

# WORLD TRADE ORGANIZATION

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Committee on Regional Trade Agreements

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## FREE TRADE AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND MEXICO

The following text reproduces the Free Trade Agreement\* between the European Communities and Mexico.

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### DECISION NO. 2/2000 OF THE EC-MEXICO JOINT COUNCIL OF 23 MARCH 2000

*The Joint Council,*

*Having regard* to the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part, signed in Brussels on 8 December 1997 (hereinafter the "Interim Agreement"), and in particular Articles 3, 4, 5, 6 and 12, in conjunction with Article 9 thereof,

*Mindful* of their rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation (hereinafter "the WTO"),

*Whereas:*

- (1) Article 3 of the Interim Agreement provides that the Joint Council shall decide on the arrangements and timetable for a bilateral, progressive and reciprocal liberalisation of tariff and non-tariff barriers to trade in goods, in accordance with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter "the GATT 1994");
- (2) Article 4 of the Interim Agreement provides that the Joint Council shall decide on the appropriate arrangements and timetable for the gradual and mutual opening of agreed government procurement markets on a reciprocal basis;
- (3) Article 5 of the Interim Agreement stipulates that the Joint Council shall establish mechanisms of cooperation and coordination among the authorities of the Parties with responsibility for the implementation of competition rules;
- (4) Article 6 of the Interim Agreement provides that the Joint Council shall establish a mechanism of consultation with a view to reaching mutually satisfactory solutions in the event of difficulties in the protection of intellectual property;

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\* The Annexes and Protocols thereto have been submitted to the Secretariat for consultation by interested Members (Office 3006).

- (5) Article 12 of the Interim Agreement mandates the Joint Council to establish a specific trade or trade related dispute settlement procedure.

*Has decided as follows:*

## **TITLE I**

### General Provisions

#### *Article 1*

#### Objectives

The Joint Council hereby lays down the necessary arrangements for implementing the following objectives of the Interim Agreement:

- (a) the progressive and reciprocal liberalisation of trade in goods, in conformity with Article XXIV of GATT 1994;
- (b) opening the agreed government procurement markets of the Parties;
- (c) establishing a cooperation mechanism in the field of competition;
- (d) setting up a consultation mechanism in respect of intellectual property matters; and
- (e) establishing a dispute settlement mechanism.

## **TITLE II**

### Free Movement of Goods

#### *Article 2*

#### Objective

The Community and Mexico shall establish a Free Trade Area over a transitional period lasting a maximum of ten years starting from the entry into force of this Decision, in accordance with the provisions of this Decision and in conformity with Article XXIV of the GATT 1994.

## CHAPTER I

### Elimination of Customs Duties

#### *Section 1*

#### Common provisions

#### *Article 3*

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to products originating in the territory of the Parties. For purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Annex III.
2. The provisions of this Chapter concerning the elimination of customs duties on exports shall apply to all goods exported from the territory of one Party into the territory of the other Party.
3. Customs duties on imports between the Community and Mexico shall be eliminated in accordance with the provisions of Articles 4 to 10. Customs duties on exports between the Community and Mexico shall be eliminated as from the date of entry into force of this Decision.
4. No new customs duties on imports or exports shall be introduced, nor shall those already applied be increased in trade between the Community and Mexico as from the date of entry into force of this Decision.
5. Each Party declares its readiness to reduce its customs duties more rapidly than is provided for in Articles 4 to 10, or otherwise improve the conditions of access under such Articles, if its general economic situation and the situation of the economic sector concerned so permit. A Decision by the Joint Council to accelerate the elimination of a customs duty or otherwise improve conditions of access shall supersede the terms established in Articles 4 to 10 for the product concerned.
6. The classification of goods in trade between the Community and Mexico shall be that set out in each Party's respective tariff regimes in conformity with the Harmonised Commodity Description and Coding System.
7. For each product, the basic customs duty to which the successive reductions are to be applied pursuant to Articles 4 to 10 shall be that specified in each Party's Tariff Elimination Schedule (Annexes I and II). Unless otherwise specified, the base rates are expressed in *ad valorem* terms.
8. A customs duty includes any duty or charge of any kind imposed in connection with the importation or exportation of a good, including any form of surtax or surcharge in connection with such importation or exportation, but does not include any:
  - (a) charge equivalent to an internal tax imposed consistently with Article 13;
  - (b) anti-dumping or countervailing duty;
  - (c) fee or other charge, provided that it is limited in amount to the approximate cost of services rendered and does not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes.
9. Upon entry into force of this Decision, the Parties shall eliminate any fee or other charge referred to in paragraph 8(c) which is applied on originating goods on an *ad valorem* basis.

## SECTION 2

### Industrial Products

#### *Article 4*

This Section applies to all products not covered by the definition of agricultural and fisheries products contained in Article 7.

#### *Article 5*

#### Customs duties on imports originating in Mexico

1. On the date of entry into force of this Decision, the Community shall eliminate all customs duties on imports of products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "A".
2. Customs duties on imports into the Community of products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "B" shall be eliminated in four equal stages, the first one taking place on the date of entry into force of this Decision, and the other three on 1 January of each successive year, so that these custom duties are completely eliminated by 1 January 2003.

#### *Article 6*

#### Customs duties on imports originating in the Community

1. On the date of entry into force of this Decision, Mexico shall eliminate all customs duties on imports of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "A".
2. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "B" shall be eliminated in four equal stages, the first one taking place on the date of entry into force of this Decision, and the other three on 1 January of each successive year, so that these custom duties are completely eliminated by 1 January 2003.
3. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "B+" shall be eliminated in accordance with the following schedule, so that these custom duties are completely eliminated by 1 January 2005:

Mexican Base Rate	2000	2001	2002	2003	2004	2005
20	18	12	8	5	2.5	0
15	13	10	7	5	2.5	0
10	8	6	4	4	2	0
7	5	4	3	2	1	0
5	4	3	2	2	1	0

4. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "C" shall be eliminated in

accordance with the following schedule, so that these custom duties are completely eliminated by 1 January 2007:

Mexican Base Rate	2000	2001	2002	2003	2004	2005	2006	2007
20	18	12	8	5	5	4	3	0
15	13	10	7	5	5	4	3	0
10	8	6	5	4	4	3	1	0
7	5	4	3	3	2	2	1	0
5	4	3	2	2	2	1	1	0

