



Committee on Regional Trade Agreements

FACTUAL PRESENTATION

**AGREEMENT BETWEEN THE UNITED STATES, MEXICO AND CANADA (USMCA/CUSMA/T-MEC)
(GOODS AND SERVICES)**

Report by the Secretariat

This report, prepared for the consideration of the Agreement between the United States, Mexico and Canada (USMCA/CUSMA/T-MEC), has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The factual presentation reproduces as closely as possible the terminology used in the Agreement and in the comments provided and does not imply official endorsement or acceptance by the Secretariat of such terminology. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671) and thus does not imply any value judgement by the Secretariat regarding the contents of the Agreement.

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Key Facts

Parties to the Agreement:	Canada, Mexico and the United States
Date of Signature:	30 November 2018, and amended on 10 December 2019
Date of Entry into Force:	1 July 2020
Date of Notification:	16 September 2020
Full implementation:	1 January 2030

1 TRADE ENVIRONMENT**1.1 Background information**

1.1. The Agreement between the United States, Mexico and Canada (USMCA/CUSMA/T-MEC, hereinafter the Agreement) supersedes, except as expressly provided for by the Agreement, the North American Free Trade Agreement (NAFTA) between the Parties.¹ Negotiations started in 2017 and ended on 30 September 2018. The Agreement was signed on 30 November 2018, amended on 10 December 2019 and entered into force on 1 July 2020. The Agreement is the 12th agreement in force and notified to the WTO by Canada, the 21st for Mexico and 14th for the United States.²

1.2 Merchandise trade

1.2. Table 1.1 shows the Parties merchandise trade in 2019. The United States is the largest trader and ranked first in terms of imports and second in terms of exports of goods. Canada and Mexico have comparable shares in world trade, with Canada ranking 13th and 12th largest importer and exporter and Mexico 12th and 11th largest importer and exporter in 2019. Manufactured products account for the majority of both exports and imports of the Parties, with exports ranging from 48% of total exports for Canada, to 71% and 81% for the United States and Mexico respectively, while imports range from 75% of total imports for Mexico, and around 77% for both Canada and the United States.

Table 1.1 Merchandise trade and GDP by Party, 2019

Party	Merchandise trade - 2019						GDP USD billion (2019)
	Imports			Exports			
	Value (USD billion)	Share in world total (%)	Rank ^a	Value (USD billion)	Share in world total (%)	Rank ^a	
Canada	464	2.4	10	447	2.4	9	1,736
Mexico	467	2.4	9	461	2.4	8	1,269
United States	2,494	13.0	1	1,643	8.7	3	21,433

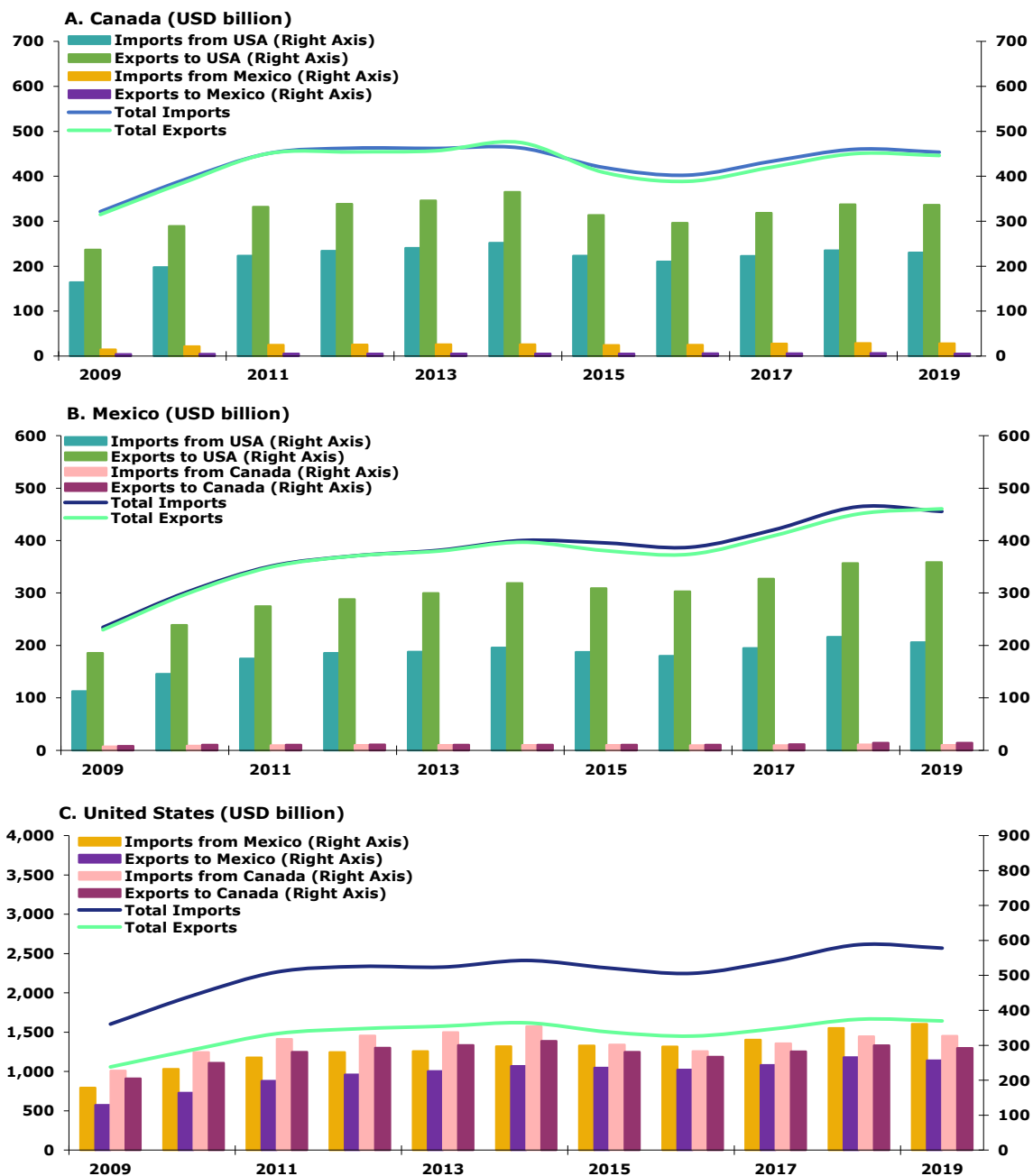
a Rank excludes intra-EU trade.

Source: WTO Statistics Database, Trade Profiles (2020) and World Bank database.

1.3. Chart 1.1 shows trends in the merchandise trade of the Parties between 2009 and 2019. Both Canada and Mexico have maintained an overall balance in their global trade for most of the period while the US has had a trade deficit. In bilateral merchandise trade Canada has maintained a steady trade deficit in its trade with Mexico, while its trade surplus with the United States grew during this period; Mexico's trade surplus with the United States grew during this period.

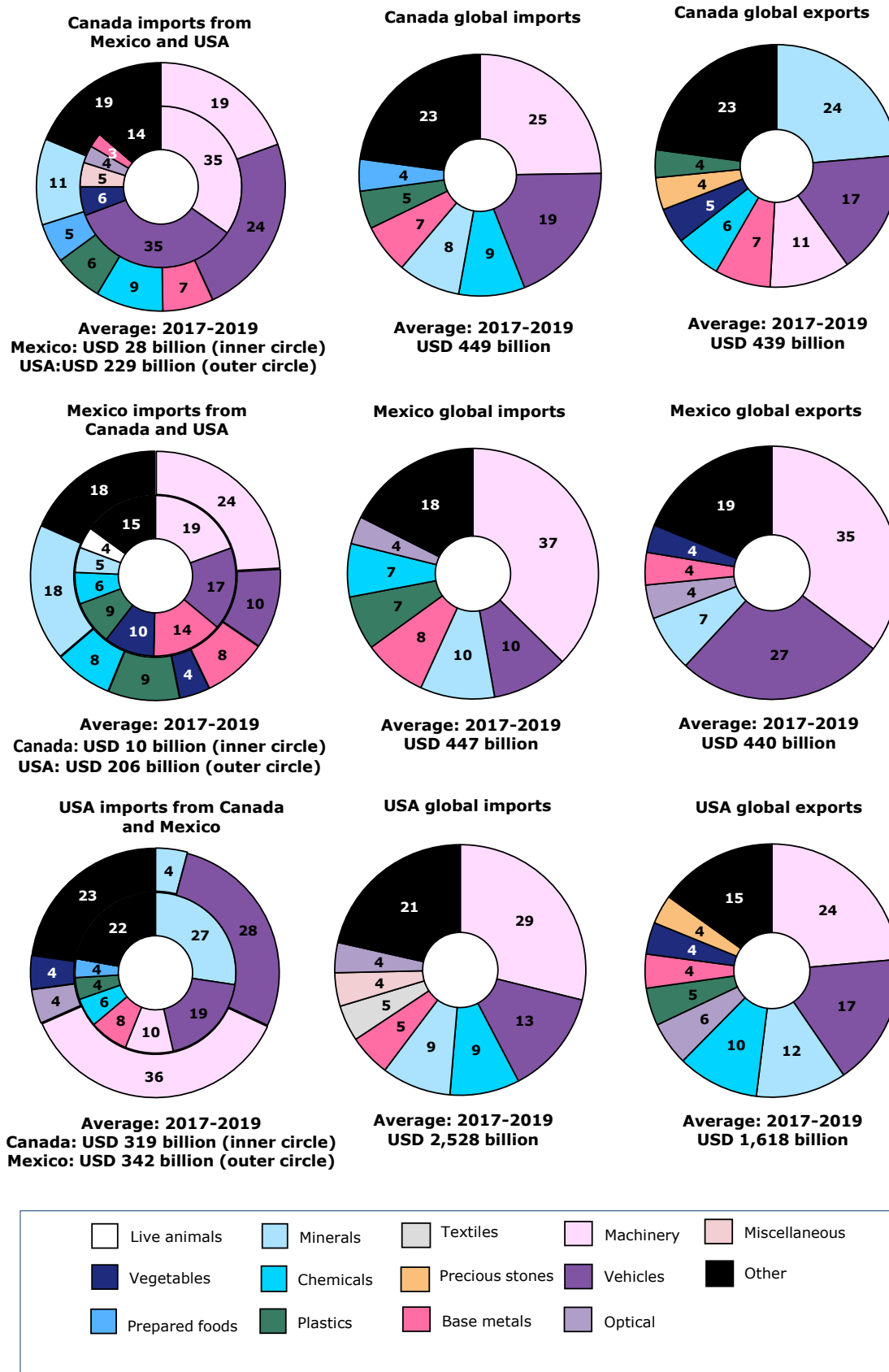
¹ The NAFTA was signed on 17 December 1992 and entered into force on 1 January 1994. It was superseded by the Agreement on 1 July 2020 (WT/REG4/N/1, 9 October 2020).

² See WTO RTA Database (rtais.wto.org).

Chart 1.1 Merchandise trade: bilateral and with world, 2009-2019

Source: UNSD Comtrade database.

1.4. Chart 1.2 shows merchandise trade between the Parties by broad HS Section. Canada's three largest export categories (minerals, vehicles and machinery which accounted for 52% of its average global exports during the period 2017-19), were also the largest imports by the United States from Canada (accounting for 56% of its imports from Canada during this period); Mexico imported mainly vehicles and machinery (which accounted for 36% of its imports from Canada), along with base metals which accounted for 14% of its imports from Canada. Mexico's largest export categories machinery and vehicles (which accounted for 62% of its global exports during 2017-19) were also the largest imports by Canada (accounting for 70% of its imports from Mexico) and the United States (64% of its imports from Mexico). The United States' two largest categories of exports (machinery and vehicles which accounted for 41% of its global exports) were also Canada's two largest import categories from the United States (43% of imports). For Mexico, the two categories accounted for 34% of its imports from the United States, accompanied by minerals which accounted for 18% of its imports from the United States.

Chart 1.2 Product composition of merchandise trade, annual average, 2017-2019

Source: UNSD, Comtrade database.

Service	Mexico						USA					
	Export			Import			Export			Import		
	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019
Manufacturing services on physical inputs owned by others												

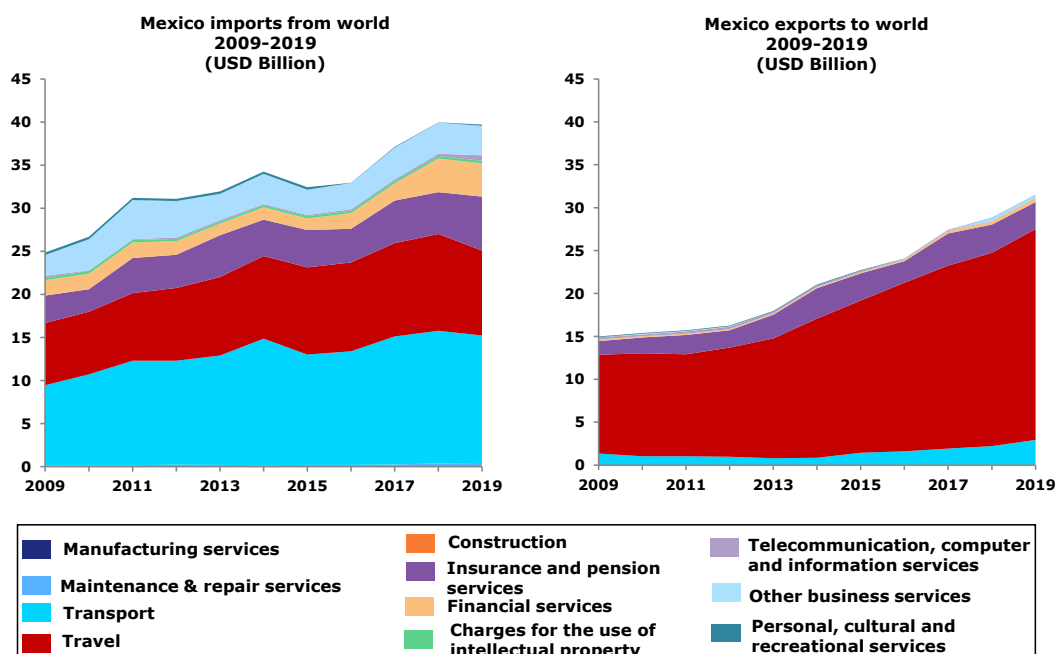
Service	Mexico						USA					
	Export			Import			Export			Import		
	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019
Maintenance and repair services n.i.e.	2	6	8	1			1,068	1,303	1,523	368	398	434
Transport services	103	96	96	216	234	240	6,625	6,579	6,589	7,452	7,959	7,848
Travel services	532	573	672	2,260	2,608	2,596	9,285	9,759	9,304	18,582	18,905	19,442
Construction services		10	10				198	88	86	228	138	139
Insurance and pension services	1			1			438	417	424	836	876	862
Financial services	31	39	30	25	56	48	4,422	5,275	5,116	5,574	6,110	6,101
Charges for the use of intellectual property n.i.e.	182	248	243	21	32	32	3,130	3,497	3,428	7,541	7,984	7,750
Telecommunications, computer, and information services	59	157	156	8	15	14	5,452	6,997	6,998	3,680	4,264	4,136
Other business services	6	2	2	7	2	2	1,127	1,282	1,318	987	1,294	1,397
Personal, cultural, and recreational services	18	38	40	1	1	1	3,204	3,404	3,649	2,042	2,291	2,462

Note: Based on BPM6. Exchange rates to convert CAD to USD for 2017-2019 are: 2017 (1.30), 2018 (1.30) and 2019 (1.33).

Source: Data provided by the authorities.

1.7. Chart 1.4 shows Mexico's global trade in commercial services during 2009-19. In 2019 Mexico's exports of commercial services were valued at USD 30,062 million in 2019 and imports at USD 36,132 million. Mexico has had a growing deficit on its balance of services trade for the period. Travel and transport services are the two most important sectors both for exports and imports with travel an especially important source of receipts. Insurance and pension services, financial services, financial services and other business services are also important imports.

Chart 1.4 Mexico: Trade in commercial services with world, 2009-2019

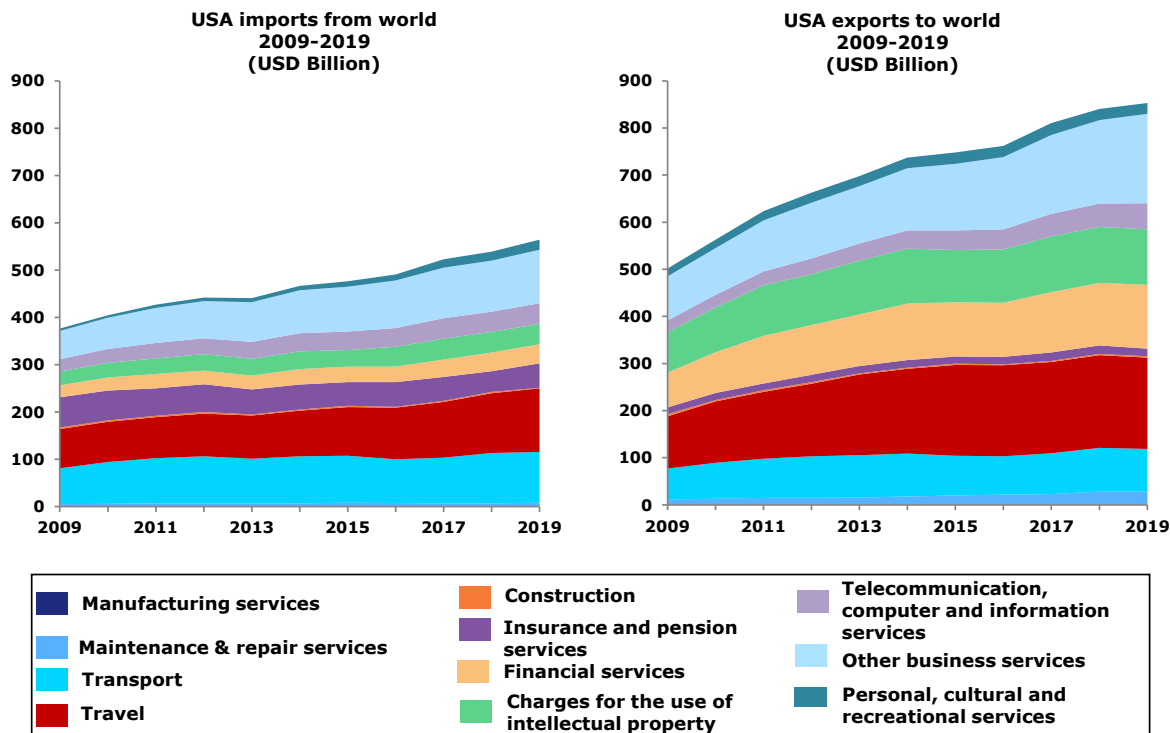


Note: Based on BPM6.

Source: WTO Statistics Database and the authorities (2017-2019).

1.8. Chart 1.5 shows the United States' global trade in commercial services during 2009-19. In 2019 US exports of commercial services were valued at USD 853,270 million in 2019 and imports at USD 564,276 million. The United States has run a growing surplus on its balance of services trade for the period. Travel, transport and other business services are the two most important sectors both for exports and imports. Financial services and charges for the use of intellectual property are important exports. In its trade with the other two Parties the United States maintained a steady trade surplus during the three years preceding entry into force of the Agreement (Table 1.3).

Chart 1.5 USA: Trade in commercial services with world, 2009-2019



Note: Based on BPM6.

Source: WTO Statistics Database and the authorities (2017-2019).

Table 1.3 USA: Bilateral trade in commercial services with Canada and Mexico, 2017-2019, USD Million

Service	Canada						Mexico					
	Export			Import			Export			Import		
	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019
Manufacturing services on physical inputs owned by others												
Maintenance and repair services n.i.e.	932	1,038	1,073	1,281	1,560	1,725	583	732	821	287	225	235
Transport services	8,052	8,205	8,373	5,851	5,881	5,851	2,900	3,225	3,189	4,440	4,831	4,850
Travel services	18,044	18,254	16,909	9,399	9,798	9,244	15,687	16,121	15,286	17,271	17,535	18,947
Construction services	229	346	241	242	393	421	38	18	35	25	21	52
Insurance and pension services	1,836	1,808	1,817	664	694	777	428	426	469	19	9	19
Financial services	8,324	8,434	8,470	2,557	2,940	2,967	2,635	2,891	3,195	382	428	481
Charges for the use of intellectual property n.i.e.	7,785	7,922	7,478	1,560	1,696	2,020	3,321	3,358	3,326	340	432	806
Telecommunications, computer, and information services	4,877	5,439	5,983	4,610	5,132	4,883	1,392	1,684	2,068	953	902	860
Other business services	12,632	15,257	15,186	8,120	7,803	8,514	3,402	3,394	3,355	3,512	2,886	2,864

Service	Canada						Mexico					
	Export			Import			Export			Import		
	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019
Personal, cultural, and recreational services	1,927	1,793	1,741	1,668	1,912	1,824	901	776	721	414	525	562

Note: Based on BPM6.

Source: Data provided by the authorities.

1.9. Tables 1.4-1.6 show FDI stocks and flows in the three Parties. While Canada and the United States are net outward investors of FDI globally, Mexico is a net recipient of FDI. Canada is also a net investor in both the United States and Mexico, with its net investment stock in Mexico increasing significantly during the three years before the Agreement entered into force. While Canada's FDI flows to the United States decreased especially between 2017 and 2018, inward flows from the United States grew substantially between 2017 and 2019 (Table 1.4).

Table 1.4 Canada: FDI stock and flow with Mexico, USA and world 2009-2019, USD Million

Year	FDI Stock					
	World		Mexico		USA	
	Outward	Inward	Outward	Inward	Outward	Inward
2009	892,257	867,387				
2010	983,889	983,889				
2011	891,619	862,698				
2012	972,042	953,503				
2013	1,149,974	982,529				
2014	1,169,024	994,712				
2015	1,156,042	806,298				
2016	1,290,015	903,453				
2017	1,532,230	966,685	15,795	2,073	408,640	295,398
2018	1,366,192	852,196	20,380	1,842	481,415	322,732
2019	1,652,480	1,037,092	20,192	1,705	485,717	335,956
Year	FDI Flow					
	World		Mexico		USA	
	Outward	Inward	Outward	Inward	Outward	Inward
2009	39,601	22,700				
2010	34,723	28,400				
2011	52,148	39,669				
2012	55,864	43,111				
2013	57,362	69,368				
2014	60,271	59,005				
2015	67,440	43,836				
2016	69,507	36,056				
2017	78,348	26,522	884.6	192	67,921	12,613
2018	49,880	43,459	158.5	25	37,222	16,900
2019	76,602	50,322	754.9	-10	25,965	20,796

Note: Exchange rates to convert CAD to USD for 2017-2019 are: 2017 (1.30), 2018 (1.30) and 2019 (1.33).

Source: UNCTADStat and the authorities (2017-2019).

1.10. Mexico's outward and inward FDI in terms of stocks has increased gradually during the period 2009-19. Outward investment flows increased between 2009 and 2012 but have since declined especially until 2016. Inward flows have remained relatively steady since 2014. FDI inflows from the other Parties show that investment from Canada has increased generally while US investment has declined (Table 1.5).

Table 1.5 Mexico: FDI stock and flow with Canada, USA and world, 2009-2019, USD Million

Year	FDI Stock					
	World		Canada		USA	
	Outward	Inward	Outward	Inward	Outward	Inward
2009	86,443	286,620				
2010	119,967	355,512				
2011	117,592	336,179				
2012	154,746	426,101				
2013	145,921	469,236				
2014	152,103	456,569				
2015	143,720	430,576				
2016	149,645	432,742				
2017	180,077	495,953				
2018	159,328	515,015				
2019	172,419	567,747				
Year	FDI Flow					
	World		Canada		USA	
	Outward	Inward	Outward	Inward	Outward	Inward
2009	9,861	17,854		2,153		8,441
2010	14,560	27,140		2,131		11,192
2011	13,311	25,574		1,590		13,090
2012	22,313	21,741		1,681		9,726
2013	15,459	48,217		5,105		16,947
2014	7,507	30,450		2,963		10,480
2015	10,672	35,437		1,097		19,332
2016	193	31,069		2,299		11,047
2017	3,988	34,200		2,827		15,530
2018	8,365	33,730		4,194		11,718
2019	10,985	34,097		2,950		12,879

Note: Data on bilateral FDI stocks are not available. Data on bilateral outflows are not available for confidentiality reasons.

Source: Mexican authorities.

1.11. The United States' net outward investment global stock remained steady for much of the period and has widened since 2016. Inflows increased significantly between 2014 and 2015 before declining to their previous levels. The US is a net recipient of FDI from Canada, although FDI inflows declined between 2017 and 2019. Its net FDI in Mexico was relatively stable during this period, despite outflows declining in 2019.

Table 1.6 USA: FDI stock and flow with Canada, Mexico and world, 2009-2019, USD Million

Year	FDI Stock					
	World		Canada		Mexico	
	Outward	Inward	Outward	Inward	Outward	Inward
2009	3,565,020	2,069,438				
2010	3,741,910	2,280,044				
2011	4,050,026	2,433,848				
2012	4,410,015	2,584,708				
2013	4,579,713	2,727,825				
2014	5,108,835	2,945,795				
2015	5,289,071	3,354,907				
2016	5,518,644	3,561,808				
2017	6,097,690	3,786,848	371,274	395,495	100,169	20,693
2018	5,801,025	4,127,175	368,498	442,802	95,873	21,050
2019	5,959,592	4,458,362	402,255	495,720	100,888	21,526

Year	FDI Flow					
	World		Canada		Mexico	
	Outward	Inward	Outward	Inward	Outward	Inward
2009	287,901	143,604				
2010	277,779	198,049				
2011	396,569	229,862				
2012	318,196	199,034				
2013	303,432	201,393				
2014	333,014	201,733				
2015	264,359	467,625				
2016	289,261	471,792				
2017	327,781	295,296	16,356	83,657	5,907	3,191
2018	-194,412	223,401	17,752	39,115	5,998	-117
2019	93,552	261,412	29,889	36,489	4,507	256

Source: US authorities.

2 CHARACTERISTIC ELEMENTS OF THE AGREEMENT

2.1 Background Information

2.1. The Agreement was signed on 30 November 2018 and amended on 10 December 2019. It entered into force on 1 July 2020 and was notified to the WTO on 16 September 2020 under Article XXIV:7(a) of GATT 1994 and Article V:7(a) of the GATS.³ The text of the Agreement and its annexes and side letters is available on the Parties' websites.⁴

2.2. The Protocol Replacing the North American Free Trade Agreement (NAFTA) with the Agreement notes that, upon its entry into force, the Agreement, attached as an annex to the Protocol shall supersede the NAFTA without prejudice to those provisions set forth in the Agreement that refer to the provisions of the NAFTA (paragraph 1 of the Protocol). The Parties accordingly notified the cessation of the NAFTA, without prejudice to these provisions.⁵

2.2 Structure of the Agreement

2.3. The text of the Agreement along with its annexes and side letters is available on the Parties' websites. The Agreement has 34 Chapters, several annexes and side letters as well as an Environment Cooperation and Customs Verification Agreement between Mexico and the United States which form an integral part of the Agreement (Box 2.1). The Protocol of Amendment covers issues relating to Chapters 1 (initial provisions and general definitions), 4 (rules of origin), 20 (intellectual property rights), 23 (labour), 24 (environment), 30 (administrative and institutional provisions), and 31 (dispute settlement).

Box 2.1 Structure of the Agreement

Chapter	Title
Preamble	
Chapter 1	Initial provisions and general definitions
Chapter 2	National treatment and market access for goods
Chapter 3	Agriculture
Chapter 4	Rules of origin
Chapter 5	Origin procedures
Chapter 6	Textiles and apparel
Chapter 7	Customs administration and trade facilitation
Chapter 8	Recognition of ownership of Mexican hydrocarbons
Chapter 9	Sanitary and phytosanitary measures
Chapter 10	Trade remedies

³ WTO documents WT/REG407/N/1 and S/C/N/1017.

⁴ Canada: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/toc-tdm.aspx?lang=eng>; Mexico: <https://www.gob.mx/t-mec/acciones-y-programas/textos-finales-del-tratado-entre-mexico-estados-unidos-y-canada-t-mec-202730?state=published>; and the United States: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

⁵ WTO document WT/REG4/N/1 and S/C/N/4/Add.1, dated 9 October 2020.

Chapter	Title
Chapter 11	Technical barriers to trade
Chapter 12	Sectoral Annexes
Chapter 13	Government procurement
Chapter 14	Investment
Chapter 15	Cross border trade in services
Chapter 16	Temporary entry
Chapter 17	Financial services
Chapter 18	Telecommunications
Chapter 19	Digital trade
Chapter 20	Intellectual property rights
Chapter 21	Competition policy
Chapter 22	State-owned enterprises
Chapter 23	Labour
Chapter 24	Environment
Chapter 25	Small and medium sized enterprises
Chapter 26	Competitiveness
Chapter 27	Anticorruption
Chapter 28	Good regulatory practices
Chapter 29	Publication and administration
Chapter 30	Administrative and institutional provisions
Chapter 31	Dispute settlement
Chapter 32	Exceptions and general provisions
Chapter 33	Macroeconomic policy and exchange rate matters
Chapter 34	Final provisions
Annexes	
Annex I	Investment and services non-conforming measures
Annex II	Investment and services non-conforming measures
Annex III	Financial services non-conforming measures
Annex IV	SOEs—non-conforming activities
Side Letters	
All Parties	Regarding Article 23.6
Mexico-United States	on Auto Safety Standards
	on Cheeses
	on Distilled Spirits
	on Prior Users
	On the Ramsar Convention
	on 232 Dispute Settlement
	on 232 Process
	on 232
Canada-United States	On Wine
	On Natural Water Resources
	On Energy
	On Research and Development Expenditures
	On 232 Future Measures
	On 232 Autos and Auto Parts
Environment Cooperation and Customs Verification Agreement between the United States and Mexico	

Source: WTO Secretariat based on the Agreement.

2.4. Chapter 34 of the Agreement details the transition provisions from the NAFTA. Specifically, issues under consideration by the Commission or subsidiary body under the NAFTA (including documents or other work under development) may be continued under any equivalent body under the Agreement, subject to any decision by the Parties on whether and how that continuation is to occur. With regard to alternative dispute resolution the Membership of the Committee established by Article 2022 of NAFTA may be maintained for the Committee under Article 31.22.4 of the Agreement. For the review of and dispute settlement for anti-dumping and countervailing matters, Chapter 19 of the NAFTA will continue to apply to binational panel reviews related to final determinations published by a Party before the entry into force of the Agreement; the Secretariat established under Article 30.6 of the Agreement shall perform the functions assigned to the NAFTA Secretariat under Chapter 19 of the NAFTA and under the domestic implementation procedures adopted by the Parties in connection therewith, until the binational Panel has made a decision and a Notice of Completion of Panel Review has been issued by the Secretariat. Finally, appropriate measures shall be made to ensure that claims for preferential treatment made under the NAFTA are granted after the entry into force of the Agreement. The provisions of Chapter 5 of NAFTA (customs procedures) will also continue to apply for goods for which preferential tariff treatment was claimed under the NAFTA (Article 34.1).

