]**

**[**d) the more developed parties shall make all reasonable efforts to provide technical assistance in order to assist the less developed parties to this agreement to better fulfill their obligations.**]]**

**[**9.4 The Committee on Technical Barriers to Trade is enabled to grant to countries with smaller economies, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement.**]**

**[**9.5 In applying and implementing this **[**Chapter**]**, the Parties shall take into account the problems and constraints stemming from differences in development levels and the size of the economies of the countries. In this regard, they shall implement special technical and financial cooperation and technical assistance programs for strengthening institutions and infrastructure relevant for the preparation, adoption and application of standards**[**-related,**]**

**[**accreditation**]** and metrology measures, as well in connection with technological development, so as not to create technical barriers to the expansion and diversification of trade flows among them.**]**

**[Article 10. Committee on Technical Barriers to Trade]**

**[**10.1 The parties hereby establish a Committee on Technical Barriers to Trade to review the working of this **[**Chapter**]** and matters relating to technical **[**cooperation and**]** assistance **[**to the Parties**][**in the region**]**.**]**

**[**10.2 By virtue of the present agreement, a Committee on Technical Barriers to Trade is hereby established, which shall be made up of one regular and one alternate representative from each party. The Committee shall elect its chairperson and meet as necessary, at least once each year, to give the Parties an opportunity to consult with one another on any question relating to the operation of the present agreement or the fulfillment of their objectives.**]**

**[**10.3 The Committee shall review matters relating to this **[**Chapter**]**, and shall have the following duties:

a) to analyze and propose channels for resolution for cases in which standards-related measures, authorization procedures or metrology problems are considered by a Party to constitute technical barriers to trade.

b) to facilitate the process through which the Parties shall make their standards-related measures, authorization procedures and metrology compatible.

c) to foster cooperation among the Parties.

d) to assist the Parties in conducting risk assessments.

e) to cooperate in the development and strengthening of standards-related measures and metrology measures by the parties, and

f) to facilitate the process by which the parties shall establish mutual recognition agreements.**]**

**[Article 11. Consultations and Dispute Settlement]**

**[**11.1 In the event of a dispute between parties regarding the provisions of this **[**Chapter**]**, the Party affected may have recourse to either the Committee on Technical Barriers to Trade, or the dispute settlement mechanism under this agreement. Parties may not seek remedies through both channels simultaneously.**]**

**[**11.2 In the event that the technical recommendation issued by the Committee fails to settle the dispute between the Parties, the Parties may invoke the dispute settlement mechanism established in the agreement. The technical information produced by the Committee shall be considered if consultations are convened under the dispute settlement mechanism.**]**

**[Article 12. Definitions]**

**[[**For the purposes of this **[**Chapter**]] [**The Terms set out in**][**the definitions and explanatory notes of Annex 1 of the WTO TBT Agreement, in **[**accordance with**]** the current ISO/IEC Guide 2 "General Terms and Their Definitions Concerning Standardization and Related Activities." shall apply**[**. The**][**, as will the**]** International Vocabulary of Basic and General Terms in Metrology (VIM) jointly prepared by ISO, IEC, BIPM, IFCC, IUPAC and OIML shall apply. **[**In addition, for the purposes of this **[**Chapter**]** the following definitions shall apply:**] [**In addition the following shall be defined as follows:**]**

**[Administrative Refusal:** actions taken by a public administration body in the importing Party, in the exercise of its rights, to refuse a shipment entry to its territory **[**or the provision of a service**]**, for technical reasons.**]**

**[Authorization Procedure:** any administrative process that is obligatory for obtaining registration, a permit, license or any other authorization, with the aim that a good **[**or service**]** may be **[**produced,**]** marketed or used for defined purposes or according to established conditions.**]**

**[Conformity Mark:** a protected mark applied or issued in accordance with the regulations of a certification system, indicating a reasonable assurance that the relevant product, process **[**or service**]** conforms to a standard or other specific standard-setting document.**]**

**[International Standard:** a standard, or other guide or recommendation, adopted by an international standardizing body and made available to the public.**]**

**[International [Standardizing] [Standardization] Body] [Bodies for Standardization and Metrology]:** a standardizing body whose membership is open to the relevant bodies belonging to at least all the Parties in the WTO Agreement on Technical Barriers to Trade, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Codex Alimentarius Commission, the International Organization for Legal Metrology (OILM), the International Commission on Radiation Units and Measures (ICRU), or any other body designated by the Parties.**]**

**[To Make Compatible:** to bring different standards-related measures of the same scope approved by different standards-related bodies, to a level such that they are either identical, equivalent or have the effect of permitting goods **[**or services**]** to be used in place of one another or fulfill the same purpose.**]**

**[National Standard:** A standard prepared or adopted by a National Standards Body.**]**

**[Pre-Measured Product**: A packed or packaged product marketed in measured units.**]**

**[Regional Standard**: A standard prepared and promulgated by a Regional Standards Body such as the Pan American Standards Commission (COPANT).**]**

**[Risk Assessment:** assessment of the potential damage that any good **[**or service**]** traded between the Parties might cause to the achievement of legitimate objectives.**]**

**[Service:** any service, within the scope of this Agreement **[**which is subject to standardization or metrology measures and any others that the Parties may agree to in future negotiations**].]**

**[Standard**: Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for products **[**or for 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 labelling requirements as they apply to a product **[**or a service**]**, process or production method or related operation. The definition of standard may also include a pattern or artifact used in metrology.**]**

**[Standardization Body**: any body whose standardization activities are recognized.**]**

**[Standards-Related Measures**: Standards, technical regulations, or conformity assessment procedures.**]**

**[[WTO] TBT Agreement**: The World Trade Organization (WTO) Agreement on Technical Barriers to Trade.**]**

**[Technical Competence:** Aptitude for and ability to master an issue, technical subject or discipline**]**

**[Technical Regulation:** Document that lays down product characteristics or their related processes and production methods **[**or the characteristics of services or related operating methods**]**, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a product, **[**services**]**, production processes or methods or related operations.**]**

**[Traceability**: Property of the result of a measurement or the value of a standard whereby it can be related to stated references, usually national or international standards, through an unbroken chain of comparisons all having stated uncertainties**] ]]**

## **[TECHNICAL BARRIERS TO TRADE**

1. Each Party shall make every effort to fully implement and abide by the World Trade Organization Agreement on Technical Barriers to Trade;

2. In order to assist the less developed Parties to this Agreement better fulfill their commitments the more developed Parties will make all reasonable efforts to provide technical assistance;

3. The Parties hereby establish a Committee on Technical Barriers to Trade which shall meet **[**whenever required, normally each year**] [**every two years**]** to review matters related to this **[**Chapter**]**, including any matter falling under the scope of the subject matter of the TBT noted in Paragraph 1 above that has a particular interest to Parties to the Agreement as well as issues related to the technical assistance as provided in paragraph 2 above.**]**