

CHAPTER TWO: GENERAL DEFINITIONS

Article 201: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

Commission means the Free Trade Commission established under Article 2001(1) (The Free Trade Commission);

Customs Valuation Code means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade including its interpretative notes

days means calendar days, including weekends and holidays;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

existing means in effect on the date of entry into force of this Agreement;

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

goods of a Party means domestic products as these are understood in the General Agreement on Tariffs and Trade or such goods as the Parties may agree, and includes originating goods of that Party;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, and its legal notes, and rules as adopted and implemented by the Parties in their respective tariff laws;

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

national means a natural person who is a citizen or permanent resident of a Party and any other natural person referred to in Annex 201.1;

originating means qualifying under the rules of origin set out in Chapter Four (Rules of Origin);

person means a natural person or an enterprise;

person of a Party means a national, or an enterprise of a Party;

Secretariat means the Secretariat established under Article 2002(1) (The Secretariat);

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party; and territory means for a Party the territory of that Party as set out in Annex 201.1.

2 For purposes of this Agreement, unless otherwise specified, a reference to a state or province includes local governments of that state or province.

Annex 201.1: Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

national also includes:

a) with respect to Mexico, a national or a citizen according to Articles 30 and 34, respectively, of the Mexican Constitution; and

b) with respect to the United States, "national of the United States" as defined in the existing provisions of the Immigration and Nationality Act;

Section E - Definitions

Article 318: Definitions

For purposes of this Chapter:

advertising films means recorded visual media, with or without soundtracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of any Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film and that do not form part of a larger consignment.

commercial samples of negligible value means 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 marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

consumed means:

a) actually consumed; or

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

customs duty includes 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 or surcharge in connection with such importation, but does not include any:

a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT, or any equivalent provision of a successor agreement to which all Parties are party, 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) antidumping or countervailing duty that is applied pursuant to a Party's domestic law and not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

c) fee or other charge in connection with importation commensurate with the cost of services rendered;

d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and

e) fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures);

distilled spirits include distilled spirits and distilled spirit containing beverages;

duty deferral program includes measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, "maquiladoras," and inward processing programs;

c) a copy of a final customs duty determination by a customs administration respecting the relevant entry;

d) any other evidence of payment of customs duties acceptable under the Uniform Regulations established in accordance with Chapter Five (Customs Procedures);

total export shipments means all shipments from total supply to users located in the territory of another Party;

total supply means all shipments, whether intended for domestic or foreign users, from:

a) domestic production;

b) domestic inventory; and

c) other imports as appropriate; and waiver of customs duties means a measure that waives otherwise applicable customs duties on any good imported from any country, including the territory of another Party.

Annex 301.3: Exceptions to Articles 301 and 309

Section A - Canadian Measures

1. Articles 301 and 309 shall not apply to controls by Canada on the export of logs of all species.

2. Articles 301 and 309 shall not apply to controls by Canada on the export of unprocessed fish pursuant to the following existing statutes, as amended as of August 12, 1992:

a) New Brunswick Fish Processing Act, R.S.N.B. c. F18.01 (1982), and Fisheries Development Act, S.N.B. c. F15.1 (1977);

b) Newfoundland Fish Inspection Act, R.S.N. 1990, c. F12;

c) Nova Scotia Fisheries Act, S.N.S. 1977, c. 9;

d) Prince Edward Island Fish Inspection Act, R.S.P.E.I. 1988, c. F13; and

e) Quebec Marine Products Processing Act, No. 38, S.Q. 1987, c. 51.

3. Articles 301 and 309 shall not apply to:

a) except as provided in Annex 300-A, Appendix 300-A.1, paragraph 4, measures by Canada respecting the importation of any goods enumerated or referred to in Schedule VII of the Customs Tariff, R.S.C. 1985, c. 41 (3rd Supp.), as amended

b) measures by Canada respecting the exportation of liquor for delivery into any country into which the importation of liquor is prohibited by law under the existing provisions of the Export Act, R.S.C. 1985, c. E18, as amended,

c) measures by Canada respecting preferential rates for certain freight traffic under the existing provisions of the Maritime Freight Rate Act, R.S.C. 1985, c. M-1, as amended,

d) Canadian excise taxes on absolute alcohol used in manufacturing under the existing provisions of the Excise Tax Act, R.S.C. 1985, c. E-14, as amended, and

e) measures by Canada prohibiting the use of foreign or non-duty paid ships in the coasting trade of Canada unless granted a license under the Coasting Trade Act, S.C. 1992, c. 31, to the extent that such provisions were mandatory legislation at the time of Canada's accession to the GATT and have not been amended so as to decrease their conformity with the GATT.

4. Articles 301 and 309 shall not apply to quantitative import restrictions on goods that originate in the territory of the United States, considering operations performed in, or materials obtained from, Mexico as if they were performed in, or obtained from, a non-Party, and that are indicated by asterisks in Chapter 89 in Annex 401.2 (Tariff Schedule of Canada) of the Canada United States Free Trade Agreement for as long as the measures taken under the Merchant Marine Act of 1920, 46 App. U.S.C. §§ 883, and the Merchant Marine Act of 1936,

The Committee shall establish an Advisory Committee on Private Commercial Disputes regarding Agricultural Goods, comprising persons with expertise or experience in the resolution of private commercial disputes in agricultural trade. The Advisory Committee shall report and provide recommendations to the Committee for the development of systems in the territory of each Party to achieve the prompt and effective resolution of such disputes, taking into account any special circumstance, including the perishability of certain agricultural goods.