3 PROVISIONS ON TRADE IN GOODS

3.1 Import duties and charges, and quantitative restrictions

3.1.1 General provisions

3.1. Chapter 2 covers trade in goods. The Parties agree to provide each other national treatment in goods in accordance with Article III of GATT 1994 including its interpretative notes, which are incorporated into the Agreement, *mutatis mutandis*; exceptions to national treatment are laid out in Annex 2-A (see Table 3.1 below). National treatment with respect to a regional level of government is treatment no less favourable than the most favourable treatment it accords to any like, directly competitive, or substitutable goods, of the Party of which it forms a part.⁶

3.2. Refunds, waivers or reductions of customs duties owed on a good imported into its territory by any Party are not permitted by paragraph 1 of Article 2.5 on condition that the good is (a) subsequently exported to the territory of another Party; (b) used as a material in the production of another good that is subsequently exported to the territory of another Party; or (c) substituted by an identical or similar good that is subsequently exported to the territory of another Party, in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good upon import into its territory and the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

3.3. The Parties also shall not, on condition of export, refund, reduce or waive (i) an anti-dumping or countervailing duty; (ii) a premium offered or collected on an imported good arising from any tendering system from the administration of quantitative import restrictions or tariff rate quotas, or tariff preference levels; (iii) or customs duties paid or owed on a good imported into their territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3.4. Customs duties for goods imported under a duty deferral programme which are subsequently exported to another Party or used as an input or substituted by an identical or similar input to produce another good that is subsequently exported, shall be assessed by the exporting Party as if the exported good had been withdrawn from domestic consumption; and may be waived or reduced to the extent permitted under paragraph 1 of Article 2.5.

3.5. Article 2.5 on drawback and duty deferral programmes does not apply to:

- a. goods entered under bond for transport and export to another Party;
- b. goods exported to another Party in the same condition as when imported into the territory of a Party from which they are exported;
- c. goods imported into the territory of a Party and deemed to be exported from its territory, used as materials in the production of other goods deemed to be exported to another Party or substituted by identical or similar goods that is deemed to be exported to another Party by reason of delivery to a duty free shop, ships stores or supplies for ships and aircraft or delivery for use in joint undertakings of two or more of the Parties and that will subsequently become the property of the Party into whose territory the goods were deemed to be exported;
- d. refund of customs duties by a Party on goods imported and subsequently exported to another Party if the refund is due to the failure of the goods to conform to sample or specification or due to shipment of the goods without the consent of the consignee;

⁶ A side letter between Canada and the United States addresses the US trade concern on measures maintained by the Canadian Province of British Columbia (BC) governing the sale of wine in its grocery stores. Canada agreed to ensure that BC modifies the measures and implements any changes no later than November 1, 2019. The United States agreed to take no further action under WTO disputes WT/DS520 and WT/DS531, prior to November 1, 2019. (CA-US Side Letter on Wine, dated 30 November 2018).

- e. originating goods that are imported into a Party, or used as inputs to produce another good, or substituted by identical or similar goods, and subsequently exported to another Party;
- f. exports from the United States to Canada or Mexico under US tariff lines 1701.13.20 or 1701.14.20 that are imported into the United States under any re-export or like programme and used as a material in the production of, or substituted by an identical or similar good used as a material in the production of: (i) a good falling under Canadian tariff line 1701.99.00 or Mexican tariff lines 1701.99.01, 1701.99.02 or 1701.99.99 or (ii) sugar containing products that are prepared foodstuffs or beverages under headings 17.04 and 18.06 or Chapters 19-22;
- g. for trade between Canada and the United States: (i) imported citrus products; (ii) imported goods or substituted by identical or similar goods used as materials to produce goods under US tariff items 5811.00.20 (quilted cotton piece goods), 5811.00.30 (quilted man-made piece goods) or 6307.90.99 (furniture moving pads), or Canadian tariff items 5811.00.10 (quilted cotton piece goods), 5811.00.20 (quilted man-made piece goods) or 6307.90.30 (furniture moving pads), that are subject to the MFN rate of duty when exported to the other Party; and (iii) imported goods used as materials to produce apparel that is subject to the MFN rate when exported to the other Party.

3.6. Customs duties may not be waived if conditioned, explicitly, or implicitly, on the fulfilment of a performance requirement (Article 2.6). Article 2.7 lists goods that will be granted temporary duty-free entry, while under Articles 2.8 and 2.9 respectively goods re-entered after repair or alteration (as defined) and commercial samples of negligible value and printed advertising materials are not subject to customs duties.

3.7. Except as otherwise provided by the Agreement, the Chapter prohibits the Parties from adopting or maintaining import (or export) prohibitions or restrictions in their mutual trade except in accordance with Article XI of the GATT 1994, which, along with its interpretative notes is incorporated into and made part of the Agreement, *mutatis mutandis* (Article 2.11.1); this provision applies to prohibitions and restrictions on imports (and exports) of remanufactured goods (Article 2.12).⁷ For imports, the measures include: an import price requirement, except as permitted in enforcement of anti-dumping and countervailing duty orders or price undertakings; and import licensing conditioned on the fulfilment of a performance requirement. National treatment provisions, and import (or export) prohibitions and restrictions do not apply to the continuation, renewal or amendment to any law, statute, decree or administrative regulation giving rise to a measure in Annex 2-A to the extent that the continuation, renewal or amendment does not decrease the conformity of the measure listed in Article 2.11. National treatment and the general prohibition on import (or export) prohibitions and restrictions also do not apply for specific measures (Table 3.1).

Table 3.1 Exceptions to national treatment and import and export prohibitions and restrictions

Products	Does not apply to provisions on
All Parties	National treatment and import and export restrictions
Rough diamonds (HS 7102.10, 7102.21, 7102.31) under the Kimberley Process Certification Scheme and any subsequent amendments to that scheme.	
Canada	National treatment and import and export restrictions
Export of logs of all species	
Export of unprocessed fish pursuant to Provincial laws and regulations ^a	
Prohibited provisions of tariff items 9897.00.00, 9898.00.00 and 9899.00.00 except as otherwise provided	

⁷ The Parties may nevertheless, subject to their obligations under the Agreement and the WTO Agreement, require that a remanufactured good (a) be identified as such, including through labelling, for distribution or sale in their territories, and (b) meet all applicable technical requirements that apply to an equivalent good in new condition (Article 2.12.2). If a Party adopts or maintains a prohibition or restriction on a used good, the measure shall not be applied to a remanufactured good (Article 2.12.3).

Products	Does not apply to provisions on
The use of ships in the coasting trade of Canada	
Excise duties on the absolute volume of ethyl alcohol for 2207.10.90 listed in Canada's Schedule of Commitments to GATT 1994 used in manufacturing under the provisions of the Excise Act 2001	
Originating goods from the United States under 89.01, 89.04, and 89.05 and tariff items 8902.00.10 and 8903.99.90 (of an overall length exceeding 9.2 m only) as long as the measures adopted under the <i>Merchant Marine Act of 1920</i> and <i>Passenger Vessel Services Act</i> and 46 U.S.C. §§ 12102, 12113 and 12116, apply with quantitative effect to comparable originating goods from Canada sold or offered for sale in the US market.	
Mexico	Import and export restrictions (paragraphs 1-4 of Article 2.11)
Export measures pursuant to Article 48 of the Hydrocarbons Law (<i>Ley de Hidrocarburos</i>) published in Mexico's Official Gazette on 11 August 2014 for items under the Agreement that amends and establishes the classification and codification of Hydrocarbons and Petroleum Products subject to import and export permits by the Ministry of Energy ^b published in Mexico's Official Gazette on 4 December 2017 subject to Mexico's rights and obligations under the WTO Agreements including with regard to transparency and non-discriminatory treatment.	
Prohibitions or restrictions on imports of used tyres, used apparel, non-originating used vehicles and used chassis equipped with vehicle motors set forth in paragraphs 1(I) and 5 of Annex 2.2.1 of the Resolution through which the Ministry of the Economy establishes Rules and General Criteria on International Trade ^c published in Mexico's Official Gazette on 31 December 2012.	
United States	National treatment and import and export restrictions
Controls on the export of logs of all species	
(i) measures under existing provisions of the <i>Merchant Marine Act of 1920 and Passenger Vehicle Services Act</i> and 46 U.S.C. §§ 12102, 12113 and 12116, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the GATT 1947 and have not been amended so as to decrease their conformity with Part II of the GATT 1947.	
(ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in (i); and	
(iii) the amendment to a non-conforming provision of any statute referred to in (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.3 (national treatment) and 2.11 (import and export restrictions).	

a (i) New Brunswick Seafood Processing Act, SNB 2006, c S-5.3, and Fisheries and Aquaculture Development Act, SNB 2009, c F-15.001; (ii) Newfoundland and Labrador Fish Inspection Act, RSNL 1990, c F-12; (iii) Nova Scotia Fisheries and Coastal Resources Act, Chapter 25 of the Acts of 1996; (iv) Prince Edward Islands Fisheries Act, R.S.P.E.I. 1988, Cap F-13.01 and Fish Inspection Act, R.S.P.E.I. 1988, Cap. F-1; and (v) Quebec Marine Products Processing Act CQLR c T-11.01.

b *Acuerdo que modifica al diverso por el que se establece la clasificación y codificación de Hidrocarburos y Petrolíferos cuya importación y exportación está sujeta a Permiso Previo por parte de la Secretaría de Energía.*

c *Acuerdo por el que la Secretaría de Economía emite reglas y criterios de carácter general en materia de Comercio Exterior.*

Source: Annex 2-A of the Agreement.

3.8. If a Party adopts or maintains a prohibition or restriction on imports (or exports) of goods from a non-party, it may limit or prohibit the import of the good from the non-party from the territory of another Party (or require, as a condition for exporting the good of the Party to the territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party). However, if a Party adopts or maintains a prohibition or restriction on imports from a non-party, the Parties, upon request from a Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing or distribution arrangements in another Party. No requirements shall be placed by a Party on persons of the other Parties, to establish or maintain a contractual or other relationship with a distributor in its territory, as a condition for engaging in imports of a particular good. Conditions are also in place for export restrictions (see Section 3.3 below).

3.9. The Parties must notify each other of their existing import licensing procedures, if any, as soon as practicable once the Agreement enters into force (Article 2.13).⁸ Any new or modified import licensing procedure shall be published on an official government website, to the extent possible, at least 20 days before it takes effect (Article 2.13.3). Each Party has 60 days in which to respond to a reasonable enquiry from another Party concerning its licensing rules and procedures for the submission of applications for import licences. A Party denying an application for an import licence for a good of another Party shall, upon request by the applicant and within a reasonable period of time from receipt of the request, provide a written explanation for the reason for denial. Finally, no Party shall apply an import licensing procedure on a good from another Party unless the Party has complied with the requirements of Articles 2.13.1-2.13.3.

3.10. In accordance with Article VIII:1 of GATT 1994 and its interpretative notes, all fees and charges imposed on or in connection with import (or export) are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to a domestic good or a taxation of an import (or export) for fiscal purposes (Article 2.16). Consular transactions including related fees or charges in connection with imports from another Party as well as customs users fees on originating good may not be applied.⁹

3.11. Chapter 2 establishes a Committee on Trade in Goods which will meet on the request of a Party or the Commission established by the Agreement, to consider any matter arising under the Agreement (see Section 5.5 below).

3.1.2 Liberalization of trade and tariff lines

3.12. The Parties agree to apply customs duty on an originating good in accordance with their Schedules of liberalization in Annex 2-B. Unless otherwise provided in the Agreement they shall not increase any existing customs duty or adopt any new customs duty on an originating good.

3.13. Tariff liberalization continues the process started under the NAFTA. It is to be implemented in annual stages over a period of up to 10 years from the date of entry into force of the Agreement from a base rate of 1 July 2017 for Canada and the United States and 1 September 2018 for Mexico. The acceleration or broadening of tariff liberalization commitments shall be considered by the Parties upon request by a Party. An agreement between two or more Parties on such broadening or acceleration shall supersede any tariff elimination commitment in Annex 2-B of the Agreement for the good concerned once approved by each Party under its applicable legal procedures. A Party may at any time unilaterally accelerate the elimination of customs duties as scheduled in Annex 2-B.

3.14. The Parties agree to MFN duty-free treatment for automatic data processing goods, and digital processing units, parts of computers, computer power suppliers, metal oxide varistors, some semiconductor products and local area network (LAN) apparatus as detailed in Tables 2.10.1, 2.10.2 and 2.10.3.¹⁰

3.15. Tables 3.2-3.4 show tariff elimination commitments under the Agreement by the Parties. In 2020, around 70.4% (4,806 tariff lines) of Canada's tariff was already duty free on an MFN basis.¹¹ On average, almost 81% of imports from the United States and 72.8% of imports from Mexico entered Canada under these duty-free tariff lines during 2017-2019.

⁸ The notification shall include information specified in Article 5.2 of the WTO Agreement on Import Licensing and in the annual questionnaire on import licensing procedures under the Import Licensing Agreement; and be without prejudice as to whether the procedures are consistent with the Agreement (Article 2.13.1). The Party notifying shall be deemed to be in compliance with this obligation if it has provided to the WTO Committee on Import Licensing the information specified in Article 5.2 of the Agreement on Import Licensing as well as the information requested in the questionnaire on import licensing procedures under Article 7.3 of the Agreement on Import Licensing in its most recent notification before the entry into force of the Agreement (Article 2.13.2).

⁹ The fees to which the exception applies are the customs user fee in the United States and the *derecho de tramite aduanero* in Mexico (footnote 3 of Chapter 2).

¹⁰ Regardless of the rules of origin the products in Table 2.10.1 shall be considered to be originating.

¹¹ In 2020 Canada's MFN tariff consisted of 6,827 lines at the eight-digit level. Of these 6,569 or 96.22% carried *ad valorem* rates of duty, while 133 lines had specific rates, 41 mixed duties and 78 compound rates of duty. No rates were reported for six lines.

3.16. With regard to tariff commitments already made under the NAFTA, under the Agreement Canada has added three tariff lines to be liberalized for imports from the United States.¹² There are no changes to its commitments on imports from Mexico. In addition to MFN duty-free tariff lines, Canada continued the liberalization of NAFTA of a further 1,914 lines (28% of the tariff) for imports from the United States, corresponding to 19.2% of imports during 2017-2019; and 1,875 lines (27.5%), corresponding to 27.1% of its imports from Mexico during 2017-19. Canada will liberalize an additional 2 lines in 2025 and one line in 2030 for imports from the United States. At the end of implementation Canada will retain duties on 103 lines (1.5% of the tariff) for imports from the United States and 146 lines (2.1% of the tariff) for imports from Mexico.

Table 3.2 Canada: Tariff elimination commitments under the Agreement and corresponding average trade

Partner	USA				Mexico			
Duty phase-out period	Tariff lines in Canada's tariff schedule		Canada's imports (2017-2019) ^a		Tariff lines in Canada's tariff schedule		Canada's imports (2017-2019) ^a	
	Number	%	Value (USD billion)	%	Number	%	Value (USD billion)	%
MFN 2020 duty-free	4,806	70.4	144.6	80.7	4,806	70.4	14.8	72.8
2020	1,915	28.0	34.5	19.2	1,875	27.5	5.5	27.1
2025	2	0.0	0.0	0.0				
2030	1	0.0	0.0	0.0				
Remain dutiable ^b	103	1.5	0.1	0.0	146	2.1	0.0	0.0
Total	6,827	100.0	179.1	100.0	6,827	100.0	20.3	100.0

a Import coverage is from HS chapters 1-97.

b 6 tariff lines (1701.91.10, 1701.99.10, 1702.90.21, 1702.90.61, 1702.90.70, 1702.90.81) which are only applicable for Canada-Peru/Honduras FTA are counted as dutiable. These lines are not part of the Agreement but are included in the calculation of the total number of lines in Canada's tariff.

Note: Tariff lines subject to in-quota rates are excluded from the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the authorities and the WTO-IDB.

3.17. Table 3.3 shows Mexico's tariff elimination commitments. In 2020 7,103 lines (56.7% of the tariff) were duty free on an MFN basis for imports by Mexico from the other Parties.¹³ These lines corresponded on average to 64.2% and 62.6% of Mexico's imports from the United States and Canada during 2017-2019.

3.18. In 2020, in continuation of liberalization commitments under the NAFTA, the remaining 5,433 lines became duty free for imports from the United States while 5,338 lines became duty free for imports from Canada. At the end of implementation 95 lines or 0.8% of the tariff will remain dutiable for imports from Canada.

¹² Of the three lines added to its commitments two (1517.10.20 and 1517.90.22) are to be liberalized in 2025 and one (0404.10.22) in 2030.

¹³ In 2020 Mexico's MFN applied tariff consisted of 12,536 lines at the eight-digit level. Of these 12,456 (99.36%) carried *ad valorem* rates of duty, 14 lines had specific rates of duty, 44 had compound rates and 22 lines relate to prohibited products.

Table 3.3 Mexico: Tariff elimination commitments under the Agreement and corresponding average trade

Partner	USA				Canada			
Duty phase-out period	Tariff lines in Mexico's tariff schedule		Mexico's imports (2017-2019)		Tariff lines in Mexico's tariff schedule		Mexico's imports (2017-2019)	
	Number	%	Value (USD billion)	%	Number	%	Value (USD billion)	%
MFN 2020 duty-free	7,103	56.7	122.1	64.2	7,103	56.7	5.6	62.6
2020	5,433	43.3	68.0	35.8	5,338	42.6	3.3	37.1
Remain dutiable					95	0.8	0.0	0.2
Total	12,536	100.0	190.1	100.0	12,536	100.0	8.9	100.0

Note: Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from the authorities and the WTO-IDB.

3.19. Table 3.4 shows tariff elimination commitments by the United States. In 2020 4,199 lines (37.8% of the tariff) were duty free on an MFN basis.¹⁴ During 2017-2019 37.9% and 37.3% of US imports on average entered respectively from Canada and Mexico under these lines.

3.20. With regard to tariff commitments already made under the NAFTA, the US added 15 tariff lines to its tariff liberalization commitments under the Agreement for imports from Canada. In 2020 the United States maintained its NAFTA liberalization for 6,722 lines for imports from Canada and further liberalized an additional 15 lines. The United States maintained its NAFTA liberalization for 6,913 lines for imports from Mexico. These lines corresponded to 62.1% of imports from Canada and 62.7% of imports from Mexico during 2017-2019. A further 13 and two lines will be liberalized for imports from Canada, respectively in 2025 and 2030. At the end of implementation 167 lines will remain dutiable for imports from Canada.

Table 3.4 USA: Tariff elimination commitments under the Agreement and corresponding average trade

Partner	Canada				Mexico			
Duty phase-out period	Tariff lines in USA's tariff schedule		USA's imports (2017-2019) ^a		Tariff lines in USA's tariff schedule		USA's imports (2017-2019) ^a	
	Number	%	Value (USD billion)	%	Number	%	Value (USD billion)	%
2020 (MFN)	4,199	37.8	111,113.6	37.9	4,199	37.8	122,791.7	37.3
2020	6,731	60.6	182,252.4	62.1	6,913	62.2	206,425.0	62.7
2025	13	0.1	0.1	0.0	-	-	-	-
2030	2	0.0	-	-	-	-	-	-
Remain dutiable	167	1.5	25.0	0.0	-	-	-	-
Total	11,112	100.0	293,391.0	100.0	11,112	100.0	329,216.7	100.0

a Import coverage is from HS chapters 1-97.

Note: Tariff lines subject to in-quota rates are excluded in the computation.
Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by the USA and the WTO-IDB.

3.1.3 Liberalization schedule

3.21. Tariff elimination commitments by the Parties under the Agreement are shown by broad HS Section in Tables 3.5-3.7. Continuing liberalization under the NAFTA Canada liberalized the

¹⁴ In 2020 the MFN applied tariff of the United States consisted of 11,112 tariff lines at the eight-digit level of which 9,895 lines (89.05%) had *ad valorem* rates of duty. Of the remaining 1,217 lines, 752 had specific duties, 410 compound rates and 12 lines had mixed rates of duty. 43 lines had other rates of duty.

majority of its tariff in 2020. All the lines remaining dutiable once the Agreement is implemented are found in HS Sections I (68 for imports from the United States and 85 for imports from Mexico), IV (33 lines for imports from the United States and 59 lines for imports from Mexico), and VI (2 lines for imports from both the United States and Mexico). The average rates of duty for the products remaining dutiable are 228% for HS Section I and 228.5% for Section IV for imports from the United States and 155.3% in HS Section IV and 188.6% in Section I for imports from Mexico. The two lines in Section VI are subject to specific rates of duty.

Table 3.5 Canada: Tariff elimination commitments under the Agreement, by HS Section

HS Section	MFN 2020			Partner: USA					Mexico		
	Avg. %	No. of lines	Duty-free lines	Duty-free lines under the Agreement			Remain dutiable	Avg. Final Tariff (Dutiable)	Duty-free lines under the Agreement 2020	Remain dutiable	Avg. Final Tariff (Dutiable)
				2020	2025	2030					
I	34.5	449	306	74		1	68	228.0	58	85	188.6
II	3.1	438	326	112					112		
III	7.0	61	33	26	2				28		
IV	16.3	544	190	321			33 ^a	228.5	295	59 ^a	155.3
V	0.4	158	150	8					8		
VI	1.2	924	796	126			2	-	126	2	-
VII	1.7	256	194	62					62		
VIII	3.7	83	52	31					31		
IX	2.1	153	98	55					55		
X	0.0	141	141								
XI	6.5	903	543	360					360		
XII	10.2	97	30	67					67		
XIII	2.5	173	106	67					67		
XIV	1.8	58	43	15					15		
XV	1.4	652	517	135					135		
XVI	0.7	976	877	99					99		
XVII	5.3	257	108	149					149		
XVIII	1.7	275	198	77					77		
XIX	3.8	29	7	22					22		
XX	4.8	191	84	107					107		
XXI	1.4	9	7	2					2		
Total	5.8	6,827	4,806	1,915	2	1	103	228.2	1,875	146	177.6

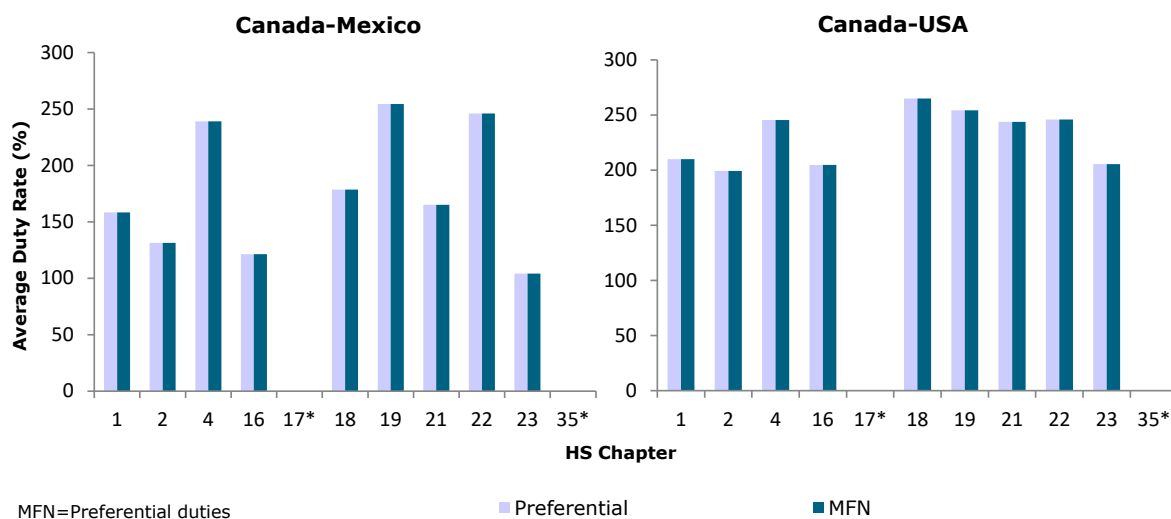
- contains specific duties only.

a 6 tariff lines (1701.91.10, 1701.99.10, 1702.90.21, 1702.90.61, 1702.90.70, 1702.90.81) which are only applicable for Canada-Peru/Honduras FTA are counted as dutiable. These tariff lines are not part of the Agreement but are included to count the total number of lines in Canada's tariff.

Note: Tariff lines subject to in-quota rates are excluded from the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the authorities and the WTO-IDB.

3.22. Chart 3.1 shows average remaining tariffs applied by Canada on imports from Mexico and the United States compared to the corresponding MFN rates. For imports from Mexico, both preferential and MFN average rates are equivalent with average tariff rates ranging from 104.3% in HS Chapter 23 (residues and waste from the food industries) to 254.3% in HS Chapter 19 (preparations of cereals, flours). For imports from the United States, both preferential and MFN average rates are equivalent and range from 199.3% for Chapter 2 (meat and edible meat offal) to 265% for Chapter 18 (cocoa and cocoa preparations).

Chart 3.1 Canada: Average of dutiable rates, by HS Chapter

Note:

- * HS chapters 17 and 35 contain specific duties only.
For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.
Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the Canadian authorities and the WTO-IDB.

3.23. Mexico liberalized the majority of its tariff in 2020 for imports from Canada and all tariffs for imports from the United States. All the lines remaining dutiable for imports from Canada once the Agreement is implemented are found in HS Sections I (69 lines), IV (24 lines), and VI (2 lines). The average rates of duty for the products remaining dutiable range from 7.5% in Section VI to 34.5% in Section I. Chart 3.3 shows average remaining preferential duties and corresponding MFN rates by HS Chapter. The remaining average preferential tariffs are equal to their corresponding average MFN rates in 2020, which range from 7.5% in HS Chapter 35 to 56.3% in HS Chapter 2. Chapters 17 and 18 which have 11 and 1 lines remaining dutiable respectively, have specific rates of duty.

Table 3.6 Mexico: Tariff elimination commitments under the Agreement, by HS Section

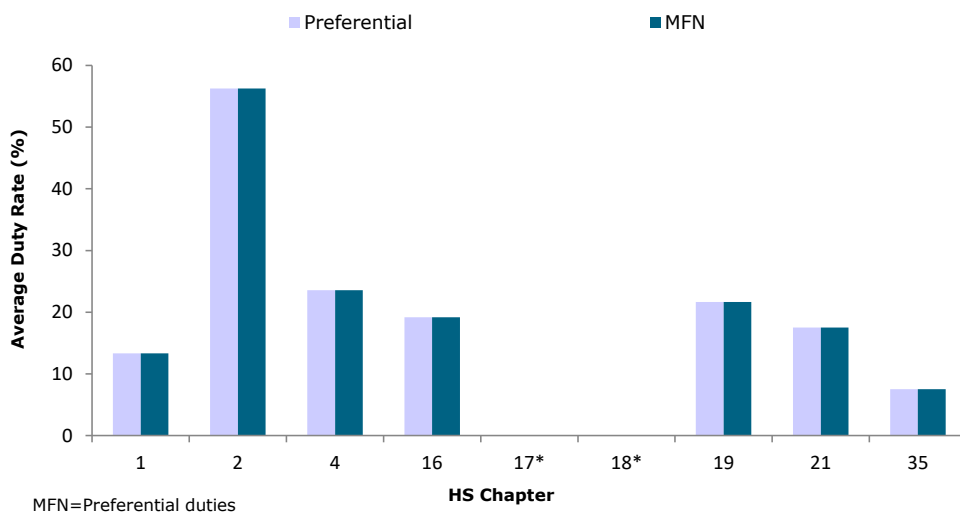
HS Section	MFN 2020			Partner: USA		Canada	
	Average %	Number of lines	Duty free lines	Duty-free lines under the Agreement		Remain dutiable	Avg. Final Tariff (Dutiable)
				2020			
I	15.7	439	62	377	308	69	34.5
II	11.7	519	117	402	402		
III	8.5	72	17	55	55		
IV	18.4	357	31	326	302	24	19.5
V	0.3	219	211	8	8		
VI	1.4	2,865	2,286	579	577	2	7.5
VII	3.8	570	347	223	223		
VIII	4.8	124	92	32	32		
IX	6.7	188	66	122	122		
X	2.8	311	182	129	129		
XI	13.3	1,422	159	1,263	1,263		
XII	17.2	167	18	149	149		
XIII	5.8	313	162	151	151		
XIV	3.3	65	47	18	18		
XV	4.8	1,267	791	476	476		
XVI	2.7	2,492	1,901	591	591		
XVII	7.6	402	200	202	202		
XVIII	2.6	450	319	131	131		
XIX	11.2	33	2	31	31		

HS Section	MFN 2020			Partner: USA	Canada		
	Average %	Number of lines	Duty free lines	Duty-free lines under the Agreement		Remain dutiable	Avg. Final Tariff (Dutiable)
				2020			
XX	8.9	247	79	168	168		
XXI	0.0	14	14				
Total	5.8	12,536	7,103	5,433	5,338	95	31.8

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from the authorities and the WTO-IDB.

Chart 3.2 Mexico: Average of dutiable rates, by HS Chapter



Note:

* HS chapters 17 and 18 contain specific duties only
For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from the authorities and the WTO-IDB.

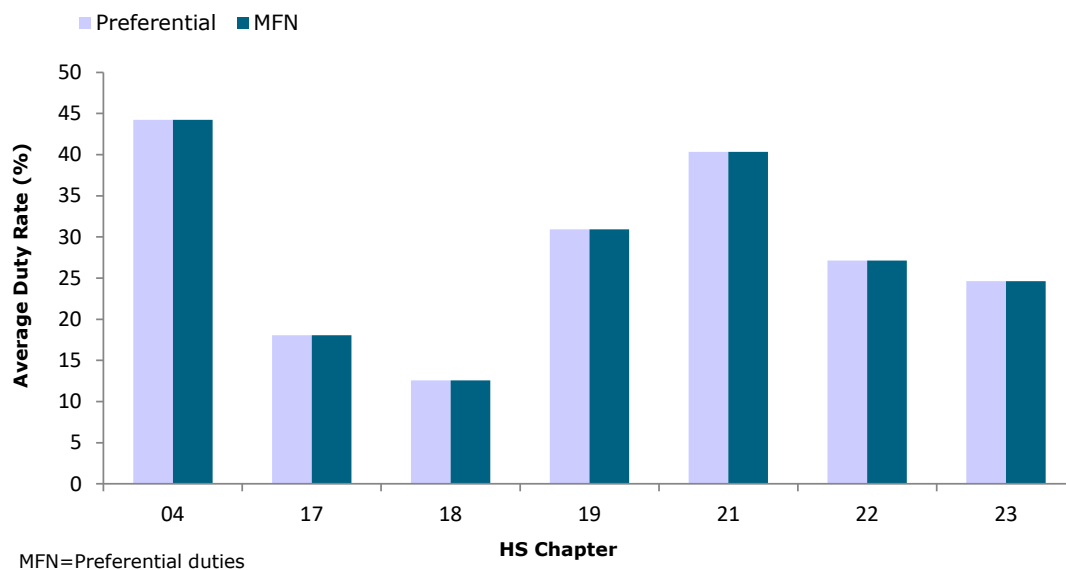
3.24. The United States liberalized the majority of its tariff in 2020 for imports from Canada and all tariffs for imports from Mexico, maintaining its liberalization under the NAFTA. Further liberalization of imports from Canada will take place in 2025 (13 lines in HS Sections II, III, IV and XI) and 2030 (2 lines in HS Section I). All the lines remaining dutiable for imports from Canada once the Agreement is implemented are found in HS Sections I (76 lines), and IV (91 lines). The average rates of duty for the products remaining dutiable will be 24.1% in HS IV and 44.2% in HS Section I. Chart 3.3 shows that for imports from Canada, preferential tariffs will remain in HS Chapters 4, 17-19 and 21-23 with the remaining preferential tariff rates being equivalent to the corresponding MFN average rates and ranging from 12.6% in HS 18 (cocoa and cocoa preparations) to 44.2% in HS 4 (dairy produce, eggs, natural honey and edible products of animal origin).