### SECTION 3

#### Agricultural Products and Fisheries

##### *Article 7*

##### Definition

1. This Section applies to products listed in chapters 1 to 24 of the Harmonised Commodity Description and Coding System with the addition of any product listed in Annex I of the WTO Agreement on Agriculture.
2. This definition includes fish and fisheries products covered by Chapter 3, Headings 1604 and 1605, and Sub-headings 051191, 230120 and ex 190220.<sup>1</sup>

##### *Article 8*

#### Customs duties on imports originating in Mexico

1. On the date of entry into force of this Decision, the Community shall eliminate all customs duties on imports of products originating in Mexico and listed in Annex I (Tariff Elimination Schedule of the Community) under category "1".
2. Customs duties on imports into the Community of products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "2" shall be eliminated in accordance with the following schedule:
  - (a) on the date of entry into force of this Decision, each duty shall be reduced to 75 per cent of the basic duty;
  - (b) one year after the date of entry into force of this Decision, each duty shall be reduced to 50 per cent of the basic duty;
  - (c) two years after the date of entry into force of this Decision, each duty shall be reduced to 25 per cent of the basic duty; and
  - (d) three years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

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<sup>1</sup> Ex 190220 is 'stuffed pasta containing more than 20 per cent by weight of fish, crustaceans, molluscs or other aquatic invertebrates'

3. Customs duties on imports into the Community of products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "3" shall be eliminated in accordance with the following schedule:

- (a) on the date of entry into force of this Decision, each duty shall be reduced to 89 per cent of the basic duty;
- (b) one year after the date of entry into force of this Decision, each duty shall be reduced to 78 per cent of the basic duty;
- (c) two years after the date of entry into force of this Decision, each duty shall be reduced to 67 per cent of the basic duty;
- (d) three years after the date of entry into force of this Decision, each duty shall be reduced to 56 per cent of the basic duty;
- (e) four years after the date of entry into force of this Decision, each duty shall be reduced to 45 per cent of the basic duty;
- (f) five years after the date of entry into force of this Decision, each duty shall be reduced to 34 per cent of the basic duty;
- (g) six years after the date of entry into force of this Decision, each duty shall be reduced to 23 per cent of the basic duty;
- (h) seven years after the date of entry into force of this Decision, each duty shall be reduced to 12 per cent of the basic duty; and
- (i) eight years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

4. Customs duties on imports into the Community of products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "4" shall be eliminated in accordance with the following schedule:

- (a) three years after the date of entry into force of this Decision, each duty shall be reduced to 87 per cent of the basic duty;
- (b) four years after the date of entry into force of this Decision, each duty shall be reduced to 75 per cent of the basic duty;
- (c) five years after the date of entry into force of this Decision, each duty shall be reduced to 62 per cent of the basic duty;
- (d) six years after the date of entry into force of this Decision, each duty shall be reduced to 50 per cent of the basic duty;
- (e) seven years after the date of entry into force of this Decision, each duty shall be reduced to 37 per cent of the basic duty;
- (f) eight years after the date of entry into force of this Decision, each duty shall be reduced to 25 per cent of the basic duty;

- (g) nine years after the date of entry into force of this Decision, each duty shall be reduced to 12 per cent of the basic duty; and
- (h) ten years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

5. Customs duties on imports into the Community of products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "4a" shall be eliminated in accordance with the following schedule:

- (a) on the date of entry into force of this Decision, each duty shall be reduced to 90 per cent of the basic duty;
- (b) one year after the date of entry into force of this Decision, each duty shall be reduced to 80 per cent of the basic duty;
- (c) two years after the date of entry into force of this Decision, each duty shall be reduced to 70 per cent of the basic duty;
- (d) three years after the date of entry into force of this Decision, each duty shall be reduced to 60 per cent of the basic duty;
- (e) four years after the date of entry into force of this Decision, each duty shall be reduced to 50 per cent of the basic duty;
- (f) five years after the date of entry into force of this Decision, each duty shall be reduced to 40 per cent of the basic duty;
- (g) six years after the date of entry into force of this Decision, each duty shall be reduced to 30 per cent of the basic duty;
- (h) seven years after the date of entry into force of this Decision, each duty shall be reduced to 20 per cent of the basic duty;
- (i) eight years after the date of entry into force of this Decision, each duty shall be reduced to 10 per cent of the basic duty; and
- (j) nine years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

6. Customs duties on imports into the Community of products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "5" shall be reduced in accordance with the provisions of Article 10.

7. Tariff quotas with reduced customs duties on imports into the Community of certain agricultural and fisheries products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "6" shall be applied as from entry into force of this Decision, in accordance with the conditions mentioned in that Annex. These quotas shall be managed on the basis of specific export documents issued by the exporting Party. The import licenses will be issued by the importing Party automatically within the agreed limit on the basis of export certificates issued by the other Party.

8. Customs duties on imports into the Community of processed agricultural products originating in Mexico listed in Annex I (Tariff Elimination Schedule of the Community) under category "7" shall be applied in accordance with the conditions mentioned in Annex I.

The Joint Council may decide on:

- (a) the extension of the list of processed agricultural products listed in Annex I (Tariff Elimination Schedule of the Community) under category "7"; and
- (b) the reduction of the duties on imports of processed agricultural products and on the level of quotas.

This reduction of duties may take place when, in trade between the Community and Mexico, duties applicable to basic products are reduced or in response to reductions resulting from the mutual concessions relating to processed agricultural products.

9 Paragraphs 1 to 8 shall apply only to the customs duties which are expressed in the "Base Rate" column in *ad valorem* terms for products listed in Annex I (Tariff Elimination Schedule of the Community) under category "EP" and shall not apply to the specific duties resulting from the application of entry price systems. In case of non-respect of the entry price level for a given product, no differentiation shall be made between specific duties paid on imports into the Community of products originating in Mexico and identical products imported into the Community and originating in other third countries.

10. Tariff concessions shall not apply to imports into the Community of products listed in Annex I (Tariff Elimination Schedule of the Community) under category "O" as these products are covered by denominations protected in the Community.

11. For certain products indicated in Annex I (Tariff Elimination Schedule of the Community) a duty-free quota shall apply, in accordance with the conditions mentioned in Annex I, as from entry into force of the Decision until the end of the tariff phase out for these products.

#### *Article 9*

##### Customs duties on imports originating in the Community

1. On the date of entry into force of this Decision, Mexico shall eliminate all customs duties on imports of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "1".

2. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "2" shall be eliminated in accordance with the following schedule:

- (a) on the date of entry into force of this Decision, each duty shall be reduced to 75 per cent of the basic duty;
- (b) one year after the date of entry into force of this Decision, each duty shall be reduced to 50 per cent of the basic duty;
- (c) two years after the date of entry into force of this Decision, each duty shall be reduced to 25 per cent of the basic duty; and



- (d) three years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

3. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "3" shall be eliminated in accordance with the following schedule:

- (a) on the date of entry into force of this Decision, each duty shall be reduced to 89 per cent of the basic duty;
- (b) one year after the date of entry into force of this Decision, each duty shall be reduced to 78 per cent of the basic duty;
- (c) two years after the date of entry into force of this Decision, each duty shall be reduced to 67 per cent of the basic duty;
- (d) three years after the date of entry into force of this Decision, each duty shall be reduced to 56 per cent of the basic duty;
- (e) four years after the date of entry into force of this Decision, each duty shall be reduced to 45 per cent of the basic duty;
- (f) five years after the date of entry into force of this Decision, each duty shall be reduced to 34 per cent of the basic duty;
- (g) six years after the date of entry into force of this Decision, each duty shall be reduced to 23 per cent of the basic duty;
- (h) seven years after the date of entry into force of this Decision, each duty shall be reduced to 12 per cent of the basic duty; and
- (i) eight years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

4. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "4" shall be eliminated in accordance with the following schedule:

- (a) three years after the date of entry into force of this Decision, each duty shall be reduced to 87 per cent of the basic duty;
- (b) four years after the date of entry into force of this Decision, each duty shall be reduced to 75 per cent of the basic duty;
- (c) five years after the date of entry into force of this Decision, each duty shall be reduced to 62 per cent of the basic duty;
- (d) six years after the date of entry into force of this Decision, each duty shall be reduced to 50 per cent of the basic duty;
- (e) seven years after the date of entry into force of this Decision, each duty shall be reduced to 37 per cent of the basic duty;

- (f) eight years after the date of entry into force of this Decision, each duty shall be reduced to 25 per cent of the basic duty;
- (g) nine years after the date of entry into force of this Decision, each duty shall be reduced to 12 per cent of the basic duty; and
- (h) ten years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

5. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "4a" shall be eliminated in accordance with the following schedule:

- (a) on the date of entry into force of this Decision, each duty shall be reduced to 90 per cent of the basic duty;
- (b) one year after the date of entry into force of this Decision, each duty shall be reduced to 80 per cent of the basic duty;
- (c) two years after the date of entry into force of this Decision, each duty shall be reduced to 70 per cent of the basic duty;
- (d) three years after the date of entry into force of this Decision, each duty shall be reduced to 60 per cent of the basic duty;
- (e) four years after the date of entry into force of this Decision, each duty shall be reduced to 50 per cent of the basic duty;
- (f) five years after the date of entry into force of this Decision, each duty shall be reduced to 40 per cent of the basic duty;
- (g) six years after the date of entry into force of this Decision, each duty shall be reduced to 30 per cent of the basic duty;
- (h) seven years after the date of entry into force of this Decision, each duty shall be reduced to 20 per cent of the basic duty;
- (i) eight years after the date of entry into force of this Decision, each duty shall be reduced to 10 per cent of the basic duty; and
- (j) nine years after the date of entry into force of this Decision, the remaining duties shall be completely eliminated.

6. Customs duties on imports into Mexico of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "5" shall be reduced in accordance with the provisions of Article 10.

7. Tariff quotas with reduced customs duties on imports into Mexico of certain agricultural and fisheries products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "6" shall be applied as from entry into force of this Decision in accordance with the conditions mentioned in that Annex. These quotas shall be managed on the basis of specific export documents issued by the exporting Party. The import licenses will be issued by the importing Party automatically within the agreed limit on the basis of export certificates issued by the other Party.

8. Customs duties on imports into Mexico of processed agricultural products originating in the Community listed in Annex II (Tariff Elimination Schedule of Mexico) under category "7" shall be applied in accordance with the conditions mentioned in that Annex.

The Joint Council may decide on:

- (a) the extension of the list of processed agricultural products listed in Annex II (Tariff Elimination Schedule of Mexico) under category "7"; and
- (b) the reduction of the duties on imports of processed agricultural products and on the level of quotas.

This reduction of duties may take place when in trade between Mexico and the Community, duties applicable to basic products are reduced or in response to reductions resulting from the mutual concessions relating to processed agricultural products.

#### *Article 10*

##### Review Clause

##### Agricultural and Fisheries Products

1. No later than three years after the entry into force of this Decision and in accordance with the provisions of Article 3(5), the Joint Council shall consider further steps in the process of liberalisation of trade between the Community and Mexico. For this purpose, a review shall be undertaken, on a case by case basis, of the customs duties applicable on products listed in Annexes I and II (Tariff Elimination Schedule of the Community and of Mexico, respectively) under category "5". Where appropriate, the relevant rules of origin shall also be reviewed.
2. No later than three years after the entry into force of this Decision and in accordance with the provisions of Article 3(5), the Joint Council shall review the tariff quota quantities set out for agricultural products in Annexes I and II (Tariff Elimination Schedules of the Community and Mexico, respectively) under category "6". For this purpose, a review shall be undertaken, on a case by case basis, of the products listed in these Annexes.
3. No later than three years after the entry into force of this Decision and in accordance with the provisions of Article 3(5), the Joint Council shall review the relevant elements in the process of liberalisation of trade between the Community and Mexico for fisheries products set out in Annexes I and II (Tariff Elimination Schedules of the Community and Mexico, respectively) under category "6".
4. Products listed in Annex I (Tariff Elimination Schedule of the Community) under category "O" shall be reviewed in accordance with developments in intellectual property rights.
5. No later than 1 September 2001, both Parties shall enter into discussions to examine the possibility of opening a preferential tariff rate quota for tuna loins before 1 January 2002.

## CHAPTER II

### Non-Tariff Measures

#### *Article 11*

##### Scope

The provisions of this Chapter shall apply to products of the territory of a Party.

#### *Article 12*

##### Prohibition of quantitative restrictions

1. All import or export prohibitions or restrictions in trade between the Community and Mexico, other than customs duties and taxes, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Decision. No new such measures shall be introduced.
2. Paragraph 1 shall not apply to measures set out in Annex IV.

#### *Article 13*

##### National treatment on internal taxation and regulation

1. The imported products of the territory of the other Party shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to domestic production.<sup>2</sup>
2. The imported products of the territory of the other Party shall be accorded treatment no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.
3. The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.
4. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement, which shall be subject exclusively to the provisions of Title III.
5. Paragraphs 1 and 2 shall not apply to the measures set out in Annex V until the date mentioned in that Annex.