Article 708: Definitions

For purposes of this Section:

agricultural good **means** a good provided for in any of the following:

Note: (For purposes of reference only, descriptions are provided next to the corresponding tariff provision.)

(a) Harmonized System (HS) Chapters 1 through 24 (other than a fish or fish product);
or

(b)

HS subheading	2905.43	manitol
HS subheading	2905.44	sorbitol
HS heading 33.01		essential oils
HS headings	35.01 to 35.05	albuminoidal substances, modified starches, glues
HS subheading	3809.10	finishing agents HS subheading 3823.60 sorbitol
HS heading	43.01	raw furskins
HS headings	50.01 to 50.03	raw silk and silk waste
HS headings	51.01 to 51.03	wool and animal hair
HS headings	52.01 to 52.03	raw cotton cotton waste and cotton carded or combed
HS heading	53.01	raw flax
HS heading	53.02	raw hemp

customs duty means "customs duty" as defined in Article 318 (National Treatment and Market Access for Goods - Definitions);

duty-free means "duty-free" as defined in Article 318; fish or fish product means a fish or crustacean, mollusc or other aquatic invertebrate, marine mammal, or a product thereof provided for in any of the following:

HS Chapter	03	fish and crustaceans, molluscs and other aquatic invertebrates
HS heading	05.07	tortoise-shell, whalebone and whalebone hair and those fish or crustaceans, molluscs or other aquatic invertebrates, marine mammals, and their products within this heading
HS heading	05.08	coral and similar materials
HS heading	05.09	natural sponges of animal origin
HS heading	05.11	products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3
HS heading	15.04	tats and oils and their fractions of fish or marine mammals

(c) protect human life or health in its territory from risks arising from a diseasecausing organism or pest carried by an animal or plant, or a product thereof, or

(d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest, including end product criteria; a product-related processing or production method; a testing, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a method of risk assessment; a packaging and labelling requirement directly related to food safety; and a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation and scientific basis means a reason based on data or information derived using scientific methods legitimate objective includes an objective such as:

(a) safety,

(b) protection of human, animal or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

(c) sustainable development, considering, among other things where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification but does not include the protection of domestic production; make compatible means bring different standards-related measures of the same scope approved by different standardizing 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; services means land transportation services and telecommunications services;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating 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 good, process, or production or operating method;

standardizing body means a body having recognized activities in standardization;

standards-related measure means a standard, technical regulation or conformity assessment procedure;

technical regulation means a document which lays down goods characteristics or their related processes and production methods, or services characteristics or their 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 good, process, or production or operating method; and

telecommunications service means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming to the public generally.

2. Except as they are otherwise defined in this Agreement, other terms in this Chapter shall be interpreted in accordance with their ordinary meaning in context and in the light of the objectives of this Agreement, and where appropriate by reference to the terms presented in obligations of the Party. Where the adoption of a law is required for a Party, the Party shall use its best efforts to secure the adoption of the law and shall implement any such law within a reasonable to trade;

(c) the level of trade affected; and

(d) the extent of the disparity.

In developing its work program, the Council may address other related matters, including emissions from on-road and non-road mobile sources.

Article 1705: Copyright

works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:

(a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such, and

(b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:

(a) the importation into the Party's territory of copies of the work made without the right holder's authorization;

(b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

(c) the communication of a work to the public; and (d) the commercial rental of the original or a copy of a computer program. Subparagraph (d) shall not apply where the copy of the computer program is not itself an

essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee and

(b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making

5. Each Party shall confine limitations or exceptions to the rights provided for in this

Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

3. For purposes of the proper administration of the capital limits in this Section, the following provisions shall apply:

(a) Each foreign financial affiliate shall have an authorized capital determined by Mexico, and the paid-in capital of such an institution shall not be less than that authorized at the time of approval of its establishment. After the time of establishment, Mexico may permit authorized capital to exceed paid-in capital. Authorized capital shall not be reduced by any measure of Mexico (other than prudential measures) below paid-in capital. The maximum size of the operations of each foreign financial affiliate shall be determined, on a national treatment basis, as a function of the lesser of its capital or its authorized capital. (b) Mexico reserves the right to impose limitations on transfers of assets or liabilities by foreign financial affiliates that have the effect of evading the capital limits set forth in this Schedule. This subparagraph does not apply to bona fide transfers of funds to make overnight deposits or bona fide transfers of banking liabilities.

4. No foreign financial affiliate may issue subordinated debentures, other than to the investor of another Party that owns and controls the affiliate.

5. The aggregate of the authorized capital of all foreign financial affiliates of the same type, measured as a percentage of the aggregate capital of all financial institutions of such type in Mexico, shall not exceed the percentage set forth in the chart in this paragraph for that type of institution, except for insurance companies as set out in paragraph 6 of this Section. Beginning one year after the date of entry into force of this Agreement, these initial limits shall increase annually in equal increments so as to reach the final limits specified in the chart in this paragraph at the beginning of the last year of the transition period:

<u>Type of Financial Institution</u>	<u>Percentage of Total Capital</u>	
	<u>Initial Limit</u>	<u>Final Limit</u>
Commercial banks	8%	15%
Securities firms	10%	20%
Factoring companies	10%	20%
Leasing companies	10%	20%

Any capital in existence as of the date of signature of this Agreement of a foreign bank branch established in Mexico prior to such date shall be excluded from each of the aggregate capital limits referred to in this Schedule.