Table 3.7 USA: Tariff elimination commitments under the Agreement, by HS Section

HS Section	MFN 2020			Partner: Canada					Mexico	
	Avg. %	No. of lines	Duty free lines	Duty-free lines under the Agreement			Remain dutiable	Avg. Final Tariff (Dutiable)	Duty-free lines under the Agreement 2020	Remain dutiable
				2020	2025	2030				
I	8.4	699	283	338		2	76	44.2	416	
II	3.9	567	153	411	3				414	
III	3.7	70	17	52	1				53	
IV	12.0	790	156	540	3		91	24.1	634	
V	0.6	204	151	53					53	
VI	3.5	1,804	554	1,250					1,250	
VII	3.7	376	86	290					290	
VIII	4.9	231	42	189					189	
IX	2.3	300	174	126					126	
X	0.0	275	275							
XI	9.0	1,681	221	1,454	6				1,460	
XII	13.4	197	35	162					162	
XIII	5.5	317	99	218					218	
XIV	3.0	105	48	57					57	
XV	2.0	988	536	452					452	
XVI	1.4	1,383	828	555					555	
XVII	2.3	272	140	132					132	
XVIII	2.5	518	252	266					266	
XIX	2.2	33	18	15					15	
XX	3.6	295	124	171					171	
XXI	0.0	7	7							
Total	4.9	11,112	4,199	6,731	13	2	167	33.2	6,913	-

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages; specific rates are excluded, and the *ad valorem* parts of the alternate rates are included and AVEs (*ad valorem* equivalent) are used to the tariff lines where USA has provided. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by the USA and the WTO-IDB.

Chart 3.3 USA-Canada: Average of dutiable rates, by HS Chapter

Note: Tariff lines subject to in-quota rates are excluded from the computation. For the calculation of averages specific rates are excluded and the *ad valorem* part of the alternate rates are included and AVEs are used as provided by the authorities.

Source: WTO estimates based on data provided by the authorities and the WTO-IDB.

3.1.4 Tariff rate quotas

3.25. Appendix 2 of Chapter 2 details TRQs applied by Canada and the United States. Mexico does not have TRQs under the Agreement. Canada has TRQs for a number of dairy products including milk, cream, milk powder, butter and cream powder, cheese, concentrated or condensed milk, yoghurt and buttermilk and ice cream and ice cream mixes, as well as chicken and eggs. In addition, Canada maintains its WTO TRQs with respect to imports of turkey and turkey products and/or broiler hatching eggs and chicks, and it commits to certain obligations in determining the TRQ quantities and in administering the TRQs.¹⁵ The United States has TRQs on dairy products including cream, skim milk powder, butter, cream and cream powder, cheese, whole milk powder, concentrated milk and sugar and sugar containing products. Canada and the United States will gradually increase the quota quantity for most products over a 19-year period. The in-quota rates are zero while the out of quota rates will be the applied MFN duties. Details of the products covered, the rates and the quantities are in Annex 2. While Canada administers quotas using an allocation mechanism, the United States does so on a first come first served basis.

3.26. Article 3.A.2 deals with tariff quota administration. The Parties shall implement and administer their TRQs in accordance with Article XIII of the GATT including its interpretative notes, the Import Licensing Agreement and Article 2.15 on transparency in import licensing. The procedures for administering TRQs shall be transparent; fair and equitable; use clearly specified timeframes, administrative procedures and requirements; are no more administratively burdensome than necessary; are responsive to market conditions; and are administered in a timely manner. Transparency provisions include publication of information on TRQ administration on a designated website at least 90 days before the beginning of the TRQ year and a commitment to administer TRQs in a manner that gives importers an opportunity to utilize TRQ quantities fully. No new TRQ conditions, limits or eligibility requirements on the utilization of the TRQ for import of an agricultural good are to be added except following prior notification and consultations with the Party concerned. No conditions, limits or eligibility requirements shall in any case be imposed on the quota applicant's nationality or location of headquarters; requiring physical presence in the Party except doing business or having a business office or having an employee, agent for service of process or a legal representative in the territory of the Party. There are also transparency requirements for any change to the allocation mechanism used for TRQs and publication of TRQ allocations and, if possible, utilization rates; once quotas administered by an allocation mechanism are filled a notice shall be published as early as practicable. For TRQs issued on a first come first served basis, utilization rates and remaining TRQ quantities available shall be published over the course of each TRQ year in a timely and on-going basis; once such quotas are filled a notice shall be published within 10 days. Consultations shall be held on the request of the exporting Party within 30 days of the request being made to the Party administering the TRQ.

3.2 Rules of origin

3.27. A good is considered to be originating if it is (a) wholly obtained or produced entirely in the territory of one or more of the Parties; (b) produced entirely in the territory of one or more of the Parties using non-originating materials which must satisfy the product-specific rules in Annex 4-B; (c) produced entirely in the territory of one or more of the Parties exclusively from originating materials; or (d) except for a good in HS Chapters 61-63 (i) produced entirely in the territory of one or more of the Parties; (ii) one or more of the non-originating materials used in the production of the good cannot satisfy the product specific rules because both the good and the materials used are classified in the same sub-heading or heading that is not further subdivided into sub-headings or the good was imported into the territory of a Party in an unassembled or disassembled form but was classified as an assembled good; and (iii) the regional value content (RVC) of the good is not less

¹⁵ Canada's global import quota on turkey and turkey products for any given year shall be no less than 3.5% of the previous year's Canadian production. Except for 10 years after the entry into force of the Agreement Canada shall calculate the difference in any given year between (i) 3.5% of the previous year's turkey production in Canada and (ii) 3.5% of that year's Canadian turkey production quota. If (i) exceeds (ii) by 1,000 MT or more, Canada may restrict the level of global imports of such products for that quota year to no more than 3.5% of that year's Canadian domestic turkey production quota plus 1,000 MT. The combined level of global import quotas on broiler hatching eggs and chick products, for any given year shall be no less than 21.1% of the estimated Canadian production of broiler hatching eggs for that year. Further details are provided in Section C of Annex 2-B of Chapter 2.

than 60% under the transaction value method or not less than 50% under the net cost method; and that the good satisfies all other applicable requirements of Chapter 4.

3.28. The RVC is calculated using either the transaction value method or the net cost method as defined in Article 4.5. For a small number of goods, the net cost method may be used. The value of non-originating materials used in the production of a good shall not include the value of non-originating materials used to produce originating materials subsequently used in the production of the good.

3.29. In general, the product specific rules of origin require a change in tariff classification (CTC) mostly at the heading level but also at the subheading and Chapter levels. A chemical reaction rule applies for certain Chapters such as 27 (mineral fuels) or Sections VI and VII (products of the chemicals or allied industries and plastics); other rules such as purification, mixtures and blends and standards materials also apply to Sections VI and VII. Accumulation rules in Article 4.11 provide that an originating good or material of one or more of the Parties is considered originating in the territory of another Party, and that production undertaken on a non-originating material in the territory of one or more of the Parties may contribute towards the originating status of a good, regardless of whether that production was sufficient to confer originating status to the material itself. *De minimis* rules apply if the value of non-originating materials used in the production of a good that do not undergo an applicable CTC as in Annex 4-B do not exceed 10% either of the transaction value of the good adjusted to exclude any international shipment costs or the total cost of the good (Article 4.12), provided that the good meets all other applicable requirements of Chapter 4. Annex 4-A lists the exceptions to this rule and includes certain agricultural products.

3.2.1 Rules of origin for textiles and apparel

3.30. For textiles or apparel classified in HS 50-60 or HS 96.19 the *de minimis* rule applies. If the product contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 4-B, it shall nonetheless be considered to be an originating good if the total weight of all those materials does not exceed 10% of the total weight of the good (of which the total weight of elastomeric content may not exceed 7% of the total weight of the good). For apparel goods the *de minimis* rule applies if the total weight of non-originating fibres or yarns does not exceed 10% of the component that determines the tariff classification of the good (of which the total weight of elastomeric content may not exceed 7% of the total weight of component) (Article 6.1). Under the NAFTA the *de minimis* level was 7%.¹⁶ Other rules for textiles and apparel under HS Chapters 50-63 are mostly continued from the NAFTA, with a few adjustments as follows: The yarn forward rule that applied in NAFTA is continued under the Agreement, whereby most textile and apparel products must be made from originating yarns for tariff preferences to apply. In addition, there is a provision under which the United States will not apply tariffs on textiles and apparel imported from Mexico and assembled from fabrics wholly formed and cut, and exported from and reimported by the United States. In addition, textile and apparel goods sold as sets will only be considered as originating if each of the goods in the set is originating or the total value of the non-originating goods in the set does not exceed 10% of the value of the set (Article 6.1). As in the NAFTA certain handmade, traditional folkloric or indigenous handicrafts shall also be eligible for duty free treatment (Article 6.2). Subject to trilateral agreement (instead of bilateral under the NAFTA), the Parties can consider changes to the product-specific rules of origin in the case of fabrics, yarns and fibres which are not commercially available in the region (the "short supply list"). The tariff preference level (TPL) categories have been largely maintained as in the NAFTA although the volume that may be imported under certain categories has been adjusted and the scope of eligible goods has been expanded in some instances (Section C of Chapter 6).¹⁷

¹⁶ Article 405 of the NAFTA.

¹⁷ TPLs are used to provide duty free treatment to limited quantities of imports of certain textiles and apparel products that do not meet the yarn-forward product-specific rules of origin, but that are cut and sewn, or knit to shape, in the territory of a Party. The categories under which such imports take place are: cotton or man-made fibre apparel, wool apparel, cotton or man-made fibre fabrics and made-up goods, and cotton or man-made fibre spun yarn (Appendix 1 – 3 of Chapter 6).

3.2.2 Rules of origin for automotive goods

3.31. For passenger vehicles¹⁸ and light trucks¹⁹ to qualify as originating, they must meet five requirements: vehicle regional value content (RVC), core parts RVC, aluminium, steel, and labour value content (LVC). Heavy trucks²⁰ are subject to the same requirements, except for the core parts RVC. For passenger vehicles and light trucks, the vehicle RVC requirement based on the net cost method is set at 66% on July 1, 2020 and gradually increasing to 75% over a three-year period.²¹ For heavy trucks, the vehicle RVC requirement based on the net cost method is being increased to 70% over a 7-year period. For passenger vehicles and light trucks to originate, the rules also require that their core parts (engine, transmission, body and chassis, axle, suspension system, steering system and advanced battery) meet a 75% RVC based on the net cost method. Most other components are subject to a CTC or an alternative rule that includes an RVC threshold of 65% or 70%, thresholds that are higher than those that applied under the NAFTA. These increases in RVC requirements are being phased-in over a three-year period. The RVCs for other vehicles range from at least 50% to 62.5% using the net cost method (Article 10 of the Appendix to Annex 4-B), and remain largely unchanged from NAFTA. For vehicles other than passenger vehicles, light trucks, and heavy trucks, the rules of origin have largely not changed from NAFTA.

Table 3.8: Transition rules of origin for passenger motor vehicles, light trucks and components

Product	Transition rules of origin			
	Entry into force	Year 1	Year 2	Year 3
Passenger motor vehicles, light trucks and components				
Passenger vehicles, light trucks	66% (NC)	69% (NC)	72% (NC)	75% (NC)
Core parts listed in Table A.1	66% (NC), 76% (TV)	69% (NC), 79% (TV)	72% (NC), 82% (TV)	75% (NC), 85% (TV)
Parts listed in Table B ^a	62.5% (NC), 72.5% (TV)	65% (NC), 75% (TV)	67.5% (NC), 77.5% (TV)	70% (NC), 80% (TV)
Parts listed in Table C ^b	62% (NC), 72% (TV)	63% (NC), 73% (TV)	64% (NC), 74% (TV)	65% (NC), 75% (TV)
Heavy trucks and components	entry into force	Year 4	Year 7	
Heavy trucks	60% (NC)	64% (NC)	70% (NC)	
Parts listed in Table D	60% (NC), 70% (TV)	64% (NC), 74% (TV)	70% (NC), 80% (TV)	
Parts listed in Table E	54% (NC), 64% (TV)	57% (NC), 67% (TV)	60% (NC), 70% (TV)	

NC net cost method.

TV transaction value method.

a Notwithstanding the requirements, a part of the list in Table B is considered originating if it meets the applicable CTC requirements in the product-specific rules of origin.

b Notwithstanding the requirements a part of the list in Table C is considered originating if it meets the applicable CTC requirements in the product-specific rules of origin.

Source: Appendix to Annex 4-B, the Agreement.

3.32. In addition to these requirements under Article 6 of the Appendix to Annex 4-B, a passenger vehicle, light truck or heavy truck shall be considered as originating only if at least 70% of the vehicle producers purchases of steel and aluminium by value are of originating goods; the producer may calculate the purchases of steel and aluminium over the previous fiscal year of the producer, over the previous calendar year, or over the quarter or month, fiscal year or calendar year to date in which the vehicle is exported. Finally, in order for a passenger vehicle to originate, Article 7 requires a minimum labour value content (LVC) of at least 30% as of 1 July 2020. In order to be

¹⁸ passenger vehicle means a vehicle of subheading 8703.21 through 8703.90, except for:

(a) a vehicle with a compression-ignition engine classified in subheading 8703.31 through 8703.33 or a vehicle of 8703.90 with both a compression-ignition engine and an electric motor for propulsion; (b) a three or four-wheeled motorcycle; (c) an all-terrain vehicle; (d) a motorhome or entertainer coach; an ambulance; or a vehicle intended principally for off-road use.

¹⁹ light truck means a vehicle of subheading 8704.21 or 8704.31, except for a vehicle that is solely or principally for off-road use.

²⁰ heavy truck means a vehicle of subheading 8701.20, 8704.22, 8704.23, 8704.32, 8704.90, or 87.06, except for a vehicle that is solely or principally for off-road use.

²¹ Under Article 403 of the NAFTA, the RVC requirement was 62.5% for passenger vehicles and light trucks and 60% for heavy trucks, based on the net cost method.

considered high-wage and contribute to meeting the LVC threshold, a material must be produced in a plant located in the territory of a Party in which the average base wage for direct production workers is at least USD 16 per hour. This 30% LVC must consist of at least 15 percentage points of high wage material and manufacturing expenditures, no more than 10 percentage points of high wage technology expenditures and no more than 5 percentage points of high wage assembly expenditures). The LVC threshold for passenger vehicles will increase to 33% on 1 July 2021 (one year after entry into force); 36% on 1 July 2022 or two years after entry into force; and 40% on 1 July 2023 or three years after entry into force. The LVC threshold for light trucks and heavy trucks is 45% beginning on July 1, 2020.

3.33. Under Article 8, producers are also permitted to individually request additional time and flexibility to meet the new rules of origin requirements for limited quantities of their vehicles under an alternative staging regime (ASR).²² Trilateral agreement is required for a company to trade on the basis of an ASR. Companies granted permission to use an ASR are entitled to duty-free treatment for some of the vehicles they produce for a limited period of time, based on satisfying less restrictive rules of origin. The Parties may, upon request from a Party, review the requirements of the Appendix for motor vehicles to ensure that they reflect the composition of the vehicles, especially advanced technology vehicles and in light of technological developments (Article 9). The Parties indicate that to date, no such review has been requested.

3.3 Export duties and charges, and quantitative restrictions

3.34. The Parties may not adopt or maintain any duty, tax or other charge on the export of any good to the territory of another Party unless it is also applied to the good if destined for domestic consumption (Article 2.15).

3.35. As for imports above, restrictions or prohibitions on the export or sale for export to another Party are not permitted by Chapter 2 of the Agreement except in accordance with Article XI of the GATT 1994 and its interpretative notes. If a Party maintains restrictions on exports to a non-party, nothing in the Agreement shall be construed to prevent the Party from requiring, as a condition for exporting the good concerned from its territory to another Party, that the good not be re-exported to the non-party, directly or indirectly, without being consumed in the territory of the other Party.

3.36. Along with national treatment, and similar to import restrictions, with respect to export restrictions, Article 2.11 does not apply to the continuation, renewal or amendment to any law, statute, decree or administrative regulation giving rise to measures in Table 3.1 above, to the extent that the continuation, renewal or amendment does not decrease the conformity of the measure with Article 2.11 on import and export restrictions.

3.37. Under Chapter 3 on agriculture, the Parties recognize that under Article XI:2(a) of the GATT 1994 a Party may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI:1 of the GATT 1994 on a foodstuff to prevent or relieve critical shortages, subject to meeting the conditions in Article 12.1 of the WTO Agreement on Agriculture. Paragraph 3 of Article 3.5 sets out notification requirements.²³ The Party notifying shall, upon request, consult with a Party that has a substantial interest as an importer of the foodstuff, provide that Party with relevant economic indicators on whether a critical shortage exists or is likely to exist in the absence of the measure, and respond in writing to any question posed by another Party within 14 days of receipt of the questions. Measures requiring notification shall normally be terminated within six months. An intention to extend the measure shall be notified to the other Parties no later than five months after the date of adoption of the measure. The measure may not be continued beyond 12 months from the date of adoption unless the Party has consulted with other Parties that are net importers of the product concerned; the measure shall be discontinued immediately when the critical shortage or threat thereof ceases to exist. No notification is required if the measure covers foodstuffs that the Party has been a net importer of during each of the three calendar years preceding the imposition

²² Some ASRs apply to only up to 10% of the producer's total North American passenger vehicle or light truck production. For other companies the ASR may cover more than 10% of their North American production.

²³ A Party imposing a prohibition or restriction on exports to another Party shall notify the measure to the other Parties at least 30 days before the date on which the measure takes effect except in cases of force majeure in which case the notification should be made prior to the measure taking effect; or maintaining an export prohibition or restriction as of the date of entry into force of the Agreement shall notify the measure to the other Parties within 30 days of the date of entry into force of the Agreement.

of the measure (excluding the year in which the measure is imposed). The Party shall nevertheless, within a reasonable period of time, provide to the other Parties, trade data demonstrating that it was a net importer of the foodstuff during the three preceding years.

3.38. With regard to export licensing, Article 2.14 requires that each Party, within 30 days of the entry into force of the Agreement, shall notify the other Parties in writing of the publications in which its export licensing procedures, if any, are set out.²⁴ Any new export licensing procedure or any modification to an existing export licensing procedure adopted shall be published as soon as practicable but no later than 30 days after the new procedure or modification takes effect.²⁵

3.39. Upon request from a Party each Party must provide to the extent practicable, particular information regarding an export licensing procedure that the Party adopts or maintains, except when doing so would reveal business proprietary or other confidential information. The information includes the aggregate number of licences granted by the Party over a recent period as specified in the request; and measures, if any, adopted by the Party in conjunction with the licensing procedure to restrict domestic production or consumption or to stabilize production, supply or prices of the good concerned. Article 2.14 does not require export licences to be granted, or prevent a Party from implementing its obligations under United Nations Security Council Resolutions and other multilateral non-proliferation regimes as listed in Article 2.14.4.

3.4 Regulatory provisions on trade in goods

3.4.1 Standards

3.4.1.1 Sanitary and phytosanitary measures

3.40. Under Chapter 9 on sanitary and phytosanitary (SPS) measures, the Parties affirm their rights and obligations under the WTO SPS Agreement. SPS measures which conform to the relevant provisions of Chapter 9 are presumed to be consistent with the Parties' obligations under Chapter 2 on national treatment and market access, relating to the use of SPS measures and Article XX(b) of the GATT 1994 as incorporated into Article 32.1 on general exceptions.²⁶

3.41. Each Party has the right to adopt or maintain SPS measures necessary for the protection of human, animal or plant life or health, provided that the measures are not inconsistent with the provisions of Chapter 9. The Parties shall base their SPS measures on relevant international standards, guidelines and recommendations provided that they meet their appropriate levels of sanitary or phytosanitary protection. If the measures are not based on relevant international standards, guidelines, or recommendations, or if there are no relevant international standards, guidelines or recommendations, the Parties shall ensure their SPS measures are based on an assessment, as appropriate to the circumstances, of the risk to human, animal or plant life or health. Chapter 9 does not prevent a Party from establishing the level of protection it deems to be appropriate; establishing or maintaining an approval procedure requiring a risk assessment before

²⁴ Export licensing procedure is defined by Article 2.14.5 as a requirement that a Party adopts or maintains under which an exporter must, as a condition for exporting a good from the Party's territory, submit an application or other documentation to an administrative body or bodies, but does not include customs documentation required in the normal course of trade or any requirement that must be fulfilled prior to introduction of the good into commerce within the Party's territory.

²⁵ The publication shall include (a) the texts including any modifications of licensing procedures; (b) the goods subject to the procedure; (c) a description of the process for applying for the licence and any criteria to be met; (d) a contact point from which further information can be obtained on the conditions for obtaining the licence; (e) an administrative body to which the application is to be made; (f) a description of or a citation to a publication reproducing in full any measure that the export licensing procedure implements; (g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication; (h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if practicable, the value of the quota, and the opening and closing dates of the quota; and (i) any exemptions from or exceptions to the requirement to obtain an export license that are available to the public, how to request or use these exemptions or exceptions, and the criteria for the exemptions or exceptions.

²⁶ Furthermore, SPS measures which conform to relevant international standards, guidelines and recommendations are deemed to be necessary to protect human, animal, or plant life or health, and presumed to be consistent with the relevant provisions of Chapter 9, Chapter 2, relating to the use of SPS measures, and Article XX(b) of the GATT 1994 as incorporated into Article 32.1.

the Party grants a product access to its market; or adopting or maintain an SPS measure on a provisional basis if relevant scientific evidence is insufficient (Article 9.6).²⁷

3.42. Each Party shall ensure that its SPS measures: are applied only to the extent necessary to protect human, animal or plant life or health; are based on scientific principles taking into account relevant factors including, if appropriate, different geographic conditions; are not maintained if there is no longer a scientific basis; do not arbitrarily or unjustifiably discriminate between Parties with identical or similar conditions, including between its own territory and that of other Parties; and are not applied in a manner that constitutes a disguised restriction on trade between the Parties. Risk assessment and risk management for an SPS regulation within the scope of Annex B of the WTO SPS Agreement shall be conducted in a manner that is documented and provides the other Parties and persons of the Parties opportunity to comment, in a manner to be determined by that Party. The Parties will ensure that their risk assessment is appropriate to the circumstances of the risk to human, animal, or plant life or health and takes into account the available relevant scientific evidence, including qualitative and quantitative data and information. In conducting its risk assessment and risk management, each Party shall take into account the relevant guidelines of the WTO SPS Committee and relevant international standards, guidelines and recommendations of the relevant international organization. The Parties shall consider not taking any measure if that would achieve their appropriate level of protection. They shall also select measures that are not more restrictive than required to achieve the level of protection they have determined to be appropriate.

3.43. Each Party shall endeavour to enhance compatibility of its SPS measures with those of the other Parties and is encouraged to consider relevant actual or proposed SPS measures of the other Parties in the development, modification or adoption of its own measures and making its SPS measures equivalent, or if appropriate, identical to those of the other Parties to the extent that doing either does not reduce its appropriate level of protection, (Article 9.7). The Parties shall apply the recognition of equivalence to a specific sanitary or phytosanitary measure or, to the extent feasible and appropriate, to a group of measures or on a systems-wide basis. In determining equivalence, each Party shall take into account the relevant guidance of the WTO SPS Committee and relevant international standards, guidelines and recommendations. The importing Party shall, without delay, initiate an assessment upon receipt of sufficient information from the exporting Party and shall finalize and communicate the results of its assessment to the exporting Party (Article 9.9).

3.44. Under Article 9.8 the Parties agree to cooperate on the recognition of pest- or disease-free areas and areas of low pest or disease prevalence to acquire confidence in each others' procedures for the recognition of such areas. They shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3.45. Article 9.10 provides for audits of the exporting Party's competent authorities, including associated or designated inspection systems, to determine an exporting Party's ability to comply with the importing Party's SPS requirements or to verify an exporting Party's compliance with its SPS requirements that the importing Party has determined to be equivalent. Prior to the commencement of an audit, the auditing and audited Parties shall decide on the itinerary and procedures for conducting the audit. A decision or action taken by the auditing Party as a result of the audit must be supported by objective and verifiable evidence and data which the auditing Party shall provide if requested by the audited Party. A Party may use import checks to assess compliance with its SPS measures and to obtain information to assess risk or to determine the need for, develop, or periodically review a risk-based import check. If it prohibits or restricts the import of a good from another Party on the basis of an adverse result of an import check, it shall provide an opportunity for a review of the decision (Article 9.11) and consider any relevant information submitted to assist the review.

3.46. The Parties recognize that assurances on SPS requirements may be provided by means other than certificates and shall ensure that at least one of the following conditions is met before imposing a SPS certification requirement: the certification requirement is based on the relevant international standards and is appropriate to the circumstances of risks to human, animal or plant life or health at issue. In applying certification requirements, an importing Party shall take into account relevant guidance from the WTO SPS Committee and relevant international standards, guidelines, and

²⁷ In the latter case, the Party shall, within a reasonable period of time, seek to obtain additional information necessary for a more objective assessment of risk; complete the risk assessment after obtaining this information; and review and if appropriate, revise the provisional measure in light of the assessment.

recommendations. The Parties shall promote the use of electronic certification and other technologies to facilitate trade (Article 9.12). Article 9.14 addresses emergency measures to address an urgent problem of human, animal or plant life or health. The provisions require prompt notification and the Party taking the measure shall review the scientific basis of the measure within six months, and make the results of the review available to any Party on request. If the reason for adoption of the measure remains, the Party should review the measure periodically thereafter.

3.47. Transparency provisions envisage information sharing, notification and publication of proposed SPS measures that constitute SPS regulations for the purposes of Annex B of the WTO SPS Agreement (Article 9.13). Other provisions include Article 9.15 on information exchange, and 9.16 on cooperation. The Agreement addresses contact points and requires that the Parties establish a Committee on Sanitary and Phytosanitary Measures that shall meet once a year unless the Parties decide otherwise to, *inter alia*, consider matters relating to the Chapter and its implementation, to improve understanding of SPS issues relating to the implementation of the WTO SPS Agreement or the Chapter, and identify and discuss at an early appropriate stage, proposed SPS measures or revisions to existing measures that may have a significant effect on trade in the region (Article 9.17). The Committee may establish technical working groups. The Parties may seek to resolve any specific trade concerns related to the application of a sanitary or phytosanitary measure through the relevant technical working group (Article 9.18). Under procedures in Article 9.19; dispute settlement under Chapter 31 of the Agreement is not possible without first seeking to resolve the matter through technical consultations (Article 9.20).

3.4.1.2 Technical barriers to trade

3.48. Chapter 11 on technical barriers to trade (TBT) incorporates various parts of the WTO Agreement on Technical Barriers to Trade, *mutatis mutandis*.²⁸ The sections of the WTO TBT Agreement that are incorporated into the Chapter are therefore not subject to dispute settlement under the Agreement. Also excluded are (i) measures that the Party alleges to be inconsistent with the Chapter that were referred to or subsequently referred to a WTO dispute settlement panel, (ii) were taken to comply in response to a recommendation or ruling by the WTO Dispute Settlement Body or (iii) bear a close relationship with a measure under (ii) above (Article 11.3).

3.49. The Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures, including any amendments of central level of government bodies, which may affect trade between the Parties. It does not apply to technical specifications prepared by a government body for production or consumption requirements of a governmental body or SPS measures (Article 11.2). The role played by international standards in encouraging regulatory alignment is recognized and the Parties agree to follow only the WTO TBT Committee Decision on International Standards in determining international standards, guides or recommendations within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement.²⁹ The Parties will also cooperate to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary barriers to international trade (Article 11.4). Article 11.5 deals with the preparation, and review of technical regulations and the use of standards in technical regulations.

3.50. The Parties commit to provide national treatment to conformity assessment bodies located in the territory of the other Parties including for procedures, criteria, fees and other conditions relating to accrediting, approving, licensing or otherwise recognizing conformity assessment bodies. If a Party maintains procedures, criteria or other conditions as above, and requires conformity assessment results as positive assurance that a product conforms to a technical regulation or standard, (i) it shall not require the conformity assessment body to be located in its territory, (ii) not effectively require it to operate an office within the Party's territory, and (iii) permit conformity assessment bodies in other Parties' territories to apply to the Party or any body it has recognized or approved for this purpose, for a determination that they comply with any procedures, criteria and other conditions the Party requires.

²⁸ The Sections incorporated are: Articles 2.1-2.5, 2.9-2.12; Articles 3.1, 4.1 and 7.1; Articles 5.1-5.9; and paragraphs D, E, F and J of Annex 3 of the WTO TBT Agreement.

²⁹ Criteria that are not be considered in this regard include the domicile of the standards body, whether the body is non-governmental or inter-governmental and whether it limits participation to delegations.

3.51. Transparency provisions include participation by persons from the other Parties in the development of technical regulations, standards and conformity assessment procedures at terms no less favourable than for its own persons. Based on the WTO TBT Agreement, Article 11.7 requires the Parties to publish proposed technical regulations or conformity assessment procedures and allow and consider written comments from persons of the other Parties to revise the proposed measure; endeavour to promptly publish any written comments received; and publish the final technical regulation or conformity assessment procedure and an explanation of how it has addressed substantive issues raised in comments. Additional transparency through the use of electronic tools and public outreach and consultations is also encouraged. In addition to notification under the TBT Agreement, the Parties will also endeavour to notify proposed technical regulations and conformity assessment procedures of regional levels of governments that may have a significant impact on trade and that are in accordance with the technical content of relevant international standards, guides and recommendations. The "reasonable interval" between the publication of a technical regulation or conformity assessment procedure and its entry into force is defined by Article 11.8 as not less than six months except when this would be ineffective in fulfilling the legitimate objectives of the technical regulation or conformity assessment procedure.

3.52. To facilitate the acceptance of conformity assessment results, Article 11.9 goes beyond the WTO TBT Agreement by requiring the Parties to give consideration to a request by another Party on any sector-specific proposal for cooperation. The Parties also recognize mechanisms to support greater regulatory alignment and eliminate unnecessary technical barriers to trade in the region such as through regulatory dialogue and cooperation, facilitation of the greater use and alignment of standards, technical regulations and conformity assessment procedures with international standards, guides and recommendations and promotion of equivalence of other Parties' technical regulations. Article 11.10 sets up a framework for information exchange and technical discussions between the Parties to address trade concerns. A Committee on Technical Barriers to Trade as well as contact points are established (Articles 11.11 and 11.12). The Committee shall meet at least once a year unless otherwise determined by the Parties.