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<sup>2</sup> A tax conforming to the requirements of the first sentence shall be considered inconsistent with the provisions of the second sentence only in cases where competition is involved between, on the one hand, a taxed product and, on the other hand, a directly competitive or substitutable product which is not similarly taxed.

*Article 14*Antidumping and countervailing measures

The Community and Mexico confirm their rights and obligations arising from the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and from the WTO Agreement on Subsidies and Countervailing Measures.

*Article 15*Safeguard clause

1. Where any product of one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:

- (a) serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party; or
- (b) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region of the importing Party,

the importing Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard measures shall not exceed what is necessary to remedy the difficulties which have arisen and should normally consist of the suspension of the further reduction of any applicable rate of duty provided for under this Decision for the product concerned or the increase of the rate of duty for that product.

3. Such measures shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest. Measures shall not be taken for a period exceeding one year. In very exceptional circumstances, measures may be taken up to a total maximum period of three years. No safeguard measure shall be applied to the import of a product which has previously been subject to such a measure for a period of, at least, three years since the expiry of the measure.

4. The Party intending to take safeguard measures under this Article shall offer the other Party compensation in the form of substantially equivalent trade liberalisation in relation to the imports from the latter. The offer of liberalisation shall normally consist of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the safeguard measure.

5. The offer shall be made prior to the adoption of the safeguard measure and simultaneously with the supply of information and referral to the Joint Committee, as provided for in this Article. Should the offer not be considered satisfactory by the Party against whose product the safeguard measure is intended to be taken, both Parties may agree, in the consultations referred to in this Article, on other means of trade compensation.

6. If the Parties concerned are unable to agree on compensation, the Party against whose product the safeguard measure is taken may take compensatory tariff action having trade effects substantially equivalent to the safeguard measure taken under this Article. The Party taking compensatory tariff action shall apply it, as a maximum, for the period necessary to achieve equivalent trade effects.

7. In the cases specified in this Article, before taking the measures provided for therein or, in the cases to which paragraph 8(b) of this Article applies, as soon as possible, the Community or Mexico, as the case may be, shall supply the Joint Committee with all relevant information, with a view to seeking a solution acceptable to the two Parties.

8. For the implementation of the above paragraphs the following provisions shall apply:

- (a) The difficulties arising from the situation referred to in this Article shall be referred for examination to the Joint Committee, which may take any decisions needed to put an end to such difficulties.

If the Joint Committee or the exporting Party has not taken a decision putting an end to the difficulties or no other satisfactory solution has been reached within 30 days of the matter being referred to the Joint Committee, the importing Party may adopt the appropriate measures to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the measure is taken may take compensatory tariff action in accordance with this Article. Such compensatory tariff action shall be immediately notified to the Joint Committee. In the selection of safeguard measures and compensatory tariff action, priority must be given to those which least disturb the functioning of the arrangements established in this Decision.

- (b) Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Party concerned may, in the situations specified in this Article, apply forthwith precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.
- (c) The safeguard measures shall be notified immediately to the Joint Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.

9. In the event of the Community or Mexico subjecting imports of products liable to give rise to the difficulties referred to in this Article to an administrative procedure having at its purpose the rapid provision of information on the trend of trade flows, it shall inform the other Party.

#### *Article 16*

##### Shortage clause

1. Where compliance with the provisions of Chapter I or Article 12 leads to:

- (a) a critical shortage, or threat thereof, of foodstuffs or other products essential to the exporting Party; or
- (b) a shortage of essential quantities of domestic materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; or
- (c) re-export to a third country of a product against which the exporting Party maintains export customs duties or export prohibitions or restrictions,

and where the situations referred to above give rise, or are likely to give rise to major difficulties for the exporting Party, that Party may adopt export restrictions or export customs duties.

2. In the selection of measures, priority must be given to those which least disturb the functioning of the arrangements in this Decision. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or a disguised restriction on trade and shall be eliminated when the conditions no longer justify their maintenance. In addition, the measures which may be adopted pursuant to paragraph 1(b) of this Article shall not operate to increase the exports of or the protection afforded to the domestic processing industry concerned, and shall not depart from the provisions of this Decision relating to non-discrimination.

3. Before taking the measures provided for in paragraph 1 of this Article or, as soon as possible in cases to which paragraph 4 of this Article applies the Community or Mexico, as the case may be, shall supply the Joint Committee with all relevant information, with a view to seeking a solution acceptable to the two Parties. The Parties within the Joint Committee may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of the matter being referred to the Joint Committee, the exporting Party may apply measures under this Article on the exportation of the product concerned.

4. Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Community or Mexico, whichever is concerned, may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

5. Any measures applied pursuant to this Article shall be immediately notified to the Joint Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their elimination as soon as circumstances permit.

#### *Article 17*

#### Customs cooperation

1. The Parties shall cooperate in order to guarantee compliance with the provisions of Title II, as they relate to customs matters, and Annex III, and with a view to achieving the necessary coordination of their customs systems.

2. Cooperation may include the following in particular:

- (a) the exchange of information;
- (b) the organization of seminars and placements;
- (c) the introduction of the single administrative document (SAD);
- (d) the simplification of inspection and formalities in respect of the carriage of goods;
- (e) the improvement of working methods;
- (f) the respect of transparency, efficiency, integrity and accountability of operations; and
- (g) technical assistance where appropriate.

3. The administrations of both Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of an Annex on Mutual Administrative Assistance on

Customs Matters to be adopted by the Joint Council no later than one year from the entry into force of this Decision.

4. The Joint Council hereby establishes a Special Committee on Customs Cooperation and Rules of Origin composed of representatives of the Parties. Its functions shall include:

- (a) monitoring the implementation and administration of this Article and of Annex III;
- (b) providing a forum to consult and discuss on all issues concerning customs, including in particular customs procedures, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters;
- (c) providing a forum to consult and discuss on issues relating to rules of origin and administrative cooperation;
- (d) enhancing cooperation on the development, application and enforcement of customs procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation.

5. The Special Committee shall be comprised of representatives of the Parties. The Special Committee shall meet at least once a year, on a date and with an agenda agreed in advance by the Parties. The office of chairman of the Special Committee shall be held alternatively by each of the Parties. The Special Committee shall report annually to the Joint Committee.

6. The Parties may agree to hold ad hoc meetings for customs cooperation or for rules of origin and mutual administrative assistance.