3.53. In addition to Chapter 11, there are specific annexes that deal with *inter alia* the preparation, adoption and application of technical regulations, standards, conformity assessment and notification procedures for chemicals (12-A), cosmetic products (12-B), information and communication technology (12-C), energy performance standards (12-D), medical devices (12-E) and pharmaceuticals (12-F). A side letter on auto safety standards affirms Mexico's continued recognition of certain US auto safety standards, as long as these standards are useful to fulfil Mexico's legitimate objective.³⁰

3.4.2 Safeguard mechanisms

3.4.2.1 Global safeguards

3.54. As under the NAFTA, all the Parties retain their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards except those regarding compensation or retaliation and exclusion from any action to the extent that the rights and obligations are inconsistent with Article 10.2 of the Agreement. A Party taking any actions under Article XIX or the Agreement on Safeguards shall exclude imports from the other Parties from the action unless (a) imports from a Party, considered individually, account for a substantial share of total imports³¹; and (b) imports from a Party, considered individually, or in exceptional circumstances, considered collectively with all Parties, contribute importantly to the serious injury, or threat thereof, caused by imports.³² Any goods imported from one of the Parties that has been excluded from safeguard action under this provision, may subsequently be included if the competent investigating authority determines that a surge in imports of the good from the other Party or Parties undermines the effectiveness of the action. The action may only be taken once prior written notice has been provided to the Commission (see Section 5.5 below), and adequate opportunity for consultations has been provided to the

³⁰ MX-US Side Letter on Auto Safety Standards, dated 30 November 2018.

³¹ Substantial share is defined in Article 10.2 as imports from the Party being among the top five suppliers of the good, in terms of import share during the most recent three-year period.

³² Imports from a Party shall not normally be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

affected Parties as far in advance as is practicable. In addition, the action may not be taken if it would have the effect of reducing imports of the good from a Party below the trend of its imports from the Party over a recent representative base period with allowance for reasonable growth.

3.55. Compensation in the form of concessions having substantially equivalent trade effects or equivalent to the additional value of the duties to result from the action shall be provided to the affected Parties. If the Parties are unable to agree on the compensation the Party against whose good the safeguard is taken may take action with trade effects that are substantially equivalent to the safeguard measure.

3.56. The Parties agree to entrust determinations of serious injury, or threat thereof, in safeguard action proceedings to a competent investigating authority³³, and review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be modified unless they are reviewed.

3.4.2.2 Bilateral safeguards

3.57. There are no specific provisions on bilateral or transitional safeguards. The longest period for applying transitional safeguards under the NAFTA ended in 2008.

3.4.2.3 Special safeguards

3.58. Under Chapter 3 on agriculture, originating agricultural goods under preferential tariff treatment shall not be subject to any duties that the importing Party applies pursuant to a special safeguard it takes pursuant to the WTO Agreement on Agriculture (Article 3.9).

3.4.2.4 Balance of payments safeguards

3.59. Safeguards may be adopted or maintained in the event of serious balance of payments (BOP) and external financial difficulties or threats thereof. The measure must not be inconsistent with national and MFN treatment commitments with regard to investment, cross border trade in services, and financial services; be consistent with the Articles of Agreement of the IMF; avoid unnecessary damage to the commercial, economic and financial interests of another Party; not exceed those necessary to deal with the BOP or external financial difficulties or threats thereof; be temporary and phased out progressively as the BOP or external financial difficulties or threats thereof improve and not exceed 12 months in duration (extendable in exceptional circumstances by one more year); not be inconsistent with Article 14.8 on expropriation and compensation; in the case of restrictions on capital outflows, not interfere with investors' ability to earn a market rate of return in the territory of the restricting Party on assets invested in that territory by an investor of a Party that are restricted from being transferred out of the territory of the restricting Party and not be used to avoid necessary macroeconomic adjustment.

3.60. The Parties shall endeavour to use price-based measures and if not, shall explain the rationale for using quantitative restrictions. For trade in goods, the Parties incorporate Article XII of the GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994 into the Agreement, *mutatis mutandis* (Article 32.4). Further procedural requirements, including notification and a time schedule or the conditions necessary for the removal of the measure are provided in Article 32.4.

3.4.3 Anti-dumping and countervailing measures

3.61. Section 10-B and Annex 10-A deal with anti-dumping and countervailing measures. As under the NAFTA, under Article 10.5 the Parties retain their rights and obligations under Article VI of the GATT 1994, the Anti-Dumping (AD) Agreement and the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Articles 10.10-10.18 are unchanged from the provisions on the NAFTA. Article 10.10 gives the Parties the right to apply their anti-dumping and countervailing laws to goods imported from each others' territories and to modify such laws. Article 10.11 provides that the Parties

³³ The competent authorities are: the Canadian International Trade Tribunal or its successor for Canada; the International Trade Practices Unit of the *Secretaría de Economía* or its successor for Mexico; and the International Trade Commission or its successor for the United States.

may request a binational panel review of another Party's statutory amendments for a declaratory opinion as to whether such amendments: 1) do not conform with GATT 1994, the AD Agreement or the SCM Agreement, or with the object and purpose of the Agreement and Chapter 10; or 2) have the function and effect of overturning a prior decision of a panel under Article 10.12.

3.62. Section 10-B and Annex 10-A are not subject to the dispute settlement mechanism under Chapter 31 or Chapter 10 of the Agreement. Annex 10-A includes new provisions that were not in NAFTA, which enhance transparency of trade remedy proceedings. As under the NAFTA, the review of final antidumping and countervailing duty determinations may be carried out by a binational panel, as an alternative to domestic judicial review. A Party may request the establishment of a panel in writing to the other Party involved within 30 days of the publication of the final determination by the importing Party. The decision taken by the panel will be binding on the Parties involved with respect to the matter that is brought before the panel. The final determination by the panel may not be appealed through any judicial review procedures by the importing Party (Article 10.12). As in the NAFTA each Party shall maintain a Secretariat to facilitate the operation of the Section (Article 10.16) while Article 10.17 commits the Parties to maintaining a code of conduct for panelists and members of committees established under Articles 10.11, 10.12 and 10.13 (safeguarding the panel review system). The procedures on the establishment of bi-national panels (Annex 10-B-1), panel procedures under Article 10.11 (Annex 10-B-2), extraordinary challenge procedures (Annex 10-B-3) and special committee procedures (Annex 10-B-4) are also unchanged from the NAFTA. Annex 10-B-5 lists domestic laws that shall be amended by the Parties to bring them into line with the provisions of the Agreement. Canada and Mexico have amended the relevant domestic laws.

3.63. Another novelty in the Chapter is Section C on cooperation on preventing duty evasion of trade remedy laws including to strengthen and expand customs and trade enforcement efforts in matters related to trade remedy duty evasion. The Parties shall share customs information on exports, imports and transit transactions, subject to their laws, to help enable the Parties to combat duty evasion and conduct joint or coordinated analysis and investigations of suspected duty evasion. Under paragraph 5 of Article 10.7, a Party may also request that another Party conduct a duty evasion verification on the requested Party's territory to obtain information that would enable the requesting Party to determine whether an import is subject to antidumping, countervailing or safeguard duty imposed by the requesting Party. The request must be made in writing by a Party and the requested Party must respond within 30 days to indicate whether it will conduct the verification. If a verification is conducted, the report must be provided to the requesting Party promptly (Article 10.7).³⁴ Paragraph 7 of Article 10.7 also provides for the possibility that the requesting Party participate in duty evasion verification in the relevant facilities in the territory of a requested Party. Paragraph 7 also provides that duty evasion verifications are subject to mutually agreed conditions between the Parties, advanced notice to the requested Party, and consent by the parties to be verified.

3.4.4 Subsidies and State-aid

3.64. While there are no provisions on State-aid as such, Chapter 22 deals with State owned enterprises and designated monopolies in both goods and services (see Section 5.11 below).

3.65. There are specific provisions on agricultural export subsidies and fish subsidies. Article 3.4 prohibits the Parties from maintaining an export subsidy on agricultural goods destined for the territory of another Party. If a Party considers that support for export financing by another Party results or may result in a distorting effect on trade between the Parties or consider that an export subsidy for an agricultural good is being granted by another Party, it may request a discussion with the other Party. The other Party shall agree to the request as soon as practicable.

3.66. Articles 24.20 and 24.21 deal with fisheries subsidies and illegal, unreported and unregulated (IUU) fishing. Under paragraph 1 of Article 24.20 the Parties agree not to grant or maintain the following subsidies within the meaning of Article 1.1 of the WTO Subsidies and Countervailing Measures (SCM) Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

- a. Subsidies provided to a fishing vessel, or operator listed for IUU fishing by the Flag State (as defined by the Article), the subsidizing Party or a relevant RFMO or RFMA in accordance

³⁴ If it is not, the requested Party must indicate the reason for refusal in its response to the request.

with the rules and procedures of that organization or arrangement and in conformity with international law; and

- b. Subsidies for fishing that negatively affect fish stocks that are in an overfished condition.

3.67. Article 24.20 also requires that subsidy programmes under b above already in force be brought into conformity with the Agreement as soon as possible and no later than three years after the entry into force of the Agreement. For subsidies that are not prohibited, and taking into consideration each Party's social and developmental priorities, best efforts shall be made to refrain from introducing new, or extending existing subsidies within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement, to the extent that they contribute to overfishing or overcapacity. The Parties will also review the disciplines in paragraph 1 at regular meetings of the Environment Committee with a view to eliminating subsidies that contribute to overfishing or overcapacity. There is also a notification requirement for subsidies under Article 1.1 of the SCM Agreement including for activities not covered by paragraph 1 such as fuel subsidies. The Parties also foresee a number of measures to support international efforts to combat IUU fishing and to help deter trade in products from IUU fishing. Each Party will also provide, to the extent possible, the other Parties the opportunity to comment on proposed measures to prevent trade in fisheries products derived from IUU fishing.

3.68. More generally, the Parties recognize the need for individual and collective action in international fora to address urgent resource problems resulting from overfishing and unsustainable use of fisheries resources (Article 24.17). They also recognize the importance of promoting and facilitating trade in sustainably managed and legally harvested fish and fish products while ensuring that such trade is not subject to unnecessary or unjustifiable barriers to trade.³⁵ Each Party shall seek to operate a fisheries management system³⁶; take measures to prevent the use of poisons and explosives for commercial fish harvesting and to prohibit the practice of shark finning (Article 24.18); and a commitment to promoting long-term conservation of marine species (Article 24.19).

3.4.5 Customs-related procedures and trade facilitation

3.69. Customs related origin procedures are covered in Chapter 5 and 6 of the Agreement, while Chapter 7 deals with customs administration and trade facilitation.

3.70. Under Chapter 5 certifications of origin are required to claim preferential treatment and may be completed by the exporter, producer or importer. Where the importer completes a certification of origin each Party may require supporting documents; establish legal conditions to be met; and prohibit the importer from providing its own certification if the legal conditions are not met. The certification of origin need not follow a specific format but must contain a set of minimum data elements indicated in Annex 5-A³⁷, provided on an invoice or any other document, describe the originating good in sufficient detail to enable its identification and meet the requirements of the Uniform Regulations established under Article 5.16. Claims for preferential tariff treatment may not be rejected for the sole reason that the invoice is issued in a non-party but a certification of origin shall not be provided on an invoice or other commercial document issued in a non-party. Furthermore, the Parties shall allow the certification of origin to be completed and submitted electronically and shall accept it with an electronic or digital signature (Article 5.2).

3.71. Certifications of origin may be provided for a single shipment of a good into the territory of a Party, or multiple shipments of goods within a period specified in the certification, which shall not exceed 12 months. The Parties shall also ensure that the certification of origin be accepted by their customs administrations for four years following the completion of the certification (Article 5.3). Exceptions to the certification of origin requirement are provided in certain cases: (a) the value of

³⁵ They recognize that any restrictive trade measures be based on the best scientific evidence available, tailored to the conservation objective, implemented after the importing Party has consulted with the exporting Party and provided a reasonable opportunity for the exporting Party to take appropriate measures to address the issue.

³⁶ The system shall aim to regulate marine wild capture fishing that is designed to prevent overfishing and overcapacity through appropriate measures; reduce by-catch of non-target species and juveniles; promote the recovery of overfished stocks for all marine fisheries in which that Party has fishing activities; and protect marine habitat by cooperating as appropriate, to prevent or mitigate significant adverse impacts of fishing.

³⁷ Annex 5-A contains details of the minimum data elements required for the certification of origin and of the importer, exporter or producer, and a description of the good and its HS tariff classification.

import does not exceed USD1,000, or equivalent, or any higher amount established by the importing Party; or (b) it is an import for which the importing Party has waived the certification of origin requirement (Article 5.5).

3.72. Verification of origin may be conducted through a written request or questionnaire seeking information from the importer, exporter or producer; a verification visit to the premises of the exporter or producer to request information and to observe the production process and related facilities; or any other procedure decided by the Parties; for textiles and apparel, a Party may request a site visit to verify whether a good qualifies for preferential treatment under the Agreement, or if customs offenses are occurring or have occurred following the procedures in Article 6.6 of the Agreement. The verification shall be completed as expeditiously as possible and within 120 days of receipt of all the necessary information, which can be exceptionally extended by a further 90 days after notifying the importer, and any exporter or producer that is subject to or provided information for the verification. Prior to this the importing Party shall inform the importer and any qualified exporter or producer affected by the verification if it intends to deny preferential treatment of when the denial will be effective and provide for at least 30 days for the submission of additional information relating to the origin status. Preferential treatment may be withheld if verification indicates a pattern of conduct by an importer, exporter or producer of false or unsupported representations that a good imported into its territory qualifies as an originating good until the person complies with Chapters 4, 5 and 6 (Article 5.9). A Party may also deny preferential treatment if (a) it determines that the good does not qualify for preferential treatment; (b) following verification of origin it does not have sufficient information to determine that the good qualifies as originating; (c) the exporter, producer or importer fails to respond to a written request or questionnaire for information including under Article 5.9; (d) the exporter or producer fails to provide its written consent for a verification visit under Article 5.9; (e) the importer, exporter or producer fails to comply with the requirements of the Chapter; or (f) the exporter, importer or producer fails to maintain records or documentation or denies access to them if requested by a Party (Article 5.10).

3.73. Articles 5.13 and 5.15 respectively establish criminal, civil or administrative penalties for violations of the provisions of the Chapter, and review and appeal by exporter, producers and importers of decisions taken by the customs administrations. Finally, Article 5.18 establishes a Committee on Rules of Origin and Origin Procedures to consult regularly and ensure that Chapters 4 and 5 are administered effectively, uniformly and consistently with the spirit and objectives of the Agreement. It shall also consult to discuss possible amendments to product specific rules of origin (except those relating to textiles and clothing). A Sub-committee on Origin Verification shall meet to discuss matters relating to verification of origin (Article 5.19). The Committee on Rules of Origin and Origin Procedures met on May 12 and 14, 2021 where the Parties committed to continue to work on updating the USMCA rules of origin to reflect changes to the Harmonized System and amending the Rules of Origin Uniform Regulations to, among other things, include examples relating to the rules of origin for automotive goods and to continue to work on amending the Origin Procedures Uniform Regulations. The Committee on Textile and Apparel Trade Matters met on March 30, 2021.

3.74. Under Section A of Chapter 7 the Parties affirm their rights and obligations under the WTO Agreement on Trade Facilitation (TFA). As in the TFA the Chapter requires online publication of procedures for import, export and transit, related laws, weblinks to current customs duties, taxes and fees as well as procedures to correct errors in customs transactions (Article 7.2); and the establishment of enquiry points (Article 7.4). It also goes beyond the TFA provisions including for:

- a. advance rulings are to be issued for (i) tariff classification, (ii) customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement (iii) origin of a good and whether it qualifies as originating under the Agreement, (iv) whether a good is subject to a tariff rate quota or quota and, (v) other matters as agreed upon by the Parties in addition to tariff classification; advance rulings are to be issued as expeditiously as possible and no later than 120 days after obtaining all the necessary information.
- b. the Parties agree to maintain procedures that provide for immediate release of goods upon fulfilment of all requirements; release of express shipments based on, to the extent possible, minimum documentation or a single submission of information such as a manifest; procedures that apply fewer customs formalities than under formal entry procedures to express shipments valued under USD 2,500 for the U.S. and Mexico and

under CAD 3,300 for Canada; and use information technology to expedite procedures (Articles 7.7; 7.8; 7.9).

- c. For the single window, the Parties agree to (i) incorporate as appropriate, the World Customs Organization Data Model for data; (ii) endeavour to implement standards and data for import, export and transit that are the same as the other Parties' single window systems; and (iii) continuously streamline the single window system to improve transparency and reduce release times and costs (Article 7.10). Record-keeping obligations must have a fixed and finite period (Article 7.13); and
- d. maintain a trade facilitation partnership programme for authorized economic operators, who meet specified security criteria in accordance with the *Framework of Standards to Secure and Facilitate Global Trade* of the World Customs Organization (Article 7.14).

3.75. Article 7.15 ensures administrative and judicial or quasi-judicial procedures to review and appeal customs determinations. Article 7.18 allows the imposition of penalties by a Party's customs administration for breach of its customs laws, regulations or procedural requirements, but places disciplines on penalties.³⁸

3.76. Article 7.16 establishes a procedure for requesting administrative guidance for a prospective, pending or completed transaction. Article 7.20 provides for self-filing of customs declarations and other documentation without the services of a customs broker, transparency of broker requirements, and precludes a Party from imposing arbitrary limits on the ports or locations at which a customs broker may operate.

3.77. Article 7.22 ensures that information that a Party's customs administration collects from traders will be protected, in accordance with its law, from use or disclosure that could prejudice the competitive position of the trader.

3.78. A Committee on Trade Facilitation is established under Article 7.24 to facilitate the exchange of information regarding their experiences on single window, AEO programs and voluntary compliance by traders; to identify joint customs actions; discuss technical assistance; serve as a forum to share views on individual cases; review international initiatives on trade facilitation; and endeavour to resolve issues relating to Chapter 7, as well as other activities as the Parties may decide. Under Article 7.23, the Parties are to cooperate in the development and implementation of trade facilitation initiatives, which may also be supported by the Committee. And, under Article 7.1.3, the Parties are to discuss additional measures to facilitate trade. The Committee on Trade Facilitation met on September 9, 2020.

3.4.6 Other regulations

3.79. Chapter 8 of the Agreement recognizes Mexico's direct, inalienable and imprescriptible ownership of hydrocarbons in its territory, including the Continental shelf and the exclusive economic zone, pursuant to its Constitution.

3.5 Sector-specific provisions on trade in goods

3.5.1 Agriculture

3.80. In addition to provisions on agriculture mentioned in other parts of the factual presentation Article 3.6 requires that, if a Party supports its agricultural producers, the Party considers domestic support measures that have no, or at most minimal, trade distorting effects or effects on production. If a Party raises concerns that another Party's measures have had a negative impact on trade between the Parties, the Parties shall share relevant information on the measures among themselves and discuss with a view to seeking to minimize any negative effect.

³⁸ The disciplines on penalties including that clerical or minor errors in customs transactions are not treated as a breach and may be corrected without penalty, unless the error is part of a consistent pattern of such errors and that there must be a fixed, finite period for initiating penalty proceedings. Further, each Party shall maintain measures to deter the use of a customs official's public position for private gain, and provide a mechanism for the submission of complaints (Article 7.19).

3.81. Article 3.10 provides for transparency and consultations between the Parties, including the provision, upon request, of available information on measures relating to trade in agricultural goods taken by a regional level of government in their territories that may have significant impact on trade between the Parties concerned. At the request of another Party, a Party shall meet to discuss, and if appropriate, resolve matters, arising from grade, quality, technical specifications and other standards that affect trade between the Parties.

3.82. In Section B of Chapter 3 the Parties confirm the importance of encouraging agricultural innovation and facilitating trade in agricultural biotechnology products, while fulfilling legitimate objectives, including by promoting transparency and cooperation and exchange of information. The Parties are not required to mandate authorization for agricultural biotechnology products to be on the market. Paragraph 4 of Article 3.14 includes actions to reduce the likelihood of disruptions to trade in agricultural biotechnology products such as encouraging the submission of timely and concurrent applications to the Parties and measures to be taken by a Party related to the authorization of such products.

3.83. Article 3.15 requires the Parties to adopt or maintain policies or approaches designed to facilitate the management of the occurrence of any low level presence (LLP) of recombinant deoxyribonucleic acid (DNA) plant materials that have passed food safety assessments according to Codex guidelines but which may be inadvertently present in food or feed in importing countries in which the food safety of the relevant recombinant DNA plant has not been determined. Finally, Article 3.16 establishes a Working Group for Cooperation on Agricultural Biotechnology for information exchange and cooperation on policy and trade-related matters associated with agricultural biotechnology products.³⁹

3.84. In a side letter between the United States and Mexico, Mexico agreed to initiate the process to recognize American Rye Whiskey as a distinctive product of the United States, and the United States agreed to initiate the process to recognize Bacanora, Charanda, and Sotol as distinctive products of Mexico. This agreement is without prejudice to the outcome of the processes initiated by the United States and Mexico pursuant to this letter. Mexico and the United States also exchanged a side letter on cheeses. The side letter on cheeses includes Mexico's confirmation that market access of U.S. products in Mexico is not restricted due to the mere use of the individual terms listed in the letter. The letter also confirms that those terms are terms used in connection with cheeses from U.S. producers currently being marketed in Mexico.

3.5.2 Automobiles

3.85. Through the Canada-US 232 Future Measures and Mexico-US 232 Process side letters, the Parties have agreed that should the United States adopt a measure pursuant to section 232 of the Trade Expansion Act of 1962, it shall not impose the measure on imports from Mexico and Canada for at least 60 days. During this period, the parties shall seek to "negotiate an appropriate outcome based on industry dynamics and historical trading patterns". For all goods, if the US takes action that is inconsistent with the Agreement, Canada and Mexico may take a measure of equivalent commercial effect in response. If the United States imposes a measure pursuant to section 232 on automotive goods, a separate Canada-US 232 Autos and Auto Parts side letter exempts up to 2.6 million passenger motor vehicles annually (HS 8703.21-HS 8703.90), all light trucks (HS 8704.21 and HS 8704.31), and any auto parts within the scope of the measure up to USD 32.4 billion annually. Similarly for Mexico, a separate Mexico-US 232 Autos and Auto Parts side letter exempts up to 2.6 million passenger motor vehicles annually (HS 8703.21-HS 8703.90), all light trucks (HS 8704.21 and HS 8704.31), and any auto parts within the scope of the measure up to USD 108 billion US dollars annually. The excluded automotive products will be subject to tariffs under NAFTA or the Agreement as applicable. Canada and Mexico may, moreover, only bring disputes under the Agreement that challenge whether the US has excluded the agreed number of passenger motor vehicles, light trucks and auto parts from a measure taken under Section 232. Canada and Mexico retain their WTO rights to challenge any such measure.

4 PROVISIONS ON TRADE IN SERVICES AND INVESTMENT

4.1. Provisions on trade in services and investment are found in Chapters 14 (investment), 15 (cross-border trade in services) and 16 (temporary entry for business persons). Chapters 17 and 18

³⁹ The Working Group shall meet annually unless otherwise decided by the Parties.

contain specific disciplines on financial services and telecommunications. These chapters are complemented by the Parties' lists of reservations in Annexes I, II, and III. Annexes I and II contain reservations for existing and future measures for all sectors, except financial services which are listed in Annex III.

4.2. Chapters 14 and 15 build on Chapter 11 and 12 of the NAFTA and introduce new provisions on subrogation (Article 14.15), corporate social responsibility (Article 14.17), market access (Article 15.5), small and medium enterprises (Article 15.10) and payments and transfers (Article 15.12). The main provisions of Chapter 16 are similar to those in Chapter 16 of the NAFTA while Chapters 17 and 18 differ from the respective chapters of the NAFTA on financial services (Chapter 14 of the NAFTA) and telecommunications (Chapter 13 of the NAFTA). The Chapter on financial services includes new disciplines on, *inter alia*, expedited availability of insurance services and the location of computing facilities while the Chapter on telecommunications introduces new disciplines on, for example, major suppliers of public telecommunication services, roaming, number portability and submarine cable systems.

4.1 Scope and definitions

4.3. Chapter 15 applies to measures adopted or maintained by a Party relating to cross-border trade in services by a service supplier of another Party (Article 15.2).⁴⁰ It does not apply to financial services and air services, with some exceptions.⁴¹ Government procurement, services supplied in the exercise of governmental authority, and subsidies or grants provided by a Party or a State enterprise are also excluded from the application of the Chapter.

4.4. Chapter 14 applies to measures adopted or maintained by a Party relating to investors of another Party, covered investment and, with respect to Articles 14.10 (performance requirements) and 14.16 (investment and environmental, health, safety and other regulatory objectives), all investment in its territory (Article 14.2).⁴² The Parties' obligations under the Chapter apply to measures adopted or maintained by the central, regional, or local governments or authorities and a person, including a State enterprise or another body, when it exercises any governmental authority delegated to it by central, regional, or local governments or authorities.

4.5. Chapter 16 applies to measures affecting the temporary entry of business persons of a Party into the territory of another Party (Article 16.2). It does not apply to measures affecting natural persons seeking access to the employment market of another Party and to measures regarding citizenship, nationality, residence or employment on a permanent basis.

4.6. Chapter 17 applies to measures adopted or maintained by a Party relating to financial institutions of another Party, investors of another Party and their investments in financial institutions in the Party's territory and cross-border trade in financial services (Article 17.2).

4.7. Chapter 18 on telecommunications applies to measures relating to access to and use of public telecommunications services, obligations regarding its suppliers, the supply of value-added services and any other measure relating to telecommunications services (Article 18.2). The Chapter does not apply to measures relating to broadcast or cable distribution of radio and television programming, except for access to and use of public telecommunications services and transparency in regard to technical measures to the extent that they also affect public telecommunications services.

⁴⁰ Cross-border trade in or supply of services are defined in Article 15.1 as the supply of a service from the territory of a Party into the territory of another Party (mode 1), in the territory of a Party by a person of that Party to a person of another Party (mode 2) or by a national of a Party in the territory of another Party (mode 4).

⁴¹ Articles 15.5 (market access) and 15.8 (development and administration of measures) apply to a financial service if it is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 17.1 in the Party's territory. The Chapter applies to aircraft repair or maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance and specialty air services.

⁴² Covered investment is defined in Article 14.1 as an investment in the territory of a Party of an investor of another Party in existence as of the date of entry into force of the Agreement or established, acquired, or expanded thereafter.

4.2 Denial of benefits

4.8. A Party can deny the benefits of Chapters 14, 15 and 17 if the service supplier or investor (or its investments) of another Party is an enterprise owned or controlled by persons of a non-party or the denying Party, and has no substantial business activities in the territory of any Party other than the denying Party (Articles 14.14, 15.11 and 17.2.2(a)).

4.9. An anti-circumvention clause is also part of the denial of benefits provision. Under the clause, a Party can also deny the benefits of Chapters 14, 15 and 17 if the enterprise is owned or controlled by a person of a non-party, and the denying Party adopts or maintains measures with respect to the non-party or person of that non-party that prohibit transactions with that enterprise or would be violated or circumvented if the benefits of the Chapters were accorded to the enterprise.

4.3 General provisions on trade in services and investment

4.3.1 Market access

4.10. Article 15.5 lists the limitations on market access that the Parties cannot adopt or maintain unless otherwise specified in their lists of reservations. These mirror those found in GATS Article XVI.2 (a)-(e). The same commitments apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment (Articles 15.2 and 14.3), and to measures with respect to financial institutions of another Party, investors of another Party seeking to establish a financial institution and certain cross-border financial services (Article 17.5).

4.3.2 National and MFN treatment

4.11. The Parties agree to grant MFN and national treatment to each others' services and service providers (Articles 15.3 and 15.4) and investors and covered investments of other Parties with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments (Articles 14.4 and 14.5).⁴³

4.12. For financial services, MFN and national treatment is granted to investors and financial institutions of another Party, investments by investors of another Party in financial institutions, financial services or cross-border suppliers of financial services of another Party (Articles 17.3 and 17.4).⁴⁴

4.13. Exemptions from these commitments are specified in the Parties' lists of reservations (Annexes I, II and III). Moreover, the provisions on national and MFN treatment for investment do not apply to certain measures related to intellectual property (namely Articles 3 and 4 of the TRIPS Agreement and Article 20.8 of the Agreement) and to government procurement, subsidies or grants provided by a Party (Article 14.12).

4.3.3 Commercial presence

4.14. Unless listed in their reservations, a Party cannot require a services supplier of another Party to establish or maintain a representative office or an enterprise, or be resident, in its territory as a condition for the cross-border supply of a service (Articles 15.6 and 17.5.3).

4.3.4 Performance requirements

4.15. The Agreement prohibits the application of performance requirements for the establishment, acquisition, expansion, management, conduct, operation or sale or other disposition of a covered

⁴³ The Agreement specifies that whether national and MFN treatment is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

⁴⁴ For financial institutions of another Party, investors of another Party, and their investments in financial institutions, the obligation of national treatment applies with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions or investments in financial institutions in the Parties' territory.

investment under Chapter 14. Detailed provisions and applicable exceptions are found in Article 14.10.

4.3.5 Senior Management and Boards of Directors

4.16. The Parties cannot impose nationality requirements for senior management positions of an enterprise that is a covered investment, but may require that a majority of its board of directors, or any committee thereof, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment (Article 14.11). For financial services, the Parties shall not require a financial institution of another Party to engage a natural person of a particular nationality as senior managerial or other essential personnel and no Party shall require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof (Article 17.9).

4.3.6 Movement of natural persons

4.17. Chapter 16 disciplines the temporary entry of business persons of a Party into the territory of another Party. Each Party shall grant temporary entry to a business person who is otherwise qualified for entry under its measures on public health and safety and national security, in accordance with the Chapter, including Annex 16-A which includes conditions, limitations or other commitments, including business activities and minimum education requirements, for business visitors, traders and investors, intra-company transferees and professionals (Article 16.4).⁴⁵ A Party may refuse to grant temporary entry or issue an immigration document to a business person of another Party if the temporary entry of that person might affect adversely the settlement of any labour dispute in progress, or the employment of any natural person involved in such a dispute.

4.18. The Parties shall apply their measures on temporary entry expeditiously so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under the Agreement and they shall endeavour to develop and adopt common criteria, definitions and interpretations for the implementation of the Chapter (Article 16.3). They agree to publish online or otherwise make publicly available explanatory material regarding the requirements for temporary entry (Article 16.5).

4.19. The Parties may not initiate proceedings under Article 31.5 (Commission Good Offices, Conciliation, and Mediation) of the Agreement regarding a refusal to grant temporary entry unless it involves a pattern of practice and the business persons affected have exhausted all available administrative remedies regarding the matter (Article 16.7).

4.20. A Temporary Entry Working Group is established to consider a number of issues under Chapter 16 including its implementation and administration, the development of new facilitating measures and the waiving of labour certification tests for spouses of business persons (article 16.6).

4.4 Liberalization commitments

4.21. Commitments on cross-border trade in services and investment are scheduled on a negative list basis so that obligations on national and MFN treatment, market access, local presence (only for Chapter 15), performance requirements (only for Chapter 14) and senior management and boards of directors (only for Chapter 14) apply to all services or investments unless specified otherwise in the Parties' schedules of existing and future non-conforming measures under Annexes I and II. Commitments in financial services also use a negative list with the Parties' reservations listed in Annex III for existing (Section A) and future (Section B) measures for national and MFN treatment, market access and senior management and board of directors. Moreover, reservations on national and MFN treatment and senior management and boards of directors in Annexes I and II also apply to financial services to the extent that the measure or activity in the reservation is covered by Chapter 17 (Article 17.10).

⁴⁵ Business person means a citizen of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities (Article 16.1).

4.22. For existing non-conforming measures listed in Annex I and Section A of Annex III, a standstill and a ratchet mechanism apply, except for existing non-conforming measures relating to cross-border financial services, where only the standstill applies. Under the standstill mechanism, the Parties can maintain non-conforming measures that existed when the Agreement was signed, and which are listed in the Annex, but cannot increase their restrictiveness. Under the ratchet mechanism, any amendment that decreases the restrictiveness of a non-conforming measure, as it existed immediately before the amendment, is automatically incorporated into the Agreement.

4.23. All Parties listed a reservation in their respective Annex II reserving the right to adopt or maintain any measure consistent with their obligations under GATS Article XVI while providing for specific market access improvements beyond their GATS schedules.

4.4.1 Canada

4.24. Under the Agreement, Canada listed 49 reservations for existing and future non-conforming measures: 13 reservations apply horizontally, 36 are specific to one or more sectors. Commitments are in general broader than under the GATS despite some reservations.

4.4.1.1 MFN and horizontal commitments

4.25. In its GATS schedule, Canada lists horizontal limitations on the disposal of government assets, approval requirements for direct acquisitions of Canadian businesses, restrictions at the federal level on tax measures on scientific research and experimental development services, federal and sub-central tax measures, measures conferring a tax exemption or reductions, approvals for the acquisition of businesses related to Canada's industries, subsidies for research and development, supply of social services, incorporation requirements for federal corporations, and agreements between Canada and aboriginal persons.

4.26. Under the Agreement, Canada listed 13 horizontal reservations seven of which cover existing non-conforming measures and six cover future non-conforming measures. The seven reservations on existing non-conforming measures mainly refer to investment measures and include a review/approval mechanism for investments (direct acquisitions) by foreigners, as well as nationality restrictions on the ownership of land in the Province of Alberta and the shares of corporations and cooperatives. A similar approval mechanism for foreign investment is also listed in the GATS except that it only applies to direct acquisition. Under the Agreement Canada also restricts equity participation by non-residents in selected Canadian corporations⁴⁶ and imposes residency requirements on the holders of import and export permits and transit authorization certificates. Moreover, Canada reserves the right to maintain all existing non-conforming measures in its provinces and territories. Canada's horizontal reservations under the Agreement are to a large extent similar to those under the NAFTA.⁴⁷

4.27. Under the six horizontal reservations on future measures Canada reserves the right to adopt or maintain measures on social services and measures conferring rights or preferences to aboriginal people and to socially or economically disadvantaged minorities. Moreover, it reserves the right to adopt or maintain any measure relating to residency requirements for ownership of oceanfront land, the acquisition, sale or disposal of equity interests or assets in government enterprises (like in the GATS) and any measure that is not inconsistent with its market access obligations under GATS Article XVI and its GATS schedule of commitments. Canada's specific schedules of commitments are modified as indicated in Appendix I to Annex II.⁴⁸ Finally, Canada reserves the right to adopt or maintain any measure that grants differential treatment to countries under any bilateral or multilateral agreement in force or signed prior to the Agreement's entry into force, as well as agreements in force or signed after the Agreement's entry into force involving aviation, fisheries or maritime matters including salvage. Except for the improvements to its GATS schedule of commitments, the horizontal reservations on future measures listed by Canada are the same as those under the NAFTA.

⁴⁶ The Canadian corporations listed are Cameco limited, Nordion international INC, Theratronics International limited, and Canadian Arsenals Limited.

⁴⁷ Differences with respect to the NAFTA include, for example the list of Canadian corporations subject to ownership restrictions or the thresholds for the review of direct acquisitions of control.

⁴⁸ These updates relate for the most part to the removal of restrictions at the provincial level.

4.4.1.2 Sector specific commitments

4.28. Table 4.1 compares Canada's sectoral market access and national treatment commitments under the Agreement and under its GATS schedule for modes 1-3. Horizontal limitations and MFN reservations are not taken into account in the table which should be read in conjunction with Annexes I, II, and III of the Agreement containing Canada's schedule of specific commitments for cross-border trade in services and investment.

Table 4.1 Canada: comparison between the GATS and Agreement specific commitments

Sectors / Sub-sectors	GATS	FTA				
		Compared to GATS	Existing non-conforming measure(s)		Reservation(s) for future measures ^a	
			Investment	Cross-border trade	Investment	Cross-border trade
1. Business services						
A. Professional Services	Partial	Improved		✓	✓	✓
B. Computer and Related Services	Full	Same				
C. Research and Development Services	Partial	Improved				
D. Real Estate Services	Partial	Improved				
E. Rental/Leasing Services without Operators	Partial	Improved				
F. Other Business Services	Partial	Improved	✓	✓	✓	✓
2. Communication services						
A. Postal services	---	Same				
B. Courier services	Partial	Improved				
C. Telecommunication services	Partial	Improved	✓			
D. Audiovisual services	---	Same				
E. Other	---	New				
3. Construction and related engineering services						
A. General construction work for buildings	Partial	Improved				
B. General construction work for civil Engineering	Partial	Improved				
C. Installation and assembly work	Full	Same				
D. Building completion and finishing work	Full	Same				
E. Other	Partial	Improved				
4. Distribution services						
A. Commission agents' services	Full	Same				
B. Wholesale trade services	Partial	Improved				
C. Retailing services	Partial	Same				
D. Franchising	Full	Same				
E. Other	Partial	Same				
5. Education services						
A. Primary education services	---	New			✓	✓
B. Secondary education services	---	New			✓	✓
C. Higher education services	---	New			✓	✓
D. Adult education	---	New			✓	✓
E. Other education services	---	New			✓	✓
6. Environmental services						
A. Sewage services	Full	Same				
B. Refuse disposal services	Full	Same				
C. Sanitation and similar services	Full	Same				
D. Other	Full	Same				
7. Financial services						
A. All insurance and insurance-related services	Partial	Improved	✓	✓	✓	✓
B. Banking and other financial services	Partial	Improved	✓	✓	✓	✓
8. Health related and social services						
A. Hospital services	---	New			✓	✓
B. Other Human Health Services	---	New			✓	✓
C. Social Services	---	New			✓	✓
D. Other	---	New			✓	✓
9. Tourism and travel related services						
A. Hotels and restaurants (including catering)	Partial	Improved				
B. Travel agencies and tour operators services	Partial	Improved				
C. Tourist guides services	---	New				
D. Other	---	New				
10. Recreational and cultural and sporting services						
A. Entertainment services	---	New				
B. News agency services	---	Same				

Sectors / Sub-sectors	GATS	FTA				
		Compared to GATS	Existing non-conforming measure(s)		Reservation(s) for future measures ^a	
			Investment	Cross-border trade	Investment	Cross-border trade
C. Libraries, archives, museums and other cultural services	---	New				
D. Sporting and other recreational services	---	New				
E. Other	---	New				
11. Transport services						
A. Maritime Transport Services	Partial	Improved	✓	✓	✓	✓
B. Internal Waterways Transport	---	Improved	✓	✓	✓	✓
C. Air Transport Services	Partial	Improved	✓	✓		
D. Space Transport	---	New				
E. Rail Transport Services	Partial	Improved				
F. Road Transport Services	Partial	Improved		✓		
G. Pipeline Transport	---	New				
H. Services auxiliary to all modes of transport	Partial	Improved				
I. Other Transport Services	---	New				

Note: The comparison to GATS is with respect to market access and national treatment commitments only. MFN and Horizontal limitations, as well as Mode 4 commitments/limitations not considered.

Partial: Commitments are subject to one or more sector-specific limitation/reservation.

Full: Commitments are not subject to any sector-specific limitation/reservation.

---: No specific commitments under GATS.

New: New commitments full or partial, with or without limitations.

Improved: Overall improved commitments under the Agreement compared to those under the GATS.

Same: Commitments under the Agreements are the same as under the GATS.

✓: Indicates that existing non-conforming measures specific to the sector or sub-sector have been listed in Annex I or Annex III-A (for financial services) or Canada reserved the right to impose future measures as specified in Annex II or Annex III-B (for financial services).

a The columns do not reflect the modification to Canada's GATS commitments as indicated in Appendix I to Annex II.

Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/CAN), prepared by the Secretariat (in 2003) and Canada's Schedules annexed to the Agreement.

4.29. Compared to NAFTA, Canada did not list under the Agreement a number of reservations such as, for example, on loans by the Farm Credit Corporation, the provision of specialty air services and telecommunications transport networks and services. Other differences between the NAFTA and the Agreement can be found in financial services.

4.4.1.2.1 Business services

4.30. Canada improved its GATS commitments by removing some regional limitations on market access for accounting, auditing and bookkeeping services, architectural, urban planning, engineering and integrated engineering services. It maintains residency requirements for patent and trade-marks agents. Health-related services for public purpose remain unbound. Canada also broadened its GATS commitments in research and development services by expanding the sectoral coverage and removing some regional limitations. In real estate services, which are subject to reservations only at the regional level under the GATS, Canada removed certain regional limitations on market access and national treatment but maintained the rest pursuant to the Agreement's reservation on existing non-conforming measures for provinces and territories.

4.31. In other business services, while some improvements were made mainly at the regional level most of the exclusions and limitations under the GATS continue to apply under the Agreement.⁴⁹ Services incidental to fishing also continue to be unbound since Canada reserves the right to take any non-conforming measure with its national treatment and MFN obligations with respect to licences for fishing and fishing related activities. In services incidental to energy distribution, unbound under the GATS, Canada listed various reservations affecting investment including nationality,

⁴⁹ Canada removed some of its market access limitations at the regional level for management consulting services, investigation and security services, related scientific and technical consulting services and other business services, but other regional limitations, mostly in the form of residency and local requirements, are maintained as per the reservation on non-conforming measures in provinces and territories.

performance, and legal form requirements, as well as transfer of technology conditions.⁵⁰ Other reservations also apply to uranium mining, customs brokers, duty-free shop operators and examination services relating to the export and import of cultural property. Finally, in computer and related services, commitments under the Agreement are the same as those under the GATS.

4.4.1.2.2 Communication services

4.32. Canada expands its GATS commitments in courier and telecommunications services. In courier services, it broadened sectoral coverage and removed its GATS regional limitations. In telecommunications, it maintains one reservation affecting mode 3, which is similar to that under the GATS, and limits foreign equity participation in facilities-based telecommunications service suppliers and requires *inter alia* that 80% of the members of their board of directors be Canadians. Small telecommunications service suppliers (i.e. those with a share of less than 10% of the total Canadian telecommunications revenues) are exempt from the Canadian ownership and control requirements. Postal services remain largely unbound as a postal monopoly is maintained. Like in the GATS, Canada made no market access commitments in audiovisual services as it reserves the right to adopt or maintain any measures that are not inconsistent with its GATS schedules.

4.4.1.2.3 Construction and related engineering services

4.33. Under the Agreement, Canada's commitments in construction and related engineering services are to a large extent the same as those under its GATS schedule, except for some improvements in sectoral coverage and at the regional level in general construction work for building and for civil engineering.

4.4.1.2.4 Distribution services

4.34. In distribution services, except for the removal of a regional limitation for wholesale trade, Canada's commitments under the Agreement are the same as under the GATS.

4.4.1.2.5 Education services

4.35. In education services, unbound under the GATS, Canada undertook commitments for private but not public education, which is covered by a broad reservation on social services. This reservation allows Canada to adopt or maintain any non-conforming measure in public education and training.

4.4.1.2.6 Environmental services

4.36. As under the GATS, full commitments are made without limitations.

4.4.1.2.7 Financial services

4.37. In banking and other financial services and insurance services Canada generally simplified and improved its GATS commitments.⁵¹ For example, it removed nationality restrictions for the directors of the subsidiary of a foreign institution. It listed the requirement for bank branches to be established directly under the authorized foreign bank incorporated in the jurisdiction where the authorized foreign bank principally carries on business. Similarly, a foreign entity authorized to insure must be established directly under the foreign insurance company incorporated in the jurisdiction where the foreign insurance company, either directly or through a subsidiary, principally carries on business. Cooperative credit associations or fraternal benefit societies cannot be established in Canada through a branch of corporations organized under a foreign country's law. Other limitations for banks, including the requirement to establish a subsidiary for accepting retail deposits, are listed.

⁵⁰ In a side letter dated 30 November 2018, Canada and the US agreed that the Guidelines for Research and Development Expenditures (2004) would not be listed as a non-conforming measure in Canada's reservation I-C-14 related to oil and gas.

⁵¹ Under the NAFTA, Canada listed a limitation regarding the purchase of reinsurance services from non-resident reinsurers and it reserved the right to adopt or maintain any measure relating to cross-border trade in securities services and measures that require an enterprise of another Party be controlled by one or more residents of the other Party.

4.38. In addition, Canada reserves the right to adopt or maintain any measure on market access at the regional level provided that it is not inconsistent with its obligations under GATS Article XVI or with the Canada-European Union Comprehensive Economic and Trade Agreement, as well as to adopt or maintain measures relating to cross-border trade in securities and derivatives services. Finally, it reserves the right to maintain all existing non-conforming measures applied by its provinces and territories.

4.4.1.2.8 Health related and social services

4.39. Like under the GATS, no commitments were made in health related and social services under the Agreement. These services are covered by a broad reservation on social services which allows Canada to adopt or maintain any non-conforming measure with respect to cross-border trade and investment in various sectors including public health and childcare services, social welfare, social security, and correctional services.

4.4.1.2.9 Tourism and travel related services

4.40. In tourism and travel related services, Canada made some commitments in tourist guide services and other tourism and travel related services, that are new compared to its GATS commitments. For the remaining subsectors in this area (i.e. hotels and restaurants, and travel agencies and tour operator services), Canada improved its commitments at the regional level.

4.4.1.2.10 Recreational, cultural and sporting services

4.41. In recreational, cultural and sporting services, which are unbound under the GATS, Canada expanded its GATS commitments in almost all subsectors while reserving the right to adopt or maintain any measure that is not inconsistent with its market access obligations under GATS Article XVI and its GATS schedule.

4.4.1.2.11 Transport services

4.42. In transport services Canada expanded its GATS commitments by removing some of its regional limitations affecting market access in railway and road transport services and making some commitments in space, pipeline, and internal waterways transport services, all unbound under the GATS. Reservations were taken in air, water and land transport services. For instance, in water transportation services, Canada scheduled nationality, and local presence requirements for ship registration, and local presence requirements for shipping conferences.⁵² It also applies nationality/residency and certification requirements for ship crews and pilots. In addition, Canada reserves the right to adopt or maintain any measure relating to the investment in, or provision of marine cabotage services. In air transport services Canada imposes ownership and control requirements for the provision of commercial air transport services and it requires authorization to supply specialty air transport services and reserves the supply of aircraft repair and maintenance services to approved maintenance organisations and aircraft maintenance engineers located in its territory. In railway transport services Canada removes the cabotage limitation while in road transport services Canada removes some provincial requirements for public conveniences and needs tests for investment. In road transport, it also continues to reserve the supply of truck or bus services between two points in Canada for Canadians using Canadian registered vehicles.

4.4.2 Mexico

4.43. Under the Agreement, Mexico listed 61 reservations for existing and future non-conforming measures: ten reservations apply horizontally, 51 are specific to one or more sectors. Commitments are in general broader than under the GATS despite some reservations.

4.4.2.1 MFN and horizontal commitments

4.44. Mexico listed ten horizontal reservations: six for existing non-conforming measures and four for future non-conforming measures. As in its GATS schedule, Mexico restricts foreign investment in

⁵² A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by those carriers of goods by water.

activities reserved for Mexican nationals and prohibits foreigners from acquiring land along its borders and coasts. Other reservations on existing measures in the Agreement include foreign ownership restrictions for micro-industry enterprises and cooperative production enterprises and authorisation requirements for foreign investment in Mexican enterprises of a certain size operating in an unrestricted sector. Mexico also lists the criteria used to evaluate applications for acquisitions or establishment of investments which are subject to the authorisation of the National Commission on Foreign Investments. It also reserves the right to maintain all its existing non-conforming measures at the regional level. Mexico's horizontal reservations under the Agreement are similar to those under the NAFTA with substantial improvements.⁵³

4.45. Under its reservations on future measures, Mexico reserves the right to adopt or maintain any measure restricting the acquisition, sale or other disposition of bonds, treasury bills and other debt securities issued by federal, state or local governments. It reserves the right to adopt or maintain measures on specific social services⁵⁴ and measures conferring rights or preferences to socially or economically disadvantaged groups. It may also adopt or maintain any measure that grants differential treatment to countries under an international agreement in force prior to the Agreement's entry into force and all agreements in force or signed thereafter involving aviation, fisheries or maritime matters (including salvage). In addition, Mexico reserves the right to adopt or maintain any market-access measure compatible with its market access obligations under GATS Article XVI and its GATS schedule of commitments as modified in the Agreement. The modified schedule under the Agreement consists of improvements with respect to its GATS commitments on market access. Except for the improvements to its GATS schedule of commitments, the horizontal reservations on future measures listed by Mexico are the same as those under the NAFTA.

4.46. Mexico's cultural exceptions are included in Annex 15-E which, essentially, replicates the reservations taken in Annexes I and II for broadcasting, newspaper publishing, cinema services and audiovisual.

4.4.2.2 Sector specific commitments

4.47. Table 4.2 compares Mexico's sectoral market access and national treatment commitments under the Agreement and under its GATS schedule for modes 1-3. Horizontal limitations and MFN reservations are not taken into account in the table which should be read in conjunction with Annexes I, II, and III of the Agreement containing Mexico's schedule of specific commitments for cross-border trade in services and investment.

Table 4.2 Mexico: comparison between the GATS and Agreement specific commitments

Sectors / Sub-sectors	GATS	FTA				
		Compared to GATS	Existing non-conforming measure(s)		Reservation(s) for future measures ^a	
			Investment	Cross-border trade	Investment	Cross-border trade
1. Business services						
A. Professional Services	Partial	Improved	✓	✓		
B. Computer and Related Services	Partial	Improved				
C. Research and Development Services	Partial	Improved				
D. Real Estate Services	---	New				
E. Rental/Leasing Services without Operators	Partial	Improved				
F. Other Business Services	Partial	Improved	✓	✓		
2. Communication services						
A. Postal services	---	Same			✓	
B. Courier services	Partial	Improved				
C. Telecommunication services	Partial	Improved	✓	✓	✓	
D. Audiovisual services	Partial	Improved	✓	✓	✓	

⁵³ Differences with respect to commitments under the NAFTA include, for example, a longer maximum duration of trusts to acquire and use real estate located in the Restricted Zone and a higher applicable threshold for the review of an acquisition of a Mexican enterprise.

⁵⁴ Mexico stressed that the broad reservation on social services applies to the supply of public law enforcement and correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, and health and child care, to the extent that they are social services established or maintained for a public purpose.

Sectors / Sub-sectors	GATS	FTA				
		Compared to GATS	Existing non-conforming measure(s)		Reservation(s) for future measures ^a	
			Investment	Cross-border trade	Investment	Cross-border trade
E. Other	---	New				
3. Construction and related engineering services						
A. General construction work for buildings	Partial	Improved				
B. General construction work for civil Engineering	Partial	Improved	✓	✓		
C. Installation and assembly work	---	New				
D. Building completion and finishing work	Partial	Improved				
E. Other	Partial	Improved				
4. Distribution services						
A. Commission agents' services	---	New				
B. Wholesale trade services	Partial	Improved				
C. Retailing services	Partial	Improved	✓			
D. Franchising	---	New				
E. Other	---	New				
5. Education services						
A. Primary education services	Partial	Improved	✓		✓	✓
B. Secondary education services	Partial	Improved	✓		✓	✓
C. Higher education services	Partial	Improved	✓		✓	✓
D. Adult education	---	New			✓	✓
E. Other education services	Partial	Improved	✓		✓	✓
6. Environmental services						
A. Sewage services	---	New				
B. Refuse disposal services	---	New				
C. Sanitation and similar services	---	New				
D. Other	---	New				
7. Financial services						
A. All insurance and insurance-related services	Partial	Improved	✓	✓	✓	✓
B. Banking and other financial services	Partial	Improved	✓	✓	✓	✓
8. Health related and social services						
A. Hospital services	Partial	Improved			✓	✓
B. Other Human Health Services	Partial	Improved		✓	✓	✓
C. Social Services	---	New			✓	✓
D. Other	---	New			✓	✓
9. Tourism and travel related services						
A. Hotels and restaurants (including catering)	Partial	Improved				
B. Travel agencies and tour operators services	Partial	Improved				
C. Tourist guides services	Partial	Improved				
D. Other	---	New				
10. Recreational and cultural and sporting services						
A. Entertainment services	---	New		✓		
B. News agency services	---	New				
C. Libraries, archives, museums and other cultural services	---	New				
D. Sporting and other recreational services	---	New			✓	✓
E. Other	---	New				
11. Transport services						
A. Maritime Transport Services	---	New	✓	✓		✓
B. Internal Waterways Transport	---	New	✓	✓		✓
C. Air Transport Services	Partial	Improved	✓	✓		✓
D. Space Transport	---	New				
E. Rail Transport Services	---	New	✓	✓		
F. Road Transport Services	Partial	Improved	✓	✓		
G. Pipeline Transport	---	New		✓		
H. Services auxiliary to all modes of transport	Partial	Improved			✓	
I. Other Transport Services	Partial	Improved				

Note: The comparison to GATS is with respect to market access and national treatment commitments only. MFN and Horizontal limitations, as well as Mode 4 commitments/limitations not considered.

Partial: Commitments are subject to one or more sector-specific limitation/reservation.

---: No specific commitments under GATS.

New: New commitments full or partial, with or without limitations.

Improved: Overall improved commitments under the Agreement compared to those under the GATS.

Same: Commitments under the Agreements are the same as under the GATS.

- ✓: Indicates that existing non-conforming measures specific to the sector or sub-sector have been listed in Annex I or Annex III-A (for financial services) or Mexico reserved the right to impose future measures as specified in Annex II or Annex III-B (for financial services).
- a The columns do not reflect the modification to Mexico's GATS commitments as indicated in the last reservation in Annex II.
- Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/MEX), prepared by the Secretariat (in 2003) and Mexico's Schedules annexed to the Agreement.

4.48. Compared to the NAFTA, Mexico did not list under the Agreement a number of limitations including, for example, on enhanced or value-added communication services, the acquisition, establishment or operation of retail outlets engaged in the sale or distribution of gasoline, diesel, lubricants and liquified petroleum gas and the provision of air navigation services. Notwithstanding, Mexico reserved the right to adopt or maintain any measure regarding investment and cross-border trade in services with respect to sectors or sub-sector for which no specific reservation was taken in its schedules to Annexes I and II, only to the extent consistent with the least restrictive measures that Mexico may adopt or maintain under the terms of applicable reservations and exceptions to parallel obligations in other trade and investment agreements that Mexico has ratified prior to entry into force of the Agreement, including the WTO Agreement (Article 32.11).

4.4.2.2.2 Business services

4.49. In business services, Mexico expands its GATS commitments by making full commitments in all subsectors, except for professional and other business services which continue to be restricted. Despite such restrictions, both subsectors benefit from better commitments under the Agreement. In professional services, Mexico expanded its GATS coverage and added legal services, integrated engineering services, urban planning and landscape architectural services, medical and dental services and religious services to its schedule.⁵⁵ Health-related services for public purposes (i.e. medical services, and services provided by mid-wives, nurses, physiotherapists, and para-medical personnel) remain unbound as they are covered by the multi-sector reservation on social services.

4.50. Some reservations were taken for professional services. For instance, Mexico allows the provision of legal services by foreign professionals based on reciprocity and subject to compliance with other requirements. Also, only Mexican nationals and enterprises can provide commercial notary public services and only Mexican nationals licensed as doctors may supply in-house medical services in Mexican enterprises. In other business services, Mexico added a few new activities to its list of commitments (e.g. services incidental to fishing and printing and publishing services) and removed most of its GATS limitations on market access in the subsectors listed therein. Some limitations remain for agricultural services such as only Mexican nationals or enterprises may obtain a concession to spray pesticides and foreign investment is limited to 49% of "T" shares, which is a special type of share representing the value of land for agriculture, livestock or forestry. It also limits foreign investment to 49% of the ownership interest of Mexican companies performing coastal, and fresh-water fishing, printing and publishing of daily newspapers⁵⁶ and the manufacturing of explosives, fireworks, firearms, cartridges and ammunitions.

4.4.2.2.3 Communication services

4.51. Compared to the GATS, Mexico made broader commitments in all subsectors of communications services, except postal services which continue to be reserved for the State. In courier services, Mexico removed the GATS limits on foreign equity but maintained authorization and nationality requirements for the means of transport used to deliver such services. In telecommunications services, Mexico maintained most of its GATS reservations for basic and value-added telecommunications services but removed the foreign equity caps in some basic telecommunications services, including telephony services. While these restrictions were removed, Mexico continues to reserve the provision of telegraph and radiotelegraph services for the Mexican State. Investment by foreign governments and States is not allowed in Mexican companies providing

⁵⁵ In order to practice a profession in Mexico, it is necessary to have a degree that has been recognized or confirmed by the Ministry of Public Education and to obtain a professional license. Special requirements apply to engineers, architects and doctors.

⁵⁶ The scope of the reservation on the publishing of daily newspapers is limited to those whose distribution is not free and that are published at least seven days a week.

communication services, including telecommunications and postal services. Moreover, only Mexican nationals and companies can hold sole concessions and frequency band concessions and be resellers.

4.52. In audiovisuals, Mexico expanded sectoral coverage which is limited under the GATS to private production of cinematographic films and private film-screening services and relaxed its GATS reservations; it reduced to 10% (from 30% in the GATS) the percentage of screen time that theatres must reserve for Mexican movies and removed the limitation on foreign investment in companies engage in film screening and production services. In radio, television and related broadcasting services, Mexico made some commitments while maintaining various reservations. For example, only Mexican nationals or companies will be granted sole concessions and frequency band concessions to provide broadcasting services (radio and free to air television services). Investors of another Party may participate up to 49% in concessionaire enterprises providing broadcasting services conditional on reciprocity.

4.4.2.2.4 Construction and related engineering services

4.53. In construction and related engineering services, Mexico improved its commitments under the GATS by removing the equity ceiling of 49% for foreign investment in all sectors. At the same time, only Mexican nationals or Mexican enterprises, subject to a concession, are allowed to build or operate marine or river works or to build, operate, exploit, conserve or maintain federal roads and bridges.

4.4.2.2.5 Distribution services

4.54. Mexico made commitments in commission agents' services and franchising, excluded from its GATS schedule, and expanded those in wholesale and retail services, while maintaining a reservation restricting foreign participation to 49% in the capital of Mexican companies engaged in retail distribution of explosives, firearms, cartridges, ammunition and fireworks.

4.4.2.2.6 Education services

4.55. Mexico made no commitments regarding public education which is covered by the multi-sector reservation on social services. As for private education services, it removed the ceiling of 49% in private institutions providing pre-school, primary, secondary, high school, higher and combined private education services but such activities remain subject to authorization.

4.4.2.2.7 Environmental services

4.56. The provision of environmental services, unbound under the GATS, has been liberalized under the Agreement.

4.4.2.2.8 Financial services

4.57. Mexico broadened its GATS commitments in financial services while several restrictions and prohibitions continue to apply.⁵⁷ In insurance and insurance related services, Mexico prohibits foreign companies from providing insurance for, *inter alia*, maritime or aircraft hulls, and any kind of vehicle, for risks inherent to the maritime and transportation industries, provided that such hulls and vehicles have Mexican registration or are owned by persons domiciled in Mexico; credit, housing credit, surety and financial guarantee, if the insured is subject to Mexican law; and third party liabilities derived from events that may take place in Mexico. Moreover, only a Mexican or a Mexican legal entity with a foreigners exclusion clause may participate in agricultural and rural insurance funds. In banking and other financial services, Mexico expanded sectoral coverage but maintained some reservations. For example, it allows foreign investment in credit unions of up to 15% of their capital, which under the GATS is prohibited. Mexico also reserves the right to adopt or maintain measures that grant

⁵⁷ Under the NAFTA, Mexico's reservations included limitations on foreign investments (including by foreign governments and foreign state enterprises) in, *inter alia*, holding companies, securities firms, financial leasing companies, credit unions, development banks and insurance companies. It also listed the existing prohibitions and restrictions on cross-border trade in some insurance services.

exclusive rights to development banks, as well as the right to grant at the discretion of financial authorities a concession to establish a stock exchange.

4.58. Mexico also listed various reservations that apply to the entire sector. It prohibits the establishment in its territory of branches of financial institutions of another Party and, with some exceptions, participation by foreign governments in the capital stock of Mexican financial institutions, including insurance companies. It also applies nationality or residency requirements for the members of the boards of directors of financial services companies. Under its future non-conforming measures, Mexico reserves the right to prohibit or impose limitations on foreign investment in the ownership or sale of existing State enterprises and to adopt or maintain measures that grant advantages or exclusive rights to national insurance institutions.

4.4.2.2.9 Health related and social services

4.59. Health related and social services are subject to a broad reservation allowing the application of any measure affecting investment and cross-border trade in social services such as health. At the same time, under the Agreement, Mexico improved its GATS commitments by removing the limitation of 49% on foreign capital participation in private hospital services, clinical laboratories, other services auxiliary to medical treatment and dental prosthesis laboratory services.

4.4.2.2.10 Tourism and travel related services

4.60. Mexico maintained the requirement of a permit from the relevant authority to engage in the activity, but it removed the GATS ceiling of 49% on the participation of foreign capital for restaurants, cabarets, and nightclubs and bound mode 1 for travel agencies, tour operators, and tourist guide services.

4.4.2.2.11 Recreational, cultural and sporting services

4.61. In recreational, cultural and sporting services, unbound under the GATS, Mexico made commitments without limitations except for gambling and betting services for which it reserves the right to adopt or maintain any measure affecting cross-border trade or investments.

4.4.2.2.12 Transport services

4.62. In transport services, Mexico expanded the sectoral coverage, limited under the GATS to certain air, road, auxiliary and other (i.e. tramway and subway) transport services, and added rail, space, pipelines, maritime and internal waterways transport services to its list of committed activities while maintaining a number of reservations.

4.63. In maritime and internal waterways transport services, Mexico imposes, for example, restrictions on foreign investment in Mexican companies supplying services related to port administration, port services, piloting, inland and coastal navigation, and cabotage. In rail transport services, it imposes nationality and establishment requirements on companies willing to engage in the construction, operation and exploitation of railroads and railway transportation public services. In air transportation, Mexico expands sectoral coverage by making some commitments in commercial air transport services (scheduled and non-scheduled) and specialty air services, both excluded under the GATS, but maintains a number of reservations. For instance, foreign equity participation is limited to 49% in Mexican companies that have been granted a concession to operate airports and heliports (instead of 30% under the GATS).⁵⁸ In road transport services, Mexico expands sectoral coverage, which is limited to vehicle maintenance and repair services under the GATS but also maintains some reservations. Only Mexican nationals or companies may obtain a permit to establish or operate a bus or truck station and can provide bus and truck services for the transportation of goods or passengers within Mexico.

4.64. In services auxiliary to all modes of transport, Mexico reserves the provision of auxiliary services to federal road transportation to Mexican nationals and companies. Mexico prohibits investment by foreign governments or States in Mexican enterprises engaged in transportation, and

⁵⁸ Higher equity participation is possible subject to authorization.

also reserves the right to adopt or maintain any measure with respect to specialized personnel in the transportation sector, which reflect its GATS reservations.

4.4.3 United States

4.65. Under the Agreement, the US listed 40 reservations for existing and future non-conforming measures: six reservations apply horizontally, 34 are specific to one or more sectors. Commitments are in general broader than under the GATS despite some reservations.

4.4.3.1 MFN and horizontal commitments

4.66. In its GATS schedules, the US included horizontal reservations on the acquisition of land, taxation measures, subsidies and temporary entry and stay of natural persons. Under the Agreement (as under the NAFTA), it scheduled an exemption on the use of small business registration forms under the Agreement (except for Canadian issuers). A broad reservation for investment limits access to Overseas Private Investment Corporation (OPIC) programmes to US citizens and OPIC insurance and loan guaranties to i) US citizens, ii) corporations, partnerships or other associations created under the laws of the US and substantially beneficially owned by US citizens and iii) foreign partnerships or associations 100% owned, or foreign corporations at least 95% owned, by one or more US citizens, corporations, partnerships, or associations.⁵⁹ Under the NAFTA, OPIC insurance and loan guarantees were not available to certain aliens, foreign enterprises or foreign-controlled domestic enterprises. The US includes one horizontal reservation at the sub-federal level, under which it schedules an exception for all existing non-conforming measures of all states, the District of Colombia and Puerto Rico.

4.67. For future measures, the US reserves the right to adopt or maintain any measure on social services and measures according rights or preferences to socially or economically disadvantaged minorities. It may also adopt or maintain any measure that grants differential treatment to countries under an international agreement in force prior to the Agreement's entry into force and all agreements in force or signed thereafter involving aviation, fisheries or maritime matters (including salvage). In addition, the US reserves the right to adopt or maintain any market-access measure compatible with its market access obligations under GATS Article XVI and its GATS schedule of commitments as modified in the Agreement. The US's market access commitments are improved upon as indicated in Appendix II-A to Annex II. Except for the improvements beyond its GATS schedule of commitments, the horizontal reservations on future measures listed by the US are the same as those under the NAFTA.

4.4.3.2 Sector specific commitments

4.68. Table 4.3 compares the US's sectoral market access and national treatment commitments under the Agreement and under its GATS schedule for modes 1-3. Horizontal limitations and MFN reservations are not taken into account in the table which should be read in conjunction with Annexes I, II, and III of the Agreement containing the US's schedule of specific commitments for cross-border trade in services and investment.

Table 4.3 US: comparison between the GATS and Agreement specific commitments

Sectors / Sub-sectors	GATS	Compared to GATS	FTA			
			Existing non-conforming measure(s)		Reservation(s) for future measures ^a	
			Investment	Cross-border trade	Investment	Cross-border trade
1. Business services						
A. Professional Services	Partial	Improved		✓		
B. Computer and Related Services	Partial	Same				
C. Research and Development Services	---	New				
D. Real Estate Services	Partial	Same				
E. Rental/Leasing Services without Operators	Partial	Same				
F. Other Business Services	Partial	Improved	✓	✓		

⁵⁹ OPIC may issue insurance to non-eligible investors in special cases and under certain conditions.

Sectors / Sub-sectors	GATS	Compared to GATS	FTA			
			Existing non-conforming measure(s)		Reservation(s) for future measures ^a	
			Investment	Cross-border trade	Investment	Cross-border trade
2. Communication services						
A. Postal services	---	Same				
B. Courier services	Partial	Improved				
C. Telecommunication services	Partial	Same				
D. Audiovisual services	Partial	Improved	✓		✓	✓
E. Other	---	New				
3. Construction and related engineering services						
A. General construction work for buildings	Partial	Same				
B. General construction work for civil Engineering	Partial	Same				
C. Installation and assembly work	Partial	Same				
D. Building completion and finishing work	Partial	Same				
E. Other	Partial	Same				
4. Distribution services						
A. Commission agents' services	Full	Same				
B. Wholesale trade services	Partial	Same				
C. Retailing services	Partial	Same				
D. Franchising	Full	Same				
E. Other	---	New				
5. Education services						
A. Primary education services	---	New			✓	✓
B. Secondary education services	---	New			✓	✓
C. Higher education services	---	New			✓	✓
D. Adult education	Partial	Same			✓	✓
E. Other education services	Partial	Same			✓	✓
6. Environmental services						
A. Sewage services	Partial	Improved				
B. Refuse disposal services	Partial	Improved				
C. Sanitation and similar services	Partial	Improved				
D. Other	Partial	Improved				
7. Financial services						
A. All insurance and insurance-related services	Partial	Improved	✓	✓		
B. Banking and other financial services	Partial	Improved	✓	✓	✓	✓
8. Health related and social services						
A. Hospital services	Partial	Improved			✓	✓
B. Other Human Health Services	---	New			✓	✓
C. Social Services	---	New			✓	✓
D. Other	---	New			✓	✓
9. Tourism and travel related services						
A. Hotels and restaurants (including catering)	Full	Same				
B. Travel agencies and tour operators services	Partial	Same				
C. Tourist guides services	Partial	Same				
D. Other	Full	Same				
10. Recreational and cultural and sporting services						
A. Entertainment services	Full	Same				
B. News agency services	Full	Same				
C. Libraries, archives, museums and other cultural services	Full	Same				
D. Sporting and other recreational services	Partial	Same			✓	✓
E. Other	---	New				
11. Transport services						
A. Maritime Transport Services	---	New			✓	✓
B. Internal Waterways Transport	---	New			✓	✓
C. Air Transport Services	Partial	Improved	✓	✓		
D. Space Transport	---	New				
E. Rail Transport Services	Partial	Same				
F. Road Transport Services	Partial	Improved	✓	✓		✓
G. Pipeline Transport	---	New				
H. Services auxiliary to all modes of transport	Partial	Improved				
I. Other Transport Services	---	New				

Note: The comparison to GATS is with respect to market access and national treatment commitments only. MFN and Horizontal limitations, as well as Mode 4 commitments/limitations not considered.

Partial: Commitments are subject to one or more sector-specific limitation/reservation.

Full: Commitments are not subject to any sector-specific limitation/reservation.

---: No specific commitments under GATS.

New: New commitments full or partial, with or without limitations.

Improved: Overall improved commitments under the Agreement compared to those under the GATS.

Same: Commitments under the Agreements are the same as under the GATS.

✓: Indicates that existing non-conforming measures specific to the sector or sub-sector have been listed in Annex I or Annex III-A (for financial services) or the US reserved the right to impose future measures as specified in Annex II or Annex III-B (for financial services).

a The columns do not reflect the modification to the US's GATS commitments as indicated in Appendix II-A to Annex II.

Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/USA), prepared by the Secretariat (in 2003) and the US's Schedules annexed to the Agreement.

4.69. Compared to the NAFTA, the US did not list under the Agreement a number of limitations including, for example, on enhanced or value-added communication services, aircraft repair, waste management and publishing of daily newspapers. Other differences between the NAFTA and the Agreement can be found in financial services.

4.4.3.2.2 Business services

4.70. The US improved its GATS commitments for a number of professional services by adding new services or removing some restrictions in some states. At the same time, it scheduled some reservations for specific sectors. Nationality and residency restrictions are maintained for patent attorneys and agents while practitioners in trademark and non-patent cases must be licensed in the US or in a country that accords equivalent treatment to attorneys. Social services for public purpose remain unbound.

4.71. The acquisition of rights-of-way for oil or gas pipelines across on-shore federal lands and of leases or interests in certain minerals (such as coal or oil) is restricted to domestic corporations but non-US citizens may own a 100% interest in such corporation unless the foreign investor's home country denies similar or like privileges.

4.72. A customs broker's license can be obtained only by US citizens or corporations established under US law. The issuance of certificates of review with respect to export conduct is limited to residents of the US, partnerships and corporations created under and existing pursuant to Federal or state laws, or any association or combination between such persons. Licensing requirements are scheduled for certain exports and re-exports of commodities, software, and technology.

4.4.3.2.3 Communication services

4.73. The US expanded upon its GATS commitments in courier, including express and other delivery, services with no limitations for modes 1-3. Postal services remain largely unbound as a postal monopoly is maintained. In audiovisual, the US improved its GATS commitments by including and fully liberalizing multi-channel video services over provider-owned cables systems, information services and a number of motion picture and video tape production and distribution services. It maintained one reservation affecting mode 3 for radiocommunications, restricting ownership of radio licences, and it reserves the right to adopt or maintain any measure that prohibits a person of another Party from owning or operating a cable television system in its territory unless the other Party allows a US person to own or operate such systems in its territory under similar circumstances and treats the domestic supply of video content no more favourably than the supply of content of any other Party or non-Party.

4.4.3.2.4 Construction and related engineering services

4.74. In construction and related engineering services, the US did not list any reservation and its commitments under the Agreement are the same as under the GATS.

4.4.3.2.5 Distribution services

4.75. In distribution services, the US did not list any reservation and the scope for its market access commitments under the Agreement is the same as under the GATS with wholesale trade of alcoholic beverages and retail trade of alcoholic beverages, firearms and military equipment remaining unbound.

4.4.3.2.6 Education services

4.76. The US made no commitments regarding public education which is covered by the multi-sector reservation on social services. For private education services it added new commitments with no limitations on market access for modes 1-3 on higher education services while maintaining its GATS market access limitations for adult and other education services.

4.4.3.2.7 Environmental services

4.77. While the liberalization of environmental services under the GATS was limited to a number of activities, the US removed all limitations on market access for modes 1-3 on wastewater and solid waste management, refuse disposal services, sanitation and similar services, protection of ambient air and climate, remediation and clean-up of soil and water, noise abatement services, protection of biodiversity and landscape and other environmental services.

4.4.3.2.8 Financial services

4.78. The US's commitments under the GATS include the imposition, not listed in Annex III of the Agreement, of federal excise taxes on life and non-life insurance premia and on premia covering US risks.⁶⁰ The US also scheduled a number of limitations at the state level for the provision of direct insurance and services auxiliary to insurance (modes 1 and 3) such as the prohibition on government-owned or controlled insurance companies to provide insurance services in certain states and residency requirements for mutual insurance companies. Similar limitations are included in an illustrative list of non-conforming measures affecting insurance at the regional level in Appendix III-B to Annex III of the Agreement. The list includes measures regarding juridical forms, citizenship and residency requirements for senior management and boards of directors and restrictions relating to government ownership or control. Under the Agreement, branches of foreign insurance companies are not permitted to provide surety bonds for US government contracts. As under the GATS, when more than 50% of the value of a maritime vessel whose hull was built under federally guaranteed mortgage funds is insured by a non-US insurer, the insured must demonstrate that the risk was substantially first offered in the US market.

4.79. As for banking and other financial services, the US scheduled several limitations on market access for mode 3 under the GATS including, *inter alia*, citizenship requirements for directors, limitations for credit unions, savings banks, home loan or thrift business and a number of other limitations at the state level. Under the Agreement, the citizenship requirement for directors of national banks is maintained but it may be waived for not more than a minority of the total number of directors. As under the GATS, foreign ownership of Edge Act corporations is limited to foreign banks and US subsidiaries of foreign banks and credit unions, savings banks or savings associations cannot be established through branches of corporations organized under a foreign country's law. Similarly, a registration requirement to engage in securities advisory and investment management services is maintained for foreign banks and foreign banks cannot be members of the Federal Reserve System. The US's commitments regarding the establishment of a federal branch or agency by a foreign bank are improved with respect to the GATS but establishment of a federal branch or agency by a foreign bank remains unavailable in certain states and the authority to act as a sole trustee of an indenture for a bond offering and designation as a primary dealer in US government debt securities are subject to reciprocity.

4.80. The US undertakes no commitment under the Agreement on market access restrictions or requirements for a specific type of legal entity or joint venture in relation to the expansion, by a foreign bank into a state from another state if not permitted by the state in which the resulting branch is or would be located. A broker-dealer registered under US law that has its principal place of business in Canada may maintain its required reserves in a bank in Canada subject to supervision

⁶⁰ Under the NAFTA, the US listed a number of reservations including, for example, citizenship requirements for directors of a national bank, limitations to the establishment of or acquisition of an interest in a bank subsidiary within a state by a foreign bank that has a full-service branch in the US, limitations to the ownership of edge corporations, the prohibition for foreign firms from being designated as a primary dealer in US government debt obligations and for foreign insurance companies to provide surety bonds for US government contracts.

by Canada. Finally, the US may grant certain advantages to a number of government-Sponsored Enterprises (GSEs).

4.81. As to future measures, with respect to housing finance, the US reserves the right to adopt or maintain measures that grant advantages to certain GSEs or any new, reorganized or transferee entity with similar functions and objectives.⁶¹ With respect to Canada, the US reserves the right to adopt or maintain any measure relating to cross-border trade in securities and derivatives services.

4.4.3.2.9 Health related and social services

4.82. Social services are subject to a broad reservation allowing the application of any measure affecting investment and cross-border trade in social services for a public purpose. At the same time, under the Agreement, the US liberalized physical wellbeing services such as spas, and fitness centers which are not liberalized under the GATS.

4.4.3.2.10 Tourism and travel related services

4.83. In tourism and travel related services, the US did not list any reservation and its commitments under the Agreement are the same as under the GATS.

4.4.3.2.11 Recreational, cultural and sporting services

4.84. In recreational, cultural and sporting services, the US's commitments under the Agreement are the same as under the GATS and it reserves the right to adopt or maintain any measure relating to betting and gambling services.

4.4.3.2.12 Transport services

4.85. The US improved upon its GATS commitments by adding and liberalizing road freight transport and cargo-handling services, storage and warehouse services and freight transport agency services (except maritime or air transport services). It also scheduled a number of limitations in air and land transportation services. For example, only US air carriers can provide cabotage services and international scheduled and non-scheduled air service as US air carriers and an authorization for the supply of specialty air services is required. As for land transport services, the provision of truck services by Mexican persons between points in the US for the transportation of goods other than international cargo is subject to reciprocity and only persons of the US may provide truck or bus services between points in its territory.

4.86. Under its list of future non-conforming measures, the US reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of US-flagged vessels and any limitations on grants of authority for persons of Mexico to provide cross-border long-haul truck services in the its territory outside the border commercial zones if such limitations are required to address material harm or the threat of material harm to US suppliers, operators or drivers.⁶²

4.5 Regulatory provisions

4.5.1 Domestic regulation

4.87. Each Party shall ensure that a measure of general application affecting trade in services is administered in a reasonable, objective, and impartial manner (Article 15.8). If a Party adopts or maintains a measure relating to licensing or qualification requirements and procedures affecting trade in services, it shall ensure that i) it is based on objective and transparent criteria, ii) the competent authority is independent, and iii) the procedure itself does not prevent the fulfilment of

⁶¹ The reservation regards Federal Home Loan Banks, Federal Home Loan Mortgage Corporation and Federal National Mortgage Association and the advantages that may be granted include exemptions from certain taxation, registration and periodic reporting requirements.

⁶² The Parties shall meet no later than five years after the entry into force of the Agreement to exchange views on the reservation.

a requirement. In addition, the Party shall avoid requiring an applicant to approach more than one competent authority for each application for authorization.

4.88. The Parties agree that where authorisation is required for the supply of a service, they shall ensure that applicants can apply at any time allowing for a reasonable period of time. If examinations are required, the competent authorities shall schedule them at reasonably frequent intervals and provide for a reasonable period of time to enable applicants to request to take an examination. Indicative timeframes for processing an application shall be provided and the completeness of applications shall be ascertained without undue delay. The competent authorities endeavour to accept electronic applications and copies of documents authenticated in accordance with a Party's law in place of original documents. Information on the status, completeness and rejection of an application shall be provided to the applicant. Authorization fees shall be reasonable, transparent and not restrict the supply of the relevant service. Each Party shall encourage its competent authorities, when adopting a technical standard, to adopt technical standards developed through an open and transparent process.

4.89. If a Party requires authorization for the supply of a service, it shall provide to a service supplier the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorization. The information includes, *inter alia*, any fee, the contact information of a relevant competent authority, any procedure for appeal or review of a decision and for monitoring or enforcing compliance, any requirement or procedure and any technical standard.

4.90. A side letter exchanged between Canada and the US dated 30 November 2018 introduces specific disciplines related to energy regulatory measures and energy regulatory transparency. The Annex to the side letter also encourages Canada and the US to promote North American energy cooperation.

4.5.2 Recognition

4.91. Article 15.9 on recognition reproduces paragraphs 1 to 3 of Article VII of the GATS but also adds new provisions. When a Party recognizes, autonomously or by agreement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of another Party or a non-party, the Party is not obliged to accord the same recognition to another Party. Moreover, the Parties shall endeavour to facilitate trade in professional services as set out in Annex 15-C.

4.92. According to Annex 15-C, the Parties shall consult to identify professional services for which at least two of the Parties are mutually interested in establishing a dialogue on issues that relate to the recognition of professional qualifications, licensing, or registration. If such professional services are identified, the Parties' relevant bodies are encouraged to establish dialogues on, *inter alia*, the recognition of professional qualifications and facilitating licensing and registration procedures through mutual recognition agreements, autonomous recognition of education or experience, the development of mutually acceptable standards and criteria for authorization, temporary or project-specific licensing or registration based on a foreign supplier's home license or recognized professional body membership, without the need for further written examination.

4.93. Appendix 1 sets out guidelines for the negotiation of a mutual recognition agreement that can be followed by the relevant bodies if they enter into discussions for the purpose of creating a mutual recognition agreement.⁶³

4.5.3 Subsidies

4.94. Chapter 15 does not apply to subsidies or grants, and Chapter 14 excludes subsidies from the Parties' obligations regarding national and MFN treatment and senior management and boards of directors (Articles 14.12 and 15.2.3(d)).⁶⁴

⁶³ The Parties communicated that several mutual recognition agreements have been in existence prior to the entry into force of the Agreement but new ones have not been negotiated yet.

⁶⁴ Investors of another Party and covered investments shall benefit from non-discriminatory treatment with respect to measures relating to subsidies adopted or maintained in the case of armed conflict or civil strife unless such measures are listed in the Parties' Annexes of non-conforming measures (Article 14.7).

4.5.4 Safeguards

4.95. The Agreement allows the Parties to maintain or adopt restrictive measures affecting trade in services, payments or transfers in the event of serious balance of payments or macroeconomic difficulties or threats thereof (Article 32.4).⁶⁵ Such measures must be consistent with the Parties' national and MFN treatment obligations in Chapters 14, 15 and 17, their commitments on expropriation and compensation in Article 14.8, and with IMF clauses. Moreover, they must be temporary, progressively phased out and shall not exceed 12 months in duration, except in exceptional circumstances and subject to notification procedures and the Parties' agreement. In the case of restrictions on capital outflows, they shall not interfere with the investors' ability to earn a market rate of return in the territory of the restricting Party on any restricted assets. Measures should be price-based and, in the case of a Party using quantitative restrictions, it shall explain the rationale. Article 32.4 also provides for the obligation to notify in writing a measure together with its rationale and a time schedule or conditions necessary for their removal.

4.5.5 Other provisions on investment

4.96. In addition to the provisions on denial of benefits, performance requirements, senior management and board of directors, and MFN and national treatment, described in previous sections, Chapter 14 includes provisions dealing with minimum standards of treatment (Article 14.6), treatment in case of armed conflict or civil strife (Article 14.7), expropriation and compensation (Article 14.8), transfers (Article 14.9), special formalities and information requirements (Article 14.13), subrogation (Article 14.15), the need to ensure environment, health, safety and other regulatory objectives (14.16) and corporate social responsibility (Article 14.17).

4.97. The Parties agree to accord to covered investments a minimum standard of treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security (Article 14.6). Article 14.6 is to be interpreted in accordance with Annex 14-A on customary international law.

4.98. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation except for public purposes, in a non-discriminatory manner, on payment of prompt, adequate and effective compensation and in accordance with due process of law (Article 14.8).⁶⁶ The provision on expropriation does not apply to the issuance of compulsory licenses granted in accordance with the TRIPS Agreement.

4.99. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory in a freely usable currency at the market rate of exchange prevailing at the time of transfer (Article 14.9). Returns in kind are also permitted. A Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to, *inter alia*, bankruptcy, insolvency and issuing, trading, or dealing in securities or derivatives.

4.100. No Party shall, under any measure adopted after the Agreement's entry into force and covered by Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment (Article 14.12). Article 14.13 allows the Parties to adopt or maintain measures that prescribe special formalities and to require an investor to provide information for informational or statistical purposes.

4.101. Nothing in Chapter 14 shall prevent a Party from adopting, maintaining or enforcing measures otherwise consistent with the Chapter to ensure that its investment activity is undertaken in a manner sensitive to environmental, health or other regulatory objectives (Article 14.16).

4.102. The Parties also reaffirm the importance of encouraging enterprises to voluntarily incorporate internationally recognised standards, guidelines and principles of corporate social responsibility including the OECD Guidelines for Multinational Enterprises (Article 14.17). These

⁶⁵ Payments or transfers relating to foreign direct investment are excluded from the application of such measures.

⁶⁶ The article on expropriation and compensation is to be interpreted in accordance with Annex 14-B.

standards, guidelines, and principles may address areas such as labour, environment, gender equality, human rights, indigenous and aboriginal peoples' rights, and corruption.

4.6 Sector specific provisions on trade in services

4.6.1 Financial services

4.103. Chapter 17 contains rules governing financial services. It applies to measures of a Party relating to a financial institution of another Party, investors of another Party and their investment in a financial institution in the Party's territory and cross-border trade in financial services (Article 17.2).⁶⁷ It does not apply to measures related to activities or services forming part of a public retirement plan or social security system or for the account or with the guarantee of the Party or using its financial resources unless a Party allows any of these activities or services to be conducted by its financial institutions in competition with a public entity or a financial institution. Government procurement of financial services and subsidies or grants with respect to the cross-border supply of financial services are also excluded from the scope of the Chapter.⁶⁸

4.104. The Chapter contains the Parties' liberalization commitments in financial services as well as exceptions for regulatory measures, which are built upon those under the GATS Annex on Financial Services and Understanding on Commitments in Financial Services (hereafter the GATS Understanding). It contains provisions on MFN and national treatment, exceptions and prudential measures, market access, new financial services, transfer of information, the location of computing facilities, senior management and boards of directors' requirements, recognition, self-regulatory organisations, access to payment and clearing systems, expedited availability of insurance services, consultations, and dispute settlement.

4.105. In addition, Chapter 17 incorporates various obligations from Chapters 14 and 15. These provisions refer to minimum standards of treatment, treatment in case of armed conflict or civil strife, expropriation and compensation, special formalities and information requirements, denial of benefits and investment and environmental, health, safety and other regulatory objectives. Additionally, provisions related to payments and transfers are also incorporated subject to obligations pursuant to national treatment, market access and cross-border trade standstill.

4.106. The Parties allow cross-border supply (mode 1) of the financial services as specified in Annex 17-A. The list of activities is country-specific and is broader than that in the GATS Understanding for all the Parties as it includes certain electronic payment services, investment advice, portfolio management, intermediation services and other insurance related services.

4.107. The supply of financial services through modes 1-3 is subject to a negative list approach where the Parties list all the measures that do not conform to national and MFN treatment obligations, market access, cross-border trade standstill and senior management and boards of directors provisions in a schedule as set out in Annexes III-A for existing measures and III-B for future measures (Article 17.10). Annex III-A is subject to a standstill obligation and, for mode 3, a ratchet obligation.⁶⁹ Moreover, the Parties shall not adopt a measure restricting any type of cross-border trade in financial services by cross-border financial service suppliers of another Party that the Party permitted on 1 January 1994, or that is inconsistent with Article 17.3.3 (National Treatment), with respect to the supply of those services (Article 17.6).

4.108. Annex 17-C modifies Annex 14-D (Mexico-US investment disputes in financial services) for the settlement of qualifying investment disputes under Chapter 17.

4.109. Article 17.19 establishes a Committee on Financial Services that supervises the implementation of Chapter 17 and its further elaboration. The inaugural Financial Services Committee met virtually on 15 April 2021 to discuss the implementation of the agreement and other issues relevant to the financial sector.

⁶⁷ Financial services are defined as in the GATS Annex on Financial Services.

⁶⁸ Subsidies or grants with respect to the cross-border supply of financial services include government-supported loans, guarantees and insurance.

⁶⁹ Under the standstill provisions, a Party cannot amend a non-conforming measure to make it more restrictive than the one listed in Annex III-A, while a ratchet mechanism binds autonomous liberalization.

4.6.2 Telecommunication Services

4.110. Chapter 18 applies to any measure affecting trade in telecommunications services including for access to and use of public telecommunications networks or services, obligations of suppliers of public telecommunications services, the supply of value-added services and any other measure relating to telecommunications network and services (Article 18.2). It does not apply to measures relating to broadcast or cable distribution of radio or television programming, except to ensure that an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications networks and services.

4.111. Chapter 18 expands upon the GATS Annex on Telecommunications and the Reference Paper. It includes more detailed provisions on the access to and use of public telecommunications services, the conduct and obligations of major suppliers of telecommunications services, allocation and use of scarce resources, transparency, the resolution of disputes, licensing and on the independence of regulatory bodies. The provisions on universal service (Article 18.19) and competitive safeguards (Article 18.6) are identical (or almost) to those in the GATS Reference Paper.

4.112. Article 18.4 entails obligations for suppliers of public telecommunications services regarding interconnection, resale, roaming, number portability, dialling parity and access to numbers. Each Party must ensure that suppliers of public telecommunications services in its territory provide interconnection with suppliers of those services of another Party and number portability without impairment to quality and reliability, and on reasonable and non-discriminatory terms and conditions. It also must ensure that suppliers of public telecommunications services of another Party established in its territory have access to telephone numbers on a non-discriminatory basis.

4.113. No Party shall prevent suppliers of public telecommunications services in its territory to choose the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests. If a Party adopts a measure restricting technologies choice, it shall do so consistent with its transparency obligations (Article 18.15).

4.114. In the area of international mobile roaming, the Parties agree to cooperate on promoting transparent and reasonable rates for these services and a Party may take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services (Article 18.25)

4.115. On enforcement, the Parties shall provide their competent regulatory body with the authority to enforce the obligations set out in Chapter 18 including the ability to impose effective sanctions which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension or revocation of licences (Article 18.22). They shall also ensure that their enterprises have recourse to the telecommunications regulatory body to resolve disputes regarding the obligations of the Chapter and that they have access to appeal procedures should their legally protected interests be adversely affected (Article 18.23).

4.116. The Parties recognize that regulatory needs and approaches differ by market and that it is up to the Party to determine how to implement its obligations under the Chapter (Article 18.16). The Parties shall ensure that their telecommunications regulatory body is independent of any supplier of public telecommunications services (Article 18.17). Article 18.24 provides for transparency in general while Article 18.20 specifies the information that needs to be made publicly available in case a license is required.

4.117. In the event of any inconsistency between the Chapter and another Chapter of the Agreement, Chapter 18 prevails (Article 18.26).

4.118. The Parties agree to establish a Telecommunications Committee, which shall meet at times as the Parties may decide (Article 18.27).⁷⁰ The functions of the Committee include reviewing and monitoring the implementation of the Chapter and discussing issues relevant to telecommunications sector.

⁷⁰ As of 14 July 2021, the Telecommunications Committee had not yet held a meeting.

4.6.3 Delivery services

4.119. Annex 15-A in Chapter 15 deals with delivery services which comprise the collection, sorting, transport and delivery of documents, printed matter, parcels, goods or other items. The Annex does not apply to maritime, internal waterway, air, rail, or road transportation services, including cabotage.

4.120. The Parties have an obligation to define the scope of a postal monopoly (if they maintain one) based on objective criteria, including quantitative elements such as price or weight thresholds. Each Party retains the right to define the kind of universal service obligation it wishes to adopt or maintain. The Parties shall not allow a supplier of delivery services covered by a postal monopoly to use revenues derived from the supply of such services to cross-subsidize the supply of a delivery service not covered by postal monopoly and to unjustifiably differentiate among mailers or consolidators with respect to tariffs or other terms and conditions for the supply of a delivery service covered by a postal monopoly. Moreover, they shall ensure that a supplier of services covered by a postal monopoly does not abuse its monopoly position.

4.121. The Parties cannot require a delivery service supplier of another Party to provide a basic universal postal service, as a condition for authorization or licensing, or assess fees or other charges exclusively on express delivery service suppliers for the purpose of funding the supply of another delivery service. They shall ensure that the authority responsible for regulating delivery services is independent and that its decisions and procedures are impartial, non-discriminatory and transparent.

4.122. No Party may require a supplier of a delivery service not covered by a postal monopoly to contract, or prevent such a supplier from contracting, with another service supplier to supply a segment of the delivery service.

4.6.4 Programming services

4.123. Annex 15-D includes provisions specific to programming services. Canada shall rescind its Broadcasting Regulatory Policy CRTC 2016-334 and Broadcasting Order CRTC 2016-335 and, with respect to simultaneous substitution of signals during the retransmission in Canada of the program referenced in those measures, it may not accord treatment less favourable than the treatment accorded to other programs originating in the US retransmitted in Canada. Moreover, both the US and Canada shall provide in their copyright laws that authorization of the holder of the copyright in the program is required for retransmission. Canada shall ensure that US programming services specializing in home shopping, including modified versions of these services for the Canadian market, are authorized for distribution in Canada and may negotiate affiliation agreements with Canadian cable, satellite, and IPTV distributors.

5 GENERAL PROVISIONS OF THE AGREEMENT

5.1 Transparency

5.1. Transparency provisions are found in various chapters across the Agreement. There is no specific chapter dealing with transparency in the Agreement.

5.2 Current payments and capital movements

5.2. Article 32.4 permits the adoption or maintenance of restrictive measures with regard to payments or transfers for current account transactions or relating to the movement of capital (except payments or transfers relating to FDI) in the event of serious balance of payments and external financial difficulties or threats thereof; in the case of capital movements, restrictive measures may also be taken if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management. Such measures must not be inconsistent with MFN and national treatment provisions on investment (Articles 14.4 and 14.5), cross border trade in services (Articles 15.3 and 15.4) and financial services (Articles 17.3 and 17.4) and Article 14.8 on expropriation and compensation; be consistent with the Articles of the IMF; avoid unnecessary damage to the commercial, economic and financial interests of another Party; be temporary and be phased out progressively as the situation improves and shall not exceed

12 months (extendable under exceptional circumstances by one year through written notification to the other Parties at least 30 days before the extension); in the case of restriction on capital outflows, not interfere with investors' ability to earn a market rate of return in the restricting Party on assets invested in the restricting Party by an investor of a Party that are restricted from being transferred out of the restricting Party; and not be used to avoid unnecessary macroeconomic adjustment. The Parties shall endeavour to ensure that the measures are price-based; if not, they shall explain the rationale for using quantitative restrictions when notifying the other Parties of the measure.