#### *Article 18*

##### Customs valuation

From 1 January 2003, each Party shall not afford less favourable treatment in respect of customs valuation to imports of products originating in the other Party than to imports of products originating in any other country, including countries with which it has concluded an agreement notified under Article XXIV of GATT 1994.

#### *Article 19*

##### Standards, technical regulations and conformity assessment procedures

1. This Article applies to standards, technical regulations and conformity assessment procedures as defined in the WTO Agreement on Technical Barriers to Trade (hereinafter "the TBT Agreement") that may directly or indirectly affect trade in products. It does not apply to sanitary and phytosanitary measures, which are covered by Article 20 of this Decision.

2. The Parties confirm their rights and obligations relating to standards, technical regulations and conformity assessment procedures under the TBT Agreement.

3. The Parties shall intensify their bilateral cooperation in this field in light of their mutual interest to facilitate access to both Parties markets and to increase mutual understanding and awareness of their respective systems.



4. To this end, the Parties shall work towards:
  - (a) exchanging information on standards, technical regulations and conformity assessment procedures;
  - (b) holding bilateral consultations concerning specific technical barriers to trade;
  - (c) promoting the use of international standards, technical regulations and conformity assessment procedures; and
  - (d) facilitating the adoption of their respective standards, technical regulations and conformity assessment procedures on the basis of international requirements.
5. Each Party shall, on request of the other Party, provide to that Party technical advice and assistance on mutually agreed terms and conditions to enhance that Party's standards, technical regulations or conformity assessment procedures, and related activities, processes and systems.
6. In order to achieve the objectives set out in paragraph 4, the Joint Council hereby establishes a Special Committee on Standards and Technical Regulations. The Special Committee shall be comprised of representatives of the Parties. The Special Committee shall meet once a year on a date and with an agenda agreed in advance by the Parties. The office of chairman of the Special Committee shall be held alternatively by each of the Parties. The Special Committee shall report annually to the Joint Committee.
7. The Special Committee's functions shall include:
  - (a) monitoring the implementation and administration of this Article;
  - (b) providing a forum to consult and discuss on issues relating to standards, technical regulations and conformity assessment procedures;
  - (c) working towards the approximation and simplification of labelling requirements, including voluntary schemes, the use of pictograms and symbols, and the convergence of the terms applied to leather products with international practices; and
  - (d) enhancing cooperation on the development, application and enforcement of standards, technical regulations and conformity assessment procedures.

*Article 20*

Sanitary and phytosanitary measures

1. The Parties shall cooperate in the area of sanitary and phytosanitary measures with the objective of facilitating trade. The Parties reaffirm their rights and obligations set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
2. The Joint Council hereby establishes a Special Committee on Sanitary and Phytosanitary Measures. The Special Committee shall be comprised of representatives of both Parties. The Special Committee shall meet once a year, on a date and with an agenda agreed in advance by the Parties. The office of chairman of the Special Committee shall be held alternatively by a representative of each Party. The Special Committee shall report annually to the Joint Committee.

3. The functions of the Special Committee shall include:
  - (a) monitoring the application of the provisions of this Article;
  - (b) to provide a forum to identify and address problems that may arise from the application of specific sanitary or phytosanitary measures, with a view to reaching mutually acceptable solutions;
  - (c) to consider, as necessary, the development of specific provisions for the application of regionalisation, or for the assessment of equivalence; and
  - (d) to consider the development of specific arrangements for information exchange.
4. The Special Committee may establish contact points.
5. Each Party shall contribute to the work of the Special Committee, and consider the outcome of its work in accordance with its own internal procedures.

*Article 21*

Balance-of-payments difficulties

1. The Parties shall endeavour to avoid the imposition of restrictive measures relating to imports for balance-of-payments purposes. In the event of their introduction, the Party having introduced the same shall present to the other Party, as soon as possible, a time schedule for their removal.
2. Where one or more Member States or Mexico is in serious balance-of-payments difficulties, or under imminent threat thereof, the Community or Mexico, as the case may be, may in accordance with the conditions established under the GATT 1994, adopt restrictive measures relating to imports, which shall be of limited duration and may not go beyond what is necessary to remedy the balance-of-payments situation. The Community or Mexico, as the case may be, shall inform the other Party forthwith.

*Article 22*

General exceptions

Nothing in this Decision shall preclude the adoption or enforcement by any Party of measures which:

- (a) are necessary to protect public morals;
- (b) are necessary to protect human, animal or plant life or health;
- (c) are necessary to secure compliance with laws or regulations which are not inconsistent with this Decision, including those relating to customs enforcement, the protection of intellectual property rights; and the prevention of deceptive practices;
- (d) relate to the importation or exportation of gold or silver;
- (e) relate to the protection of national treasures of artistic, historic or archaeological value; or

- (f) relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

Such measures shall not, however, be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail or a disguised restriction on trade between the Parties.

### *Article 23*

#### Customs unions and free-trade areas

1. Nothing in this Decision shall preclude the maintenance or establishment of customs unions, free-trade areas or other arrangements between either of the Parties and third countries, except insofar as they do not alter the rights and obligations provided for in this Decision.
2. At the request of a Party, consultations between the Community and Mexico shall take place within the Joint Committee concerning agreements establishing or adjusting customs unions or free-trade areas and, where required, on other major issues related to the Parties' respective trade policies with third countries.

### *Article 24*

#### Special Committee on Steel Products

1. The Joint Council hereby establishes a Special Committee on Steel Products comprising representatives of the Parties with expertise or experience on the steel sector and in particular on trade in steel. The Special Committee may invite representatives of each Party's industry to its meetings. It shall meet at least twice a year and, at the request of either Party, on a date and with an agenda agreed in advance by the Parties. The office of chairman of the Special Committee shall be held alternatively by a representative of each Party.
2. The Special Committee shall analyse relevant matters on the steel sector, including trade in steel. It shall report annually to the Joint Committee.

## **TITLE III**

### Government Procurement

#### *Article 25*

#### Coverage

1. This Title applies to any law, regulation, procedure or practice regarding any procurement:
  - (a) by entities set out in Annex VI;
  - (b) of goods in accordance with Annex VII, services in accordance with Annex VIII, or construction services in accordance with Annex IX;

- (c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold as set out in Annex X.<sup>3</sup>
2. Paragraph 1 is subject to the provisions set out in Annex XI.
3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Title, this Title shall not be construed to cover any good or service component of that contract.
4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Title.
5. Procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy.
6. Procurement does not include:
  - (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or state, provincial and regional governments; and
  - (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

#### *Article 26*

##### National treatment and non-discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Title, each Party shall provide immediately and unconditionally to the products, services and suppliers of the other Party treatment no less favourable than that accorded to domestic products, services and suppliers.
2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Title, each Party shall ensure:
  - (a) that its entities do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation to, or ownership by, a person of the other Party; and,
  - (b) that its entities do not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is the other Party.
3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Title.

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<sup>3</sup> The threshold value shall be calculated and adjusted according to the provisions set out in Annex X.

*Article 27*Rules of origin

1. No Party may apply rules of origin to goods imported from the other Party for purposes of government procurement covered by this Title that are different from, or inconsistent with, the rules of origin which that Party applies in the normal course of trade.
2. A Party may deny the benefits of this Title to a service supplier of the other Party, subject to prior notification and consultation, where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of either Party.

*Article 28*Prohibition of offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means conditions imposed or considered by an entity prior to, or in the course of, its procurement process that encourage local development or improve its Party's balance-of-payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

*Article 29*Procurement procedures and other provisions

1. Mexico shall apply the rules and procedures specified in Part A of Annex XII and the Community shall apply the rules and procedures specified in Part B of Annex XII Both sets of rules and procedures are considered to provide equivalent treatment.
2. The rules and procedures specified in Annex XII may only be modified by the Party concerned in order to reflect amendments to the corresponding provisions of the North American Free Trade Agreement (hereinafter NAFTA) and the WTO Agreement on Government Procurement (hereinafter GPA), respectively, provided that the rules and procedures applied by that Party, as modified, continue to afford equivalent treatment.
3. If a Party modifies its respective rules and procedures contained in Annex XII, pursuant to paragraph 2, it shall previously consult with the other Party and shall bear the burden of proving that the rules and procedures, as modified, continue to afford equivalent treatment.
4. The Party concerned shall notify the other Party of any modification to the rules and procedures specified in Annex XII no later than 30 days prior to their date of entry into force.
5. Where a Party considers that such a modification affects access to the other Party's procurement market considerably, it can request consultations. If no satisfactory solution can be found the Party may have recourse to dispute settlement procedures under Title VI, with a view to maintaining an equivalent level of access to the other Party's procurement market.
6. No entity of a Party may make it a condition for the qualification of suppliers and for the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

*Article 30*

Bid challenge

1. In the event of a complaint by a supplier that there has been a breach of this Title in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.
2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Title arising in the context of procurements in which they have, or have had, an interest.
3. Each Party shall provide its challenge procedures in writing and make them generally available.
4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Title shall be retained for three years.
5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days from that time.
6. A Party may require under its legislation that a bid challenge be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-day period described in paragraph 5 shall begin no earlier than the date that the notice is published or the tender documentation is made available. Nothing in this provision precludes the right of interested suppliers to judicial review.
7. Challenges shall be heard by an impartial and independent reviewing authority with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedures which provide that:
  - (a) participants can be heard before an opinion is given or a decision is reached;
  - (b) participants can be represented and accompanied;
  - (c) participants shall have access to all proceedings;
  - (d) proceedings can take place in public;
  - (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
  - (f) witnesses can be presented; and
  - (g) documents are disclosed to the reviewing authority.

8. Challenge procedures shall provide for:
- (a) rapid interim measures to correct breaches of this Title and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing; and
  - (b) where appropriate, correction of the breach of this Title or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.
9. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

*Article 31*

Provision of information

1. Each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure regarding government procurement covered by this Title in the appropriate publications referred to in Annex XIII.
2. Each Party shall designate at the entry into force of this Decision one or more contact points to:
  - (a) facilitate communication between the Parties;
  - (b) answer all reasonable inquiries from the other Party to provide relevant information on matters covered by this Title; and
  - (c) on request of a supplier of a Party, provide in writing within a reasonable time period a reasoned answer to the supplier and the other Party as to whether a specific entity is covered by this Title.
3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. Where release of this information would prejudice competition in future tenders, the information shall not be released by the requesting Party, except after consultation with, and agreement of, the Party that provided the information.
4. On request, each Party shall provide to the other Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.
5. No Party may disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorisation of the person that provided the information to that Party.

6. Nothing in this Title shall be construed as requiring any Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. Each Party shall collect and exchange on an annual basis statistics on its procurements covered by this Title.<sup>4</sup> Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Title:

- (a) for entities in Annexes VI.A.1 and VI.B.1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes VI.A.2 and VI.B.2, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;
- (b) for entities in Annexes VI.A.1 and VI.B.1, statistics on the number and total value of contracts awarded above the applicable threshold value, broken down by entities and categories of products and services; for entities in Annexes VI.A.2 and VI.B.2, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;
- (c) for entities in Annexes VI.A.1 and VI.B.1, statistics broken down by entity and by categories of products and services, on the number and total value of contracts awarded under limited tendering procedures; for categories of entities in Annexes VI.A.2 and VI.B.2, statistics on the total value of contracts awarded above the threshold value under each of the cases of limited tendering procedures; and
- (d) for entities in Annexes VI.A.1 and VI.B.1, statistics broken down by entities, on the number and total value of contracts awarded under derogations to the Title contained in the relevant Annexes; for categories of entities in Annexes VI.A.2 and VI.B.2, statistics on the total value of contracts awarded under derogations to the Title contained in the relevant Annexes.

8. To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Special Committee established under Article 32 shall provide guidance on the methods to be used. With a view to ensuring effective monitoring of procurements covered by this Title, the Joint Council may decide to modify the requirements of subparagraphs (a) to (d) of paragraph 7 as regards the nature and the extent of statistical information to be exchanged.<sup>5</sup>

### *Article 32*

#### Technical cooperation

1. The Joint Council hereby establishes a Special Committee on Government Procurement. The Special Committee shall be comprised of representatives of the Parties and may invite procurement officials of the covered entities and representatives of their respective suppliers. The Special Committee shall meet once a year, or when necessary, to discuss the operation of this Title and, where

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<sup>4</sup> The first exchange of information under paragraph 7 of Article 31 will take place two years after the entry into force of this Decision. In the meantime, the Parties will communicate to each other all available and comparable relevant data on a reciprocal basis.

<sup>5</sup> The Joint Council shall modify this provision taking into account the future revisions of the GPA or NAFTA.



necessary, make recommendations for the improvement and amendment of its scope. The Special Committee shall report annually to the Joint Committee.

2. Its functions shall include:
  - (a) analysing available information on each Party's procurement market including the statistical information provided under paragraph 7 of Article 31;
  - (b) evaluating the effective access of suppliers of a Party to procurements of the other Party covered under this Title and recommending, where necessary, appropriate measures to enhance the conditions for effective access to a Party's procurement market;
  - (c) promoting government procurement opportunities for suppliers from both Parties; and
  - (d) monitoring the application of the provisions of this Title and providing a forum to identify and address any problems or other issues that may arise.
3. The Parties shall cooperate, on mutually agreed terms, to increase the understanding of their respective government procurement systems, with a view to maximise the access to government procurement opportunities for the suppliers of both Parties.
4. Each Party shall take reasonable measures to provide to the other Party and to the suppliers of the other Party, on a cost recovery basis, information concerning training and orientation programs regarding its government procurement system, and access on a non-discriminatory basis to any program it conducts.
5. The training and orientation programs referred to in paragraph 4 include:
  - (a) training of government personnel directly involved in government procurement procedures;
  - (b) training of suppliers interested in pursuing government procurement opportunities;
  - (c) an explanation and description of specific elements of each Party's government procurement system, such as its bid challenge mechanism; and
  - (d) information about government procurement market opportunities.
6. Each Party shall establish at least one contact point to provide information on the training and orientation programs referred to in this Article at the entry into force of this Decision.

### *Article 33*

#### Information technology

1. The Parties shall cooperate with a view to ensuring that the type of procurement information, notably in tender notices and documentation, held on their respective databases is comparable in terms of quality and accessibility. The Parties shall also cooperate with a view to ensuring that the type of information exchanged through their respective electronic means between interested parties for the purposes of public procurement is comparable in terms of quality and accessibility.

2. Paying due attention to issues of interoperability and interconnectivity, and after having agreed that the type of procurement information referred to in paragraph 1 is comparable, the Parties shall grant access to suppliers of the other Party to relevant procurement information, such as tender notices, held on their respective databases, and to their respective electronic procurement systems, such as electronic tendering, in accordance with Article 26.

*Article 34*

Exceptions

Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade between the Parties, nothing in this Title shall be construed to prevent any Party from adopting or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labour.

*Article 35*

Rectifications or modifications

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

5. Where a Party considers that:
- (a) an adjustment proposed under paragraph 2(c) is not adequate to maintain a comparable level of mutually agreed coverage; or
  - (b) a rectification or amendment does not meet the requirements of paragraph 3 and should be compensated,

the Party may have recourse to dispute settlement procedures under Title VI.

6. Where a Party considers that a reorganisation of procurement entities does not meet the requirements of paragraph 4 and should be compensated, it may have recourse to dispute settlement procedures under Title VI, provided that it has objected to such reorganisation within 30 days from the date of the notification.

#### *Article 36*

##### Privatisation of entities

1. Where a Party wishes to withdraw an entity from Section 2 of Annex VI.A or VI.B, as appropriate, on the grounds that government control over it has been effectively eliminated, that Party shall notify the other Party.<sup>6</sup>
2. Where a Party objects to the withdrawal on the grounds that the entity remains subject to government control, the Parties will enter into consultations to restore the balance of their offers.

#### *Article 37*

##### Further negotiations

In the case that the Community or Mexico offer a GPA or NAFTA Party, respectively, additional advantages with regard to the access to their respective procurement markets beyond what has been agreed under this Title, they shall agree to enter into negotiations with the other Party with a view to extending these advantages to the other Party on a reciprocal basis.

#### *Article 38*

##### Final provisions

1. The Joint Council may adopt appropriate measures to enhance the conditions for effective access to a Party's covered procurement or, as the case may be, adjust a Party's coverage so that such conditions for effective access are maintained on an equitable basis.

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<sup>6</sup> Where both Parties have adopted rules that allow a covered entity to derogate from procurement procedures if such entity intends to purchase exclusively to enable it to provide goods or services where other market participants are free to offer the same goods or services in the same geographical area and under substantially the same conditions, the Parties shall review the wording of this provision accordingly. In case Article XXIV:6(b) of the GPA or Article 1023 of NAFTA is amended, the Parties shall review the wording of this provision accordingly. The amended provision of the GPA or NAFTA shall not apply between the Parties until it has been incorporated in accordance with this paragraph.

2. Both Parties shall provide each other with illustrative information on their respective government enterprise markets in accordance with the format contained in Annex XIV subject to any applicable confidentiality provisions existing in their respective legal systems.

3. This Title shall enter into force once the Joint Council, upon recommendation of the Special Committee, determines that the information referred to in paragraph 2 has been exchanged in accordance with Annex XIV. By way of exception, Article 32 shall enter into force in accordance with Article 49.

#### **TITLE IV**

##### **Competition**

###### *Article 39*

##### **Mechanism of cooperation**

1. A mechanism of cooperation between the authorities of the Parties with responsibility for implementation of competition rules is established in Annex XV.

2. The competition authorities of both Parties shall present to the Joint Committee an annual report on the implementation of the mechanism referred to in paragraph 1.

#### **TITLE V**

##### **Consultation Mechanism for Intellectual Property Matters**

###### *Article 40*

##### **Special Committee on Intellectual Property Matters**

1. The Joint Council hereby establishes a Special Committee on Intellectual Property Matters. The Special Committee shall be comprised of representatives of the Parties. The Special Committee shall be convened within 30 days following a request of either Party with a view to reaching mutually satisfactory solutions to difficulties arising in the protection of intellectual property. The office of chairman of the Special Committee shall be held alternatively by each of the Parties. The Special Committee shall report to the Joint Committee.

2. For purposes of paragraph 1, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights.

**TITLE VI**Dispute Settlement**CHAPTER I**Scope and Coverage*Article 41*Scope and coverage

1. The provisions of this Title shall apply with respect to any matter arising from this Decision or from Articles 2, 3, 4, and 5 of the Interim Agreement (hereinafter the "covered legal instruments").
2. By way of exception, the arbitration procedure laid down in Chapter III shall not be applicable in the case of disputes concerning Articles 14, 19(2), 20(1), 21, 23, and 40 of this Decision.

**CHAPTER II**Consultation*Article 42*Consultation

1. The Parties shall at all times endeavour to agree on the interpretation and application of the covered legal instruments and shall make every attempt through cooperation and consultations to arrive to a mutually satisfactory resolution of any matter that might affect their operation.
2. Each Party may request consultations within the Joint Committee with respect to any matter relating to the application or interpretation of the covered legal instruments or any other matter that it considers might affect their operation.
3. The Joint Committee shall convene within 30 days of delivery of the request and shall endeavour to resolve the dispute promptly by means of a decision. That decision shall specify the implementing measures to be taken by the Party concerned, and the period of time to do so.

**CHAPTER III**Arbitration Procedure*Article 34*Establishment of an arbitration panel

1. In case a Party considers that a measure applied by the other Party violates the covered legal instruments and such matter has not been resolved within 15 days after the Joint Committee has convened pursuant to Article 42(3) or 45 days after the delivery of the request for a Joint Committee meeting, either Party may request in writing the establishment of an arbitration panel.

2. The requesting Party shall state in the request the measure and indicate the provisions of the covered legal instruments that it considers relevant, and shall deliver the request to the other Party and to the Joint Committee.

*Article 44*

Appointment of arbitrators

1. The requesting Party shall notify the other Party of the appointment of an arbitrator, and propose up to 3 candidates to serve as a chair. The other Party must then appoint a second arbitrator within 15 days, and propose up to 3 candidates to serve as a chair.

2. Both Parties shall endeavour to agree on the chair within 15 days after the second arbitrator has been appointed.

3. The date of establishment of the arbitration panel shall be the date on which the chair is appointed.

4. If a Party fails to appoint its arbitrator pursuant to paragraph 1, such arbitrator shall be selected by lot from the candidates proposed. If the Parties are unable to agree on the chair within the time period referred to in paragraph 2, it shall be selected by lot within one week from the candidates proposed.

5. If an arbitrator dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to select him or her. In such a case, any time period applicable to the arbitration panel proceeding shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is selected.

*Article 45*

Panel reports

1. The arbitration panel should, as a general rule, submit an initial report containing its findings and conclusions to the Parties not later than three months from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. Any Party may submit written comments to the arbitration panel on its initial report within 15 days of presentation of the report.

2. The arbitration panel shall present to the Parties a final report within 30 days of presentation of the initial report.

3. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to issue its final report to the Parties within three months from the date of establishment of the arbitration panel. In no case should it do so later than four months. The arbitration panel may give a preliminary ruling on whether a case is urgent.

4. All decisions of the arbitration panel, including the adoption of the final report and of any preliminary ruling, shall be taken by majority vote, each arbitrator having one vote.

5. The complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

*Article 46*Implementation of panel reports

1. Each Party shall be bound to take the measures involved in carrying out the final report referred to in Article 45 (2).
2. The Party concerned shall inform the other Party within 30 days after the final report has been issued of its intentions in respect of its implementation.
3. The Parties shall endeavour to agree on the specific measures that are required for implementing the final report.
4. The Party concerned shall promptly comply with the final report. If it is impracticable to comply immediately, the Parties shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement, either Party may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall be given within 15 days from that request.
5. The Party concerned shall notify to the other Party the measures adopted in order to implement the final report before the expiry of the reasonable period of time determined in accordance with paragraph 4. Upon that notification, any of the Parties may request the original arbitration panel to rule on the conformity of those measures with the final report. The ruling of the arbitration panel shall be given within 60 days from that request.
6. If the Party concerned fails to notify the implementing measures before the expiry of the reasonable period of time determined in accordance with paragraph 4, or if the arbitration panel rules that the implementing measures notified by the Party concerned are inconsistent with the final report, such Party shall, if so requested by the complaining Party, enter into consultations with a view to agree on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend only the application of benefits granted under the covered legal instruments equivalent to those affected by the measure found to violate the covered legal instruments.
7. In considering what benefits to suspend, a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to violate the covered legal instruments. A complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
8. The complaining Party shall notify the other Party of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due to take effect. Within 15 days from that notification, any of the Parties may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to violate the covered legal instruments, and whether the proposed suspension is in accordance with paragraphs 6 and 7. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration Panel has issued its ruling.
9. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to violate the covered legal instruments has been withdrawn or amended so as to bring it into conformity with the covered legal instruments, or the Parties have reached agreement on a resolution of the dispute.

10. At the request of any of the Parties, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

11. The rulings provided for in paragraphs 4, 5, 8 and 10 shall be binding.

*Article 47*

General provisions

1. Any time period mentioned in this Title may be extended by mutual agreement of the Parties.

2. Unless the Parties otherwise agree, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure set out in Annex XVI. The Joint Committee may amend the Model Rules of Procedure.

3. Arbitration proceedings established under this Title will not consider issues relating to each Party's rights and obligations under the Agreement establishing the World Trade Organisation (WTO).

4. Recourse to the dispute settlement provisions of this Title shall be without prejudice to any possible action in the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular matter, instituted a dispute settlement proceeding under either Article 43(1) of this Title or the WTO Agreement, it shall not institute a dispute settlement proceeding regarding the same matter under the other forum until such time as the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.

**TITLE VII**

Specific Duties of the Joint Committee with Respect to Trade and Other Related Matters

*Article 48*

1. The Joint Committee shall:

- (a) supervise the implementation and proper operation of this Decision, as well as of any other decision concerning trade and other trade related matters;
- (b) oversee the further elaboration of the provisions of this Decision;
- (c) undertake consultations pursuant to Article 42 (2) and (3), to Articles 15, 16 and 23, and to the Joint Declarations to this Decision;
- (d) carry out any functions assigned to it under this Decision or under any other decision concerning trade or trade related matters;
- (e) assist the Joint Council in the performance of its functions regarding trade and other trade related matters;
- (f) supervise the work of all the special committees established under this Decision; and



- (g) report annually to the Joint Council.
2. The Joint Committee may:
- (a) set up any special committees or bodies to deal with matters falling within its competence, and determine their composition and duties, and how they shall function;
  - (b) meet at any time by agreement of the Parties;
  - (c) consider any issues regarding trade and other trade related matters, and take appropriate action in the exercise of its functions; and
  - (d) take decisions or make recommendations on trade and other trade related matters, in accordance with Article 10 (2) of the Interim Agreement.
3. When the Joint Committee meets in order to perform any of the tasks conferred upon it by this Decision, it shall be composed of representatives of the European Community and the Mexican government with a responsibility for trade and trade related matters, normally at senior civil servant level.

## **TITLE VIII**

### Final Provisions

#### *Article 49*

### Entry into force

This Decision shall enter into force on 1 July 2000 or on the first day of the month following that in which it is adopted by the Joint Council, whichever of these dates is the latest.

#### *Article 50*

### Annexes

The Annexes to this Decision, including the Appendixes to those Annexes, are an integral part thereof.

Done at ...

For the Joint Council  
The President

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