5.3. As soon as practicable after imposing a measure, a Party shall submit the current account restrictions to the IMF for review and approval under Article VIII of the Articles of Agreement of the IMF, enter into good faith consultations with the IMF on economic adjustment measures necessary to remove the restrictions and adopt or maintain economic policies consistent with these consultations (paragraph 5 of Article 32.4). The Party must also promptly publish the measure and notify it or any changes to it, along with the rationale for its imposition, in writing to the other Parties within 30 days of imposing it; present a time schedule or conditions for its removal as soon as possible; and promptly consult with the other Parties to review the measure (paragraph 9 of Article 32.4).

5.3 Exceptions

5.3.1 General and security exceptions

5.4. Chapter 32 deals with exceptions and general provisions which are along the lines of the WTO general and security exceptions. Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of the Agreement *mutatis mutandis* with regard to Chapters 2 (national treatment and market access for goods), 3 (agriculture), 4 (rules of origin), 5 (origin procedures), 6 (textile and apparel goods), 7 (customs administration and trade facilitation), 9 (sanitary and phytosanitary measures), 11 (technical barriers to trade), 12 (sectoral annexes), and 22 (State-owned enterprises and designated monopolies); for Chapter 22 Article XX only applies to measures of a Party (including through the activities of SOEs or designated monopolies) affecting the purchase, production or sale of goods or activities that result in the production of goods.

5.5. Paragraphs (a), (b) and (c) of Article XIV of the GATS are incorporated into and made part of the Agreement *mutatis mutandis* for Chapters 15 (cross-border trade in services), 16 (temporary entry for business persons), 18 (telecommunications), 19 (digital trade), and 22 (State-owned enterprises and designated monopolies); for Chapter 22 Article XIV only applies to measures of a Party (including through the activities of SOEs or designated monopolies) affecting the purchase or supply of services or activities that result in the supply of services.⁷¹

5.6. The Parties are authorized to take action, including maintaining or increasing a customs duty if authorized by the WTO Dispute Settlement Body, or by a dispute settlement panel under a free trade agreement to which both the Party taking action and the Party affected are party.⁷²

5.3.2 Taxation exceptions

5.7. The Agreement maintains the rights and obligations of the Parties under a tax convention and in the event of inconsistency between a tax convention and the Agreement, the former prevails to the extent of the inconsistency (paragraph 3 of Article 32.3) except in respect of the obligations in paragraph 5. Under paragraph 5 of Article 32.3, Article 2.3 on national treatment and other provisions of the Agreement that are necessary to give effect to Article 2.3 apply to taxation measures to the same extent as Article III of the GATT 1994 including its interpretative notes. In addition, Article 2.15 on export duties, taxes and other charges also applies to taxation measures

⁷¹ It is understood that the measures under GATT Article XX(b) and GATS Article XIV include environmental measures necessary to protect human, animal or plant life or health and that Article XX(g) of the GATT 1994 applies to the measures relating to the conservation of living and non-living exhaustible natural resources.

⁷² The Parties shall not be required to furnish or allow access to information, whose disclosure are determined by the Parties as being contrary to their security interests or preclude them from applying measures that they consider necessary for the fulfilment of obligations on the maintenance or restoration of international peace or security, or the protection of their security interests.

5.8. Under paragraph 6 of Article 32.3, Articles 15.3 and 17.3 (respectively national treatment for cross border trade in services and financial services) apply to a taxation measure on income, capital gains or the taxable capital of corporations that relate to the purchase or consumption of particular services. A Party may however condition the receipt or continued receipt of an advantage from the purchase or consumption of particular services on requirements to provide the service in its territory.

5.9. National treatment provisions on investment (Article 14.4), cross border trade in services (15.3), and financial services (17.3), MFN treatment for investment (Article 14.5), cross border trade in services (Article 15.4), and financial services (17.4) as well as non-discriminatory treatment of digital products (Article 19.4) also apply to a taxation measure, other than on income, capital gains, on the taxable capital of corporations or taxes on estates, inheritances, gifts, and generation skipping transfers. Article 19.4 also applies to taxation measures on income, capital gains or on the taxable capital of corporations but a Party may condition the receipt or the continued receipt of an advantage relating to the purchase or consumption of particular digital products on requirements to provide the digital product in its territory.⁷³ All of the obligations in paragraph 6 are subject to a number of exceptions.

5.10. Subject to paragraph 3 of Article 32.3 and without prejudice to the rights and obligations of the Parties under paragraph 5 of Article 32.3, Articles 14.10.2 (performance requirements), 14.10.3 and 14.10.4 apply to taxation measures.

5.11. With regard to expropriation and compensation, Article 14.8 applies to a taxation measure. However, between the United States and Mexico no investor may invoke Article 14.8 as a basis for a claim if it has been determined that the measure is not an expropriation. If an investor from these Parties wishes to invoke Article 14.8 with respect to a taxation measure it must first refer to the designated authorities of the Party of the investor and the respondent Party on whether the taxation measure is not an expropriation. If the designated authorities do not agree to consider the issue or fail to agree within six months of the referral that the measure is not an expropriation, the investor may submit its claim to arbitration under Annex 14.D.3 (submission of a claim to arbitration) or paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes related to Covered Government Contracts).

5.12. In the case of a tax convention between two or more Parties, any inconsistency between the convention and the Agreement shall be referred to the designated authorities of the Parties. The designated authorities have six months (extendable up to 12 months if the Parties agree) from the date of referral to determine the existence and extent of any inconsistency. Dispute settlement provisions under the Agreement do not apply to such issues or under Annex 14-D (investment disputes) or Annex 14-E (investment disputes related to covered Government contracts) between the United States and Mexico until the expiry of the six-month period or any other period agreed by the designated authorities. A panel or tribunal established to consider a dispute related to a taxation measure shall accept the determination of the designated authorities of the Parties under paragraph 4 of Article 32.3 as binding.

5.3.3 Other exceptions

5.13. Measures adopted or maintained by Canada with respect to its cultural industry are not subject to the provisions of the Agreement, except as provided in Article 2.4 (customs duties) or Annex 15-D (programming services) (Article 32.6).⁷⁴ The United States and Mexico may adopt or maintain a measure on goods, services or content from Canada, that, if adopted by Canada, would be inconsistent with the provision above. A Party may take a measure of equivalent commercial effect in response to a measure taken by another Party that is inconsistent with the provisions above. Safeguard measures for cultural industries are subject to the Agreement's dispute settlement mechanism under Chapter 31 but the panel may make findings only with respect to whether an

⁷³ The exceptions include MFN and non-conforming provisions existing at the entry into force of the NAFTA.

⁷⁴ Cultural industries are defined in Chapter 32 as: a person engaged in: (a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing; (b) the production, distribution, sale or exhibition of film or video recordings or of audio or video music recordings; (c) the publication, distribution or sale of music in print or machine readable form; or (d) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services (Article 32.6).

action to which another Party responds is a measure adopted or maintained for cultural industries for the purposes of Article 32.6; and whether the responsive action of a Party is "of equivalent commercial effect" to the relevant action of the Party.

5.14. The Agreement permits a Party to adopt or maintain measures it deems necessary to fulfil its legal obligations to indigenous peoples, provided that the measure is not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services and investment (Article 32.5).

5.4 Accession and withdrawal

5.15. There are no provisions for accession by third parties to the Agreement.

5.16. A Party may withdraw from the Agreement by providing written notice of withdrawal to the other Parties. The withdrawal shall take effect six months after the written notice is provided. The Agreement will remain in force for the other Parties following withdrawal by one Party (Article 34.6).

5.17. The Agreement shall terminate within 16 years of its entry into force unless each Party confirms that it wishes to continue the Agreement for a new 16-year period in accordance with procedures in Article 34.7 of the Agreement. Under Article 34.7 there will be a joint review meeting of the Commission six years after entry into force of the Agreement, to assess the operation of the Agreement. The Commission will also review any recommendations for action submitted by a Party at least one month before the review meeting and decide on appropriate action. The Agreement will be automatically extended for 16 years if confirmed by all the Parties in writing and the Commission will conduct a further review and extension of the Agreement no later than at the end of the next six-year period. If, as part of the Commission's reviews, any Party(ies) that does not confirm its wish to renew the Agreement for another 16 years, the Commission shall meet every year for the remainder of the term of the Agreement. Any Party that did not confirm its renewal of the Agreement at the conclusion of a joint review, can still do so at any time between the conclusion of the review and expiry of the Agreement.

5.18. Following each renewal of the 16-year period of validity of the Agreement, the Commission will hold joint reviews every six years and the Parties shall have the ability to extend the Agreement for a further 16 years after each joint review.

5.19. The Parties may agree in writing to amend the Agreement. An amendment will enter into force 60 days following the date on which the last Party provides written notice to the other Parties of the approval of the amendment in accordance with its applicable legal procedures, or any other date agreed by the Parties (Article 34.3). The Parties shall, unless otherwise provided in the Agreement, consult of whether to amend any provision, following an amendment to the WTO Agreement that amends a provision in the Agreement (Article 34.4).

5.5 Institutional framework

5.20. A Free Trade Commission is established under Article 30.1 to *inter alia* consider matters relating to implementation or operation of the Agreement; proposals to amend or modify the Agreement; supervise the work of committees, working groups and other subsidiary bodies; consider ways to further enhance trade and investment between the Parties; adopt and update the Rules of Procedure and Code of Conduct for dispute settlement proceedings; and review the Roster of Panellists every three years and when appropriate, constitute a new Roster (Article 30.2). The Commission shall establish and oversee a Secretariat comprising national sections, to assist the Commission; provide administrative assistance to panels and committees established for the review and dispute settlement in anti-dumping and countervailing matters and dispute settlement; and support the work of other committees as directed by the Commission (Article 30.6). The first Decision of the Commission on 2 July 2020 included the adoption of the Uniform Regulations (required for rules of origin, origin procedures, textiles and clothing and customs administration and trade facilitation), rules of procedure and code of conduct for state-to-state dispute settlement and binational panels for the review of final anti-dumping and countervailing duty determinations, and the establishment of a Secretariat for the Agreement as well as rosters of individuals to serve as panelists for disputes under Chapter 31 and Chapter 10. The second Decision was taken on 18 May 2021, following the first meeting of the Commission. The second Decision adopted updated rules of

procedure for binational panels for the review of final anti-dumping and countervailing duty determinations as well as rules of procedure for the Extraordinary Challenge Procedure and the Special Committee Procedure for safeguarding the Panel Review System. The second Decision also adopted an interpretation of Article 34.1.4 (Transitional Provision from NAFTA 1994). Finally, the second Decision also adopted French and Spanish versions of the Uniform Regulations, rules of procedure for state-to-state dispute settlement and the code of conduct.

5.21. Various committees are established by the Agreement to implement and monitor different chapters. The Committee on Trade in Goods is created, to *inter alia*, monitor the implementation of Chapter 2; promote trade in goods between the Parties; provide a forum for consultation and to resolve issues relating to the Chapter including jointly with other Committees working groups or other subsidiary bodies established by the Agreement; and promptly seek to address tariff and non-tariff barriers to trade in goods between the Parties and if appropriate, refer the matter to the Commission. Under Chapter 3 a specific Committee for Agriculture as well as consultative committees on agriculture are established. The Committee for Agriculture shall focus on promoting trade in agricultural goods between the Parties; monitor and promote cooperation on implementation and administration of the Chapter; and provide a forum for consultation on trade barriers and to improve access to the Parties' markets; and report annually to the Commission.

5.22. There are also Committees on Rules of Origin and Origin Procedures (Article 5.18) to ensure effective, uniform implementation of Chapters 4 (rules of origin) and 5 (origin procedures); on Textiles and Apparel Matters (Article 6.8) to consider any matter arising under Chapter 6 including a review of the implementation of the Chapter, consultation on technical or interpretative difficulties and discuss ways to improve the effectiveness of cooperation; on Trade Facilitation (Article 7.24) to facilitate exchange of information on various aspects of trade facilitation; a sub-Committee on customs enforcement (Article 7.29) to address customs offenses and exchange of information to detect, prevent and address customs offenses; on SPS and TBT measures (Articles 9.17 and 11.11 respectively); on Government Procurement (Article 13.21) on matters relating to the operation and implementation of Chapter; Intellectual Property rights (Article 20.14); on State owned enterprises and designated monopolies (Article 22.12); Environment (Article 24.26); on SME Issues (Article 25.4), including to convene a trilateral SME Dialogue (Article 25.5) involving the private sector, employees, non-governmental organizations and other stakeholders from each Party; a North American Competitiveness Committee (Article 26.1) to promote further integration between the Parties and enhance the competitiveness of their exports; on Good Regulatory Practices (Article 28.18); and a Macroeconomic Committee (Article 33.6) to consider the macroeconomic and exchange rate policies of the Parties as well as issues, challenges or efforts to strengthen capacity with respect to transparency or reporting.

5.23. With regard to services, there are specific Committees on Transportation Services (Annex 15-B) to discuss issues arising from the implementation and operation of the Parties' obligations on transportation services in Chapters 14 on investment and 15 on cross border trade in services; Financial Services (Article 17.19) to supervise implementation of the Chapter on financial services; and telecommunications services (Article 18.27) to review and monitor the implementation of the Chapter on telecommunications services.

5.6 Dispute settlement

5.24. Dispute settlement provisions under Chapter 31 apply, unless otherwise provided for in the Agreement:

- a. With respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of the Agreement;
- b. When a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of the Agreement or that another Party has otherwise failed to carry out an obligation under the Agreement; or
- c. When a Party considers that a benefit it could reasonably have expected to accrue to it under Chapters 2 (national treatment and market access for goods), 3 (agriculture), 4 (rules of origin), 5 (origin procedures), 6 (textile and apparel goods), 7 (customs administration and trade facilitation), 9 (SPS measures), 11 (TBT), 13 (government

procurement), 15 (cross-border trade in services), or 20 (intellectual property rights) is being nullified or impaired as a result of the application of a measure by another Party that is not inconsistent with the Agreement (Article 31.2).

5.25. The Parties agree to endeavour to agree on the interpretation and application of the Agreement at all times, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application (Article 31.1).

5.26. A choice of forum clause is provided under Article 31.3. Once a complaining Party has selected either the dispute settlement forum under Chapter 31 or another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the forum selected shall be used to the exclusion of the other fora. Article 32.6 provides an exception for disputes involving safeguards taken for cultural industries which requires that all disputes be settled under the Agreement unless the Party seeking to establish the Panel has been unable to do so within 90 days of request for consultations. Consultations on any matter arising under Article 31.2 must be requested in writing, with copies to the other Parties and the Secretariat, and shall set out the reason for the request including identification of the specific measure at issue and an indication of the legal basis for the complaint.⁷⁵ Unless decided otherwise, the consultations shall be held no later than 30 days (15 days for perishable items) after the date of delivery of the request.

5.27. If there is no resolution of the matter through consultations within 75 days (30 days for perishable goods) after the delivery of the request for consultations, or another period agreed by the Parties, a consulting Party may request the establishment of a panel in writing to the responding Party with a copy to the Secretariat and to the other Parties.⁷⁶ The Panel is formed upon delivery of the request.⁷⁷ A third party that considers it has a substantial interest in the matter may join the dispute by making a written notice of its intention to participate no later than seven days after the delivery of the request to establish a panel (Article 31.6).

5.28. The Panel shall submit its initial report to the disputing Parties no later than 150 days (120 days for cases related to perishable goods) after the date of appointment of the last panellist. In exceptional cases if the panel feels that it cannot release its report within this time-period, it shall inform the Parties in writing of the reasons for the delay (which shall not exceed 30 days unless otherwise decided by the Parties) with an estimate of the expected date of submission of the report. The final report including any separate opinions on matters not unanimously agreed is to be submitted to the disputing Parties not later than 30 days after presentation of the initial report unless the disputing Parties decide otherwise.⁷⁸ After taking any steps to protect confidential information and no later than 15 days after presentation of the final report, the disputing Parties shall make the final report available to the public (Article 31.17).⁷⁹

5.29. Within 45 days from receipt of a final report that contains findings that the measure is inconsistent with a Party's obligations under the Agreement; a Party has otherwise failed to carry out its obligations under the Agreement; or the measure at issue is causing nullification or impairment within the meaning of Article 31.2 the disputing Parties shall endeavour to agree on the resolution of the dispute. This could include elimination of the non-conformity or the nullification or impairment, if possible, the provision of mutually acceptable compensation or another remedy

⁷⁵ A third Party may indicate its interest in joining the consultations in writing to the Secretariat no later than seven days following the date of delivery of the request for consultations.

⁷⁶ The Parties may decide at any time to voluntarily undertake an alternative method of dispute resolution such as good offices, conciliation or mediation. They may decide to continue such methods while a dispute proceeds for resolution before a panel established under Article 31.6 or decide to suspend or terminate those proceedings (Article 31.5).

⁷⁷ The Panel, whose terms of reference are provided in Article 31.7 and is chosen from a roster of 30 individuals established under the provisions of Article 31.8, shall comprise five members unless the disputing Parties agree to a panel of three members. The panel shall operate under the rules of procedure established by Article 31.11 and functions under Article 31.13.

⁷⁸ Comments on the initial report may be submitted to the panel by a disputing Party no later than 15 days after the presentation of the initial report or any other period decided by the disputing Parties.

⁷⁹ The Panel may suspend its work at any time at the request of the complaining Party, for a period not to exceed 12 consecutive months. It shall suspend its work at any time at the disputing Parties' request. If the suspension exceeds 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties decide otherwise (Article 31.16).

agreed by the disputing Parties (Article 31.18). If the disputing Parties are unable to agree on a resolution to the dispute within 45 days from receipt of the final report, the complaining Party may suspend the application to the responding Party, of benefits of equivalent effect to the non-conformity or nullification or impairment until the disputing Parties agree on a resolution to the dispute (Article 31.19).⁸⁰ If the responding Party considers that (a) the level of benefits proposed is excessive or (b) it has eliminated the non-conformity, nullification or impairment as determined by the panel, it may request the complaining Party in writing that the panel be reconvened to consider the matter. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under either (a) or (b) or 120 days for requests under both (a) and (b). If the panel considers that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall provide its views as to the level of benefits it considers to be of equivalent effect. If the panel concludes that the responding Party has not eliminated the non-conformity, nullification or impairment, the complaining Party may suspend benefits up to the level determined by the Panel (Article 31.19).

5.30. Section B of Chapter 31 is on domestic proceedings and private commercial dispute settlement. If an issue relating to the interpretation or application of the Agreement arises in a domestic judicial or administrative proceeding of a Party, that a Party considers would merit its intervention, or if a court or administrative body asks for the Party's views, that Party shall notify the other Parties and the Secretariat. The Commission shall try and agree on an appropriate response as expeditiously as possible. If the Commission is unable to agree, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum. Private rights of action against another Party on the ground that its measures are inconsistent with the Agreement are not permitted under the law of any Party (Article 31.21). Article 31.22 encourages the use of alternative dispute resolution such as arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area. The Commission is to establish and maintain an Advisory Committee on Private Commercial Disputes which shall, to the extent possible, encourage, facilitate and promote through education, the use of arbitration, mediation, online dispute resolution and other procedures for the resolution of international commercial disputes between private parties in the free trade area. The Committee will report and provide recommendations to the Commission on general issues concerning such alternative dispute resolution mechanisms.

5.31. Annexes 31-A and 31-B provide for a Facility-Specific Rapid Response Labour Mechanism (the Mechanism) respectively, between Mexico and the United States and between Canada and Mexico. The Mechanism shall apply whenever a Party has a good faith basis belief that workers at a Covered Facility⁸¹ are being denied the right of free association and collective bargaining under laws necessary to fulfil the obligations of the respondent Party under the Agreement.⁸² A Party shall notify the other Party within five business days of initiating its domestic process for determining whether to invoke the Mechanism, if that Party has such a process, and that the process has started regarding a Covered Facility in the other Party.⁸³

⁸⁰ A complaining Party should first seek to suspend benefits in the same sector as that affected by the measure or other matter that was the subject of the dispute; if the complaining Party considers it is not practicable or effective to suspend benefits in the same sector it may suspend benefits in other sectors unless otherwise provided for in the Agreement (Article 31.19).

⁸¹ A Covered facility is defined as a facility in the territory of a Party that produces a good or supplies a service traded between the Parties or produces a good or supplies a service that competes in the territory of a Party with a good or service of the other Party and is a facility in a priority sector, defined as a sector that produces manufactured goods (including aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminium, glass, pottery, plastic, forgings and cement), supplies services or involves mining (Articles 31-A.15 and 31-B.15). The Parties shall review the priority sectors annually and determine whether to add any new sectors (Article 31-A.13 and 31-B.13).

⁸² With respect to the United States, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the National Labour Relations Board. With respect to Canada, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the Canada Industrial Relations Board. With respect to Mexico, a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).

⁸³ Consistent with Articles 31-A.4 and 31-B.4, the United States and Canada, respectively, established such a process under which their respective governments will strive to complete initial reviews of complaints

5.32. If a complainant Party has good faith basis to believe that workers at a Covered Facility are being denied their rights, it shall first request that the respondent Party conduct its own review of whether a Denial of Rights exists.⁸⁴ If the respondent Party finds that there is a Denial of Rights, it shall attempt to remediate the situation within 45 days of the request. The respondent Party has 10 days to notify the complainant Party on whether it intends to conduct the review. If it does not notify within the 10-day period, or decides not to conduct a review, the complainant Party may request the formation of a Rapid Response Labour Panel to conduct a verification and determination pursuant to Article 31-A.5 and 31-B.5 respectively. If the respondent Party conducts the review it shall report the results and any remediation to the complainant Party within 45 days. If it finds that there is a Denial of Rights, the Parties shall consult in good faith for 10 days and shall endeavour to agree upon action to remediate the Denial of Rights without interrupting trade. If the Parties agree on a course of remediation, the respondent Party shall take action by the date agreed upon and no remedy shall be imposed by the complainant Party until the end of the agreed period.⁸⁵ If the Parties disagree on whether the Denial of Rights has been remediated, the complainant Party may write to the respondent Party of its intention to impose remedies at least 15 days prior to imposing remedies. The respondent Party may, within 10 days of receipt of the notice, request the Panel to determine whether the Denial of Rights persists under Article 31-A.5 or 31-B.5. The complainant Party may not impose remedies until the Panel's determination.⁸⁶ After conditions precedent for the establishment of a panel are met, the complainant Party may request the establishment of a Panel if it continues to have a good faith basis that a Denial of Rights is occurring at a Covered Facility (Article 31-A.5 and 31-B.5). Under Article 31-A.7 and 31-B.7 the Panel shall issue a request for verification and shall make a determination on whether there is a Denial of Rights within 30 days of conducting the verification or after it is constituted if there has been no verification. The Panel's determination shall be in writing and made public. The complainant Party may impose remedies if the Panel finds there is a Denial of Rights after providing written notice to the respondent Party at least five business days in advance (Article 31-A.9 and 31-B.9). Remedies may be taken under Article 31-A.10 and 31-B.10.

5.33. Annex 14-C deals with legacy investment claims and pending claims under NAFTA.⁸⁷ The Parties consent, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA and Annex 14-C of the Agreement alleging breach of an obligation under Section A of Chapter 11 of NAFTA or some provisions of NAFTA on monopolies and State enterprises. A Party's consent expires three years after the termination of NAFTA. An arbitration initiated pursuant to the submission of a claim under paragraph 1 of Annex 14-C or under Section B of Chapter 11 of NAFTA while it is still in force may proceed to its conclusion in accordance with Section B of Chapter 11 of NAFTA. The tribunal's jurisdiction with respect to such a claim is not affected by the expiry of consent or the termination of NAFTA.

5.34. Annex 14-D provides for a mechanism for the settlement of investment disputes between Mexico and the US while Annex 14-E modifies the mechanism for investment disputes related to covered Government contracts between Mexico and the US.

5.7 Relationship with other agreements concluded by the parties

5.35. Under Article 1.2 each Party affirms its existing rights and obligations with respect to each other under the WTO Agreements and other agreements to which it and another Party are party.

received by the government about a Covered facility in the other Party in 30 days. Mexico has not established such a process yet.

⁸⁴ Once it makes its request the complainant Party may delay final settlement of customs accounts for goods from the Covered facility. The settlement of accounts must be resumed immediately upon an agreement between the Parties that there is no denial of rights or a finding by a panel of no denial of rights.

⁸⁵ If the respondent Party determines that there is no denial of rights the complainant Party may either agree or if it disagrees it may communicate this in writing and may request a panel verification and determination pursuant to Article 31-A.5 or 31-B.5

⁸⁶ If the Parties cannot agree on remediation measures at the end of 10 days, the complainant Party may request a panel verification and determination pursuant to Articles 31-A.5 or 31-B.5.

⁸⁷ Legacy investment means an investment of an investor of another Party in the territory of the Party established or acquired between 1 January 1994 and the date of termination of NAFTA and in existence on the date of entry into force of the Agreement.

5.36. At least 3 months before commencing free trade agreement negotiations with a non-market country⁸⁸ a Party must inform the other Parties of its intentions to do so and shall provide, upon request, as much information as possible about the objectives for such negotiations. As early as possible and no later than 30 days before signature, a Party intending to sign an FTA with a non-market country shall provide the other Parties with an opportunity to review the text, annexes and any side letters of the FTA for them to be able to review the FTA and assess its potential impact on the Agreement. If a Party enters into an FTA with a non-market country the other two Parties may terminate the Agreement on six months' notice, and replace it with a bilateral agreement between them which shall include the provisions of the Agreement except those which the Parties agree shall no longer apply (Article 32.10).

5.37. Table 5.1 lists all other agreements to which the Parties are party.

Table 5.1 Canada, Mexico and the United States: participation in other RTAs (notified and non-notified in force), as of 2 August 2021

RTA Name	Date of entry into force ^a	Coverage	GATT/WTO Notification	
			Year	WTO Provisions
CANADA				
United Kingdom – Canada	01-Jan-21 01-Apr-21	Goods Services	2020 2021	GATT Art. XXIV GATS Art. V
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	30-Dec-18	Goods & Services	2018	GATT Art. XXIV & GATS Art. V
EU – Canada	21-Sep-17	Goods & Services	2017	GATT Art. XXIV & GATS Art. V
Canada – Ukraine	01-Aug-17	Goods	2017	GATT Art. XXIV
Canada - Republic of Korea	01-Jan-15	Goods & Services	2015	GATT Art. XXIV & GATS Art. V
Canada – Honduras	01-Oct-14	Goods & Services	2015	GATT Art. XXIV & GATS Art. V
Canada – Panama	01-Apr-13	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
Canada – Jordan	01-Oct-12	Goods	2013	GATT Art. XXIV
Canada – Colombia	15-Aug-11	Goods & Services	2011	GATT Art. XXIV & GATS Art. V
Canada – Peru	01-Aug-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
EFTA – Canada	01-Jul-09	Goods	2009	GATT Art. XXIV
Canada - Costa Rica	01-Nov-02	Goods	2003	GATT Art. XXIV
Canada – Chile	05-Jul-97	Goods & Services	1997	GATT Art. XXIV & GATS Art. V
Canada – Israel	01-Jan-97	Goods	1997	GATT Art. XXIV
MEXICO				
United Kingdom – Mexico	01-Jan-21	Goods & Services	2021	GATT Art. XXIV & GATS Art. V
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	30-Dec-18	Goods & Services	2018	GATT Art. XXIV & GATS Art. V
Pacific Alliance	01-May-16	Goods & Services	2016	GATT Art. XXIV & GATS Art. V
Mexico – Panama	01-Jul-15	Goods & Services	2016	GATT Art. XXIV & GATS Art. V
Mexico - Central America	01-Sep-12	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
Peru – Mexico	01-Feb-12	Goods & Services	2012	GATT Art. XXIV & GATS Art. V; Enabling Clause - Changes to LAIA TM 80

⁸⁸ A non-market country is defined by Article 32.10 as a country (a) that on the date of signature of the Agreement has been determined to be a non-market country by a Party for purpose of its trade remedy laws; and (b) with which no Party has signed a free trade agreement.

RTA Name	Date of entry into force ^a	Coverage	GATT/WTO Notification	
			Year	WTO Provisions
Mexico - Plurinational State of Bolivia	07-Jun-10	Goods	2019	Enabling Clause
Japan - Mexico	01-Apr-05	Goods & Services	2005	GATT Art. XXIV & GATS Art. V
Mexico - Uruguay	15-Jul-04	Goods & Services	2013	GATT Art. XXIV & GATS Art. V; Enabling Clause - Changes to LAIA TM 80
Brazil - Mexico	02-May-03	Goods	2019	Enabling Clause
MERCOSUR - Mexico [LAIA, AAP.CE 55]	01-Jan-03	Goods	2020	Enabling Clause - Changes to LAIA TM 80
EFTA - Mexico	01-Jul-01	Goods & Services	2001	GATT Art. XXIV & GATS Art. V
Mexico - Cuba	28-Feb-01	Goods	2019	Enabling Clause
Mexico - Guatemala [LAIA, AAP.A25TM 37]	05-Dec-00	Goods Services	2020 Not notified	Enabling Clause - Changes to LAIA TM 80
EU - Mexico	01-Jul-00 01-Oct-00	Goods Services	2000 2002	GATT Art. XXIV GATS Art. V
Israel - Mexico	01-Jul-00	Goods	2001	GATT Art. XXIV
Latin American Integration Association (LAIA) - Accession of Cuba	26-Aug-99	Goods	1999	Enabling Clause
Chile - Mexico	01-Aug-99	Goods & Services	2001	GATT Art. XXIV & GATS Art. V; Enabling Clause - Changes to LAIA TM 80
Colombia - Mexico	01-Jan-95	Goods & Services	2010	GATT Art. XXIV & GATS Art. V; Enabling Clause - Changes to LAIA TM 80
Global System of Trade Preferences among Developing Countries (GSTP)	19-Apr-89	Goods	1989	Enabling Clause
LAIA - Cultural Goods [LAIA, AAR.CEYC 7]	01-Jan-89	Goods	2020	Enabling Clause - Changes to LAIA TM 80
Argentina - Mexico	01-Jan-87	Goods	2019	Enabling Clause
LAIA- Preferences in favour of Paraguay [LAIA, AAR.AM 3]	01-Jul-84	Goods	2020	Enabling Clause - Changes to LAIA TM 80
LAIA - Agreement on Regional Tariff Preference [LAIA, AAR.PAR 4]	01-Jul-84	Goods	2020	Enabling Clause - Changes to LAIA TM 80
Mexico - Paraguay	01-Jan-84	Goods	2019	Enabling Clause
Ecuador - Mexico	01-May-83	Goods	2019	Enabling Clause
LAIA - Preferences in favour of Ecuador [LAIA, AAR.AM 2]	01-May-83	Goods	2020	Enabling Clause - Changes to LAIA TM 80
Latin American Integration Association (LAIA)	18-Mar-81	Goods	1982	Enabling Clause
Protocol on Trade Negotiations (PTN)	11-Feb-73	Goods	1971	Enabling Clause
LAIA - Accession of Panama	03-May-12	Goods	Not notified	
UNITED STATES				
United States - Panama	31-Oct-12	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
United States - Colombia	15-May-12	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
Republic of Korea - United States	15-May-12	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
United States - Peru	01-Feb-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
United States - Oman	01-Jan-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
United States - Bahrain	01-Aug-06	Goods & Services	2006	GATT Art. XXIV & GATS Art. V
Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR)	01-Mar-06	Goods & Services	2006	GATT Art. XXIV & GATS Art. V

RTA Name	Date of entry into force ^a	Coverage	GATT/WTO Notification	
			Year	WTO Provisions
United States – Morocco	01-Jan-06	Goods & Services	2005	GATT Art. XXIV & GATS Art. V
United States – Australia	01-Jan-05	Goods & Services	2004	GATT Art. XXIV & GATS Art. V
United States – Singapore	01-Jan-04	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
United States – Chile	01-Jan-04	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
United States – Jordan	17-Dec-01	Goods & Services	2002	GATT Art. XXIV & GATS Art. V
United States – Israel	19-Aug-85	Goods	1985	GATT Art. XXIV
United States – Japan	01-Jan-20	Goods & Services	Not notified	

a Dates of the first entry into force for at least one of the Parties.

Note: The LAIA reference is indicated in brackets for some RTAs notified as a change to LAIA's TM 80. Further details can be found at: <http://www.aladi.org>.

Source: WTO Secretariat. Further information on these Agreements and on specific dates of entry into force/provisional applications may be found in the WTO Database on RTAs: <http://rtais.wto.org>.

5.8 Government procurement

5.38. Chapter 13 applies between Mexico and the United States to measures relating to government procurement.⁸⁹ The substantive obligations in Chapter 13 generally accord with the substantive obligations in the revised WTO Agreement on Government Procurement.

5.39. Unless otherwise provided in Annex 13-A, and as in the GPA, the following are not covered:

- a. The acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
- b. Non-contractual agreements or any form of assistance that a Party or its procuring entities provides including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements;
- c. The procurement or acquisition of: fiscal agency or depository services; liquidation and management services for regulated financial institutions; or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- d. Public employment contracts; and
- e. Procurement conducted (i) for the specific purpose of providing international assistance, including development aid; (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops to the joint implementation by the signatory countries of a project; or (iii) under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance if the applicable procedure or condition would be inconsistent with the Chapter (Article 13.2).

5.40. The Chapter accords with the provisions in the GPA on valuation and exceptions, rules of origin, offsets and procurement by electronic means, and commits to national and non-

⁸⁹ Procurement of (a) of a good, service or any combination thereof as specified in a Party's Schedule to Annex 13-A; (b) by any contractual means, including: purchase; rental or lease, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts; (c) for which the value as estimated in accordance with paragraphs 9 and 10 of the Chapter equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 13-A, at the time of publication of a notice of intended procurement; (d) by a procuring entity; and (e) that is not otherwise excluded from coverage under the Agreement.

discriminatory treatment in procurement. Procuring entities shall use open tendering unless Articles 13.8 (Qualification of suppliers) or 13.9 (limited tendering) apply.

5.41. For covered procurement, the procedures and conditions for participation are similar to those in the WTO GPA. Paragraph 5 of Article 13.7 clarifies that the conditions for participation do not preclude a procuring entity from promoting compliance with laws in the territory in which the good is produced or the service is performed relating to labour rights as recognized by the Parties in Article 23.3 provided that the measures are applied in a manner that is consistent with Chapter 29 (publication and administration) and not in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction in their mutual trade. With regard to limited tendering the procedures are also similar to those in the WTO GPA.

5.42. Article 13.17 requires each Party to ensure that criminal, civil or administrative measures exist to address corruption, fraud and other wrongful acts in its government procurement. The measures may include procedures to debar, suspend or declare ineligible from participation in the Party's procurements for a stated period of time, a supplier that the Party has determined to have engaged in such activities. Article 13.17 provides guidelines on procedures that the Parties could follow in such cases. The Parties shall also put in place policies or procedures to address potential conflicts of interest for those involved in, or having an influence over, the procurement process. They may also include policies or procedures requiring successful suppliers to maintain and enforce effective internal controls, business ethics, and compliance programmes taking into account the size of the supplier, particularly SMEs, and other relevant factors. Procedures and requirements for domestic review are set out in Article 13.18 and accord with those in the WTO GPA.

5.43. Proposed modifications and rectifications to the Parties' Schedules in Annex 13-A shall be notified in writing through the Agreement Coordinator designated under Article 30.5. As in the GPA a Party whose rights may be affected by the proposed modification shall notify any objection to the other Party within 45 days of the notification and the modifying and objecting Parties shall make every effort to resolve the objection through consultations. Compensatory adjustments shall be provided, if necessary, to maintain a level of coverage comparable to that which existed prior to the modification (Article 13.19).

5.44. Specific provisions are made to facilitate participation by SMEs including: the provision of comprehensive information on procurement including a definition of SMEs in a single electronic portal; endeavour to make all tender documentation available free of charge; conduct procurement electronically or through other new information and communication technologies; and consider the size, design and structure of the procurement, including the use of subcontracting by SMEs. Any measures that provide preferential treatment for SMEs, including any eligibility criteria, shall be transparent (Article 13.20).

5.45. The Chapter also establishes a Committee on Government Procurement which shall meet upon request by a Party to address matters related to the operation and implementation of the Chapter.

5.46. The United States and Canada are party to the GPA; Mexico is neither a party nor an observer to the GPA. The thresholds for procurement established in the Chapter are based upon the same values in the NAFTA, but they reflect adjustments for inflation. The United States' thresholds under the GPA are substantially higher than under the Chapter (Table 5.2). The thresholds are to be adjusted following the formula provided in Section G of Annexes 13-A and 13-B. Mexico and the United States list central government and other entities covered by the Agreement in Annexes 13-A and 13-B respectively.⁹⁰

⁹⁰ There are several exceptions to procurement by the entities covered, including procurement of fuel and gas by PEMEX, certain textiles and clothing products and agricultural products, as well as certain goods procured by the Ministries of Defence and Navy and certain services by Mexico and procurement of agricultural goods related to agricultural support or human feeding programmes, certain goods procured by the Department of Defence procured by the Department of Energy as well as certain goods procured by the Department of Homeland Security in the United States.

Table 5.2 Government procurement: thresholds, USD

	Entities	Procurement of	Mexico	United States
Agreement	Central govt entities	Goods and services	80,317	80,317
		Construction services	10,441,216	10,441,216
	Other entities	Goods and services	401,584	401,584
		Construction services	12,851,327	12,851,327
NAFTA	Central government entities	Goods and services	50,000	50,000
		Construction services	6,500,000	6,500,000
	Government enterprises	Goods and services	250,000	250,000
		Construction services	8,000,000	8,000,000
GPA	Central govt entities	Goods and services	n.a.	182,000
		Construction services	n.a.	7,008,000
	Sub-central government entities	Goods and services	n.a.	498,000
		Construction services	n.a.	7,008,000

n.a. not applicable.

Source: Annexes 13-A and 13-B of the Agreement, WTO Agreement on Government Procurement and Chapter 10 of the North American Free Trade Agreement.

5.9 Intellectual property rights

5.47. Chapter 20 on intellectual property rights (IPRs) builds on provisions in the TRIPS Agreement and NAFTA. Its obligations include providing to nationals of another Party adequate and effective protection and enforcement of IPRs while ensuring that the enforcement measures themselves do not become a barrier to trade. It aims to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, drawing from the TRIPS Agreement (Article 20.2). As under the NAFTA, a Party may, but is not obliged to, provide more extensive protection for, or enforcement of, IPRs under its law than is required by the Chapter as long as this does not contravene the Agreement (Article 20.5). The Parties also affirm their ratification of, or accession to, International Agreements listed in Article 20.7 and affirm their commitments regarding public health measures, in particular those related to the Declaration on TRIPS and Public Health (Article 20.6).

5.48. The Parties under Article 20.8 commit to providing national treatment to each other's nationals in respect of intellectual property protection and enforcement although derogation is permitted under certain circumstances. They agree to endeavour to publish online their laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of IPRs as well as information concerning applications for trademarks, geographical indications, designs, patents and plant variety rights (Article 20.9). Further measures on transparency include the establishment of contact points for cooperation (Article 20.12); agreement to endeavour to cooperate on subject matters covered by the Chapter (Article 20.13); and the establishment of a Committee on Intellectual Property Rights to exchange information on IPR matters, work towards strengthening border protection of IPRs through promotion of collaborative operations and sharing best practices, exchange information regarding trade secret-related matters, discuss proposals to enhance procedural fairness in patent litigation, including with respect to choice of venue, and upon request, endeavour to reach a mutually acceptable solution before taking measures on future requests of recognition or protection of a geographical indication from any third country through a trade agreement (Article 20.14).⁹¹

5.49. Section C on trademarks, includes provisions on the kinds of signs to be covered, collective and certification marks, the use of identical or similar signs, limited exceptions to the rights conferred by a trademark, and well-known trademarks (Articles 20.17-20.21). The Parties will provide a system for the examination and registration of trademarks as provided by Article 20.22. They shall also provide an electronic trademarks system which is publicly available (Article 20.23). The ten-year term of protection is the same as under the NAFTA, but more than the seven years under the TRIPS Agreement.

⁹¹ The Committee shall meet annually unless otherwise decided by the Parties.

5.50. In Section E on geographical indications (GIs), the Parties recognize that GIs may be protected through trademarks or a *sui generis* system or other legal means. Administrative procedures for the protection or recognition of GIs, whether through a trademark or a *sui generis* system, must include certain transparency and due process elements, described in Article 20.30. Such administrative procedures must also allow interested persons to object to the protection or recognition of a GI on the grounds given in Article 20.31. The date of protection for a GI under the procedures in Article 20.30 shall be no earlier than the filing date or registration date in the Party (Article 20.34). A side letter between the United States and Mexico recognizes "prior users" under the Mexico-European Union Global Agreement.⁹²

5.51. With regard to patents, the definition of patentable subject matter is unchanged from the NAFTA (Article 20.36), with limited exceptions provided under Article 20.39.⁹³ Furthermore nothing in the Chapter limits the Parties' rights and obligations under Article 31 of the TRIPS Agreement and any waiver or amendment to the Article accepted by the Parties (Article 20.40). For new agricultural chemical products,⁹⁴ Article 20.45 guarantees protection of undisclosed test or other data from third parties for at least 10 years from the date of marketing approval of the new product. Article 20.46 requires the Parties to make available an adjustment of the patent term for pharmaceutical products (including through a period of additional *sui generis* protection) to compensate the patent holder for unreasonable curtailment of the effective patent term due to the marketing approval process. In implementing this obligation, the Parties may impose conditions and limitations.⁹⁵ Article 20.47, provides an exception to allow third persons to make, use, sell, offer to sell or import in the territory of the Party a patented product solely to generate information to meet requirements for marketing approval of the product. Any undisclosed data that is required to be submitted as a condition for granting marketing approval for a new pharmaceutical product⁹⁶ is protected from third parties for at least five years from the date of marketing approval (Article 20.48). Article 20.50 requires the Parties to provide measures that promote the early resolution of potential pharmaceutical patent disputes. As an alternative to Article 20.50, Annex 20-A permits Mexico to maintain a system other than judicial proceedings that precludes the issuance of marketing approval to any third person to market a pharmaceutical product, including through direct coordination between the marketing approval authority and the patent office. The Parties may take measures to protect public health in accordance with the Declaration on TRIPS and Public Health as well as any waivers or amendments to the TRIPS Agreement to implement the Declaration (Article 20.48).

5.52. Industrial designs shall be protected consistent with the provisions of the TRIPS Agreement for a period of 15 years from either the date of filing or the date of granting the protection (compared to 10 years under the NAFTA) (Section G).

5.53. With regard to copyright and related rights, protection is extended to at least the life of the author and 70 years after the death of the author; or 75 years from the end of the calendar year of the first authorized publication of a work, performance or phonogram, or if not published within 25 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram (compared to 50 years in the NAFTA) (Article 20.62). Article 20.66 provides for legal protection and legal remedies

⁹² MX-US Side Letter on Prior Users, dated 30 November 2018. The Side Letter describes prior users as any natural or legal persons, including their successors and assignees, who have used the corresponding term in good faith, in Mexico, in any of the following activities: production, distribution, marketing, importation and exportation to Mexico of cheeses. Mexico also confirms that with respect to some terms, "prior users" only refers to persons having used the term in a continuous manner, prior to the agreement in principle between Mexico and the European Union.

⁹³ Limited exceptions may be provided, if the exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties (Article 20.39).

⁹⁴ Defined as one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

⁹⁵ Such conditions may include: (i) limiting compensation to a single patent term adjustment for each product that has been granted marketing approval; (ii) requiring the adjustment to be made on the first marketing approval granted to the product in the Party; (iii) limiting the period of adjustment to a maximum of five years; and (iv) limiting the period of any additional *sui generis* protection to a maximum of two years (Article 20.46).

⁹⁶ Defined as a pharmaceutical product that does not contain a chemical entity that has been previously approved in that Party (Article 20.49).

against the circumvention of effective technological measures⁹⁷ that authors, performers and producers of phonograms use, while Article 20.67 has provisions to provide adequate and effective legal remedies to protect rights management information.

5.54. Section I ensures that persons are provided legal means to prevent trade secrets that are lawfully in their control from being disclosed to, acquired or used by others (including state-owned enterprises) without their consent. The Parties shall provide civil judicial procedures to address trade secret misappropriation, as well as criminal procedures and penalties for the unauthorized and wilful misappropriation of trade secrets (Articles 20.70 and 20.71).

5.55. Section J deals with enforcement and includes civil and administrative procedures and remedies and criminal procedures and penalties (Articles 20.81 and 20.84). Article 20.83 provides for *ex officio* action at the border against suspected counterfeit trademark goods or pirated copyright goods under customs control that are imported, destined for export, in transit and admitted into or exiting from a free trade zone or a bonded warehouse. Article 20.85 provides for the protection of encrypted programme-carrying satellite and cable signals, including by imposing criminal penalties and civil remedies. The Parties also recognize the importance of facilitating the continued development of legitimate online services operating as intermediaries and, accordingly, shall provide legal remedies for right holders to address copyright infringements and shall establish or maintain appropriate safe harbours for Internet Service Providers (Article 20.88).⁹⁸

5.56. Finally Article 20.89 on final provisions relates to transition periods provided to Mexico to meet its obligations under the Chapter (between 3 and 5 years from the date of entry into force of the Agreement), and Canada (between 2.5 and 4.5 years).

5.10 Competition

5.57. The Parties shall maintain national competition laws that proscribe anti-competitive business conduct to promote competition so as to increase economic efficiency and consumer welfare and to take appropriate action in that regard. They shall endeavour to apply their competition laws to all commercial activities in their territories; they may also apply their national competition laws to commercial activities outside their borders that have an appropriate nexus to their jurisdiction. Exemptions from the application of national competition laws may be applied provided they are transparent, established in the Party's national law, and based on public interest or public policy grounds. The Parties will also maintain a national competition authority or authorities to enforce national competition policy.⁹⁹

5.58. Article 21.2 on procedural fairness requires the Parties to provide transparency, regarding their applicable competition laws, regulations and procedural rules under which competition law investigations and enforcement is conducted; conduct investigations within a set or reasonable time-frame if the investigations are not subject to definitive deadlines; afford a person a reasonable opportunity to be represented by legal counsel; recognize lawful communications between the legal counsel and the person as confidential; and permit early consultations between the national competition authority and any merging persons to provide their views concerning the transaction. All information gathered by the authorities in their investigations and merger reviews that is protected by the law is to be treated as confidential and not disclosed subject to applicable legal exceptions. All final decisions in contested civil or administrative matters that find a violation of national competition law shall be set out in writing, indicating the findings of fact and conclusions of law on which they are based. Final decisions shall be made public, except for any confidential material. Before applying any sanctions or remedies on a person for violation of national competition laws, a Party must afford reasonable opportunity to that person to obtain information regarding the national authority's concerns; engage with the authority at key points on significant legal, factual and procedural issues; have access to information necessary to prepare an adequate defence; be

⁹⁷ Defined as a technology, device or component that, in the normal course of its operation, controls access to a protected work, performance or phonogram, or protects copyrights or related rights (Article 20.66).

⁹⁸ Internet Service Provider is defined in Article 20.87.

⁹⁹ Enforcement by a Party will: ensure that persons of another Party are treated no less favourably than persons of the Party in like circumstances; consider, if applicable, the effect of enforcement activities on related enforcement activities by a national competition authority of another Party; and limit remedies to conduct or assets outside the Party's territory to situations in which there is an appropriate nexus to harm or threatened harm affecting the Party's territory or commerce.

heard and present evidence in its defence; cross examine any witness testifying in an enforcement proceeding; and contest an allegation that the person has violated national competition laws.¹⁰⁰ The Parties must also provide for an opportunity to persons who have been subject to a fine, sanction or remedies, the opportunity to seek judicial review through a court or independent tribunal, including review of alleged substantive or procedural errors, unless the person voluntarily agrees to the imposition of the fine, sanction or remedy.

5.59. The Parties shall seek to further strengthen cooperation and coordination between their respective national competition authorities, particularly on commercial practices that hinder market efficiency and reduce consumer welfare within the free trade area. Their national competition authorities shall also seek to cooperate on their national competition policies and enforcement of their competition laws, which may include coordination of investigations that raise common law enforcement concerns. Other provisions on cooperation include the sharing of experiences and considering undertaking agreed technical cooperation activities, including training. The Parties acknowledge the importance of international cooperation at multilateral organizations such as in the Competition Committee of the OECD and the International Competition Network (Article 21.3). Article 21.5 ensures transparency, including the provision to a Party, upon request, of public information on national competition law enforcement policies and practices, and any exemptions from and immunities to national competition laws.

5.60. Each Party shall maintain national consumer protection laws or other laws or regulations proscribing fraudulent and deceptive commercial activities, recognizing that the enforcement of these criminal or civil laws is in the public interest. The Parties recognize that fraudulent and deceptive commercial activities transcend national boundaries and that cooperation and coordination is in the public interest. The Parties agree to promote, as appropriate, cooperation and coordination on matters of mutual interest relating to fraudulent or deceptive commercial activities (Article 21.4).

5.61. Consultations, upon request from a Party, are envisaged under Article 21.6 to foster understanding between the Parties, or to address specific matters arising from the Chapter. The Chapter on competition is not subject to the dispute settlement provisions under the Agreement in Chapter 31, nor Chapter 14 on Investment (Article 21.7).

5.11 State-owned enterprises and designated monopolies

5.62. Chapter 22 applies to the activities (or delegated regulatory, administrative or other governmental authority) of State-owned enterprises (SOEs), State enterprises or designated monopolies of a Party that affect or could affect trade or investment between the Parties within the free trade area or that cause adverse effects in the market of a non-party¹⁰¹ except:

- a. Regulatory or supervisory activities or monetary and related credit policy and exchange rate policy, of a central bank or monetary authority of a Party;
- b. The regulatory or supervisory activities of a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency or other organization or association, that exercises regulatory or supervisory authorities over financial services suppliers;
- c. Activities undertaken by a Party or one of its State enterprises or state-owned enterprises for the purpose of the resolution of a failing or failed financial institution or other failing or failed enterprise principally engaged in the supply of financial services;
- d. An independent pension fund of a Party;
- e. An enterprise owned or controlled by an independent pension fund of a Party except the provisions on non-commercial assistance (Articles 22.6.1, 22.6.2, 22.6.4, and 22.6.6) apply (i) only to a Party's direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund, and (ii) only to a Party's

¹⁰⁰ As an exception the Party may provide for these opportunities within a reasonable period of time after it imposes an interim measure.

¹⁰¹ Adverse effects are described in Article 22.7

indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund; and

f. Government procurement.

5.63. The Chapter also applies to State Productive Enterprises (SPEs) referred to in the Decree Amending the Political Constitution of the United Mexican States (the Decree) of 20 December 2013 as well as subsidiaries and affiliates of the SPEs. It does not apply to special purpose vehicles (SPVs) except for paragraphs 3 and 4 of the Annex 22-E which contain rules on SPVs.¹⁰²

5.64. Nothing in the Chapter shall be construed to prevent a Party from establishing or maintaining a State enterprise or an SOE or designating a monopoly. In addition, provisions on non-discriminatory treatment (Article 22.4) do not apply to the extent that a Party's SOE or designated monopoly makes purchases and sales of goods or services pursuant to: (a) an existing non-conforming measure that the Party maintains, continues, renews, or amends in accordance with Articles 14.12.1, 15.7.1, or 17.10.1, in its Schedule to Annex I or in Section A of its Schedule to Annex III; or (b) a non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors or activities in accordance with Articles 14.12.2, 15.7.2 or 17.10.2 in its Schedule to Annex II or in Section B to its Schedule to Annex III (Article 22.2). Exceptions are also contained in Article 22.13. Measures to respond temporarily to a national or global economic emergency are permitted. The supply of financial services by a SOE pursuant to a government mandate if the service supports certain exports or imports, or private investment outside the territory of the Party, under certain conditions, is carved-out from the non-discrimination and commercial considerations provisions.

5.65. Article 22.6 on non-commercial assistance does not apply to an enterprise located outside the territory of a Party over which an SOE of that Party has assumed temporary ownership due to a foreclosure or similar action related to a defaulted debt or payment of an insurance claim by an SOE associated with the financial services mentioned in paragraph 5.62 above, provided that any support provided by the Party, the state enterprise or SOE during the period of temporary ownership is provided to recoup the SOEs investment under a restructuring or liquidation plan that will result in divestment of the enterprise. Finally, Articles 22.4 (non-discriminatory treatment and commercial considerations), 22.6 (non-commercial assistance), 22.10 (transparency) and 22.12 (Committee on SOEs and designated monopolies) do not apply to an SOE or designated monopoly if in any one of the three previous consecutive fiscal years, the annual revenue from its commercial activities was less than a threshold to be calculated in accordance with Annex 22-A.

5.66. Non-discriminatory treatment and commercial considerations apply to SOEs when engaging in commercial activities or designated monopolies, subject to the provisions of Article 22.4. Article 22.6 prohibits certain non-commercial assistance if provided to an SOE primarily engaged in the production or sale of goods other than electricity and the construction of general infrastructure subject to the conditions in footnote 13.¹⁰³ Non-conforming activities to which the obligations under Articles 22.4 and 22.6 will not apply are listed in Annex IV to the Agreement. Each Party shall furthermore ensure that the Party, its state enterprises and SOEs do not cause adverse effects to the interests of another Party through the use of direct or indirect non-commercial assistance provided to its SOEs with respect to: (a) the production and sale of a good by an SOE; (b) the supply

¹⁰² Mexico will ensure that SPVs are established as a result of competitive processes under its laws and regulations applicable to SPEs; pursue commercial activities on equal circumstances and conditions available to competitors on a level playing field with no intention of displacing or impeding competitors from the relevant market; be aimed at generating economic value and profitability under commercial conditions; follow generally accepted accounting principles and international corporate governance rules such as G20/OECD Principles of Corporate Governance; and act in accordance with rules on non-discriminatory treatment and commercial considerations (Article 22.4), courts and administrative bodies (Article 22.5) and non-commercial assistance (Article 22.6). Mexico shall also provide information on the SPV and any assistance provided to it, to the extent reasonably available, if it is requested in accordance with the relevant provisions on transparency (Article 22.10).

¹⁰³ The prohibited assistance includes loans or loan guarantees provided by a state enterprise or an SOE of a Party to an uncreditworthy SOE of that Party; non-commercial assistance by a Party, a state enterprise or an SOE of a Party to an SOE of that Party in circumstances where the recipient is insolvent or on the brink of insolvency without a credible restructuring plan to return the SOE to long term viability within a reasonable period of time; and conversion by a Party or a state enterprise or an SOE of a Party of the outstanding debt of an SOE of that Party to equity, in circumstances where this would be inconsistent with the usual investment practice of a private investor.

of a service by an SOE from the territory of the Party into the territory of another Party; or (c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party. No Party shall cause injury to a domestic industry of another Party through the use of direct or indirect non-commercial assistance to an SOE that is a covered investment in the territory of the other Party in circumstances in which (a) the non-commercial assistance is provided for the production and sale of a good by the SOE in the territory of the other Party; and (b) a like good is produced and sold in the territory of the other Party by the domestic industry of that other Party.¹⁰⁴

5.67. Article 22.10 requires each Party to provide to the other Parties or publish on an official website a list of its SOEs no later than six months after entry into force of the Agreement; the list shall be updated annually thereafter. Each Party must also notify the other Parties promptly or publish on a website, the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation and provide information on the provision of any non-commercial assistance or any equity capital to SOEs upon a written request from a Party.¹⁰⁵ If appropriate, and subject to available resources, the Parties shall mutually decide on technical cooperation activities (Article 22.11).

5.68. In certain circumstances, each Party's courts have jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign Government based on a commercial activity carried out in its territory (Article 22.5). This shall not be construed to require a Party to provide jurisdiction over those claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

5.69. A Committee on State-Owned Enterprises and Designated Monopolies shall review and consider the operation and implementation of the Chapter or any other matter raised by a Party, and develop cooperative efforts to promote the principles underlying the disciplines in the Chapter. It shall meet within one year of the Agreement entering into force, and at least annually thereafter, unless decided otherwise by the Parties (Article 22.12). The Committee held its first meeting on April 12, 2021.

5.70. Finally, further negotiations are foreseen under Annex 22-C within six months from the date of entry into force of the Agreement. The Parties have held two rounds of discussions so far. The negotiations aim to extend the application of the obligations of the Chapter to the activities of SOEs owned or controlled by a sub-central level of government if the obligations are listed in Annex 22-D¹⁰⁶ and to extend the disciplines of the Chapter on non-commercial assistance (Article 22.6) and adverse effects (Article 22.7) to address effects caused in a market of a] non-party of the supply of services

¹⁰⁴ A service supplied by an SOE of a Party within that Party's territory shall be deemed to not cause adverse effects. Adverse effects in relation to non-commercial assistance are defined in Article 22.7 while injury, including the determination of material injury, is defined in Article 22.8.

¹⁰⁵ The information to be provided on SOEs and government monopolies includes details of the shares held by the Party, its state enterprises, SOEs or designated monopolies, the government titles of any government official serving on the board of directors, annual revenue and total assets of the entity for the most recent three year period available, any exemptions or immunities from the law provided to the entity, and any additional publicly available information. The information to be provided on a Party's policy or programme includes the form of the non-commercial assistance provided, the names of the government agencies or SOEs providing and receiving the assistance, the legal basis and policy objective of the programme, the amount per unit of the assistance for goods and the annual budgeted amount for services, the amount of the loan or the amount invested, details of the shares received and any assessment of the financial health and prospects of the enterprise, duration of the policy or programme and statistical data permitting an assessment of the effects of the non-commercial assistance.

¹⁰⁶ The provisions are for all three Parties: non-discriminatory treatment and commercial considerations (Articles 22.4.1(a)-(c)(i)); non-discriminatory treatment and commercial consideration for monopolies designated by a sub-central level of government (22.4.2); courts and administrative bodies with respect to administrative regulatory bodies established or maintained by a sub-central level of government (22.5.2); non-commercial assistance (22.6.1-22.6.3); non-commercial assistance (22.6.4(a)) and non-commercial assistance for the production and sale of a good in competition with a like good produced and sold by a covered investment (22.6.5(a)), non-commercial assistance (22.6.4(b) and (c), 22.6.5(b) and (c) and 22.6.6), and transparency (Article 22.10.1); Canada has additional transparency provisions which do not apply under Articles 22.6.6 and 22.10.4.

by an SOE. The Parties shall meet every three months and endeavour to complete negotiations within three years of entry into force of the Agreement.

5.12 Environment

5.71. Chapter 24 on the environment, while recognizing the sovereign right of each Party to establish its own level of domestic environmental protection, and priorities, and to establish, adopt or modify its environmental laws and policies as appropriate, agrees that it is inappropriate to establish or use environmental laws or other measures in a manner which would constitute a disguised restriction on mutual trade or investment. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection, and to continue to improve its respective levels of environmental protection (Article 24.3). In the event of any inconsistency under the Agreement and the environment and conservation agreements listed in Article 1.3, a Party's obligations under the Agreement shall not preclude it from taking a measure to comply with its obligations under the listed agreements provided that the primary purpose of the measure is not to impose a disguised restriction on trade.¹⁰⁷

5.72. No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties following the entry into force of the Agreement. However, they have discretion to make decisions regarding investigatory, prosecutorial, regulatory and compliance matters; and the allocation of environmental enforcement resources for other environmental laws which have higher priority.¹⁰⁸ In accordance with the recognition that it is inappropriate to encourage trade or investment by weakening or reducing protection provided by environmental laws, a Party shall not waive (or offer to waive) or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties (Article 24.4).

5.73. Public awareness of environmental laws and policies and enforcement and compliance procedures is to be promoted by making relevant information available to the public and by enabling cooperation and a written exchange of views on the implementation of the Chapter (Article 24.5). The Parties will ensure that interested persons may request the competent authorities to investigate alleged violations of environmental laws; the requests shall be given due consideration, in accordance with their laws. Administrative, quasi-judicial, or judicial proceedings for the enforcement of environmental laws shall be ensured as will fair, equitable, transparent proceedings, that comply with due process of law (Article 24.6).¹⁰⁹ Article 24.6 also envisages that the parties to the proceedings have the right to review, and if warranted, to correct or redetermine final decisions of the proceedings. The Article also provides that each Party shall provide appropriate sanctions or remedies for violations of the Parties' environmental laws.

5.74. Appropriate procedures are to be maintained for the environmental impact assessment of proposed projects that are subject to an action by the central level of government that may cause significant effects on the environment, with a view to avoiding, minimizing or mitigating adverse effects (Article 24.7)¹¹⁰; the Parties must implement the multilateral environmental agreements (MEAs) to which they are party and adopt, maintain and implement laws, regulations and measures necessary to meet their obligations under MEAs listed in Article 24.8.¹¹¹ They also agree to consult and cooperate as appropriate on environmental issues of interest, in particular trade related issues, relating to relevant MEAs. Commitments are also in place for the protection of the ozone layer

¹⁰⁷ The environmental agreements listed in Article 1.3 may be amended pursuant to Article 34.3 (amendments) of the Agreement.

¹⁰⁸ Thus, the Parties understand that with respect to the enforcement of environmental laws, a Party is in compliance with the commitments above if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

¹⁰⁹ The hearings shall be open to the public except when the administration of justice decides otherwise; the final decisions on the merits of the case be provided in writing; made available to the parties to the proceedings without delay; and be based on information or evidence presented by the parties to the proceedings and in accordance with the Parties' laws.

¹¹⁰ Each Party shall ensure that such procedures provide for the disclosure of information to the public and, in accordance with its law, allow for public participation.

¹¹¹ Further clarification with respect to the Ramsar Convention is provided in a side letter between Mexico and the United States (Side Letter on the Ramsar Convention, dated 10 December, 2019).

including measures to control the production, consumption and trade in, substances controlled by the Montreal Protocol; public participation and consultation in the development and implementation of measures concerning the protection of the ozone layer; and cooperation, including in the areas listed in Article 24.9.3, to address matters of mutual interest related to such substances. The Parties also commit to taking measures to prevent the pollution of the marine environment from ships (Article 24.10), air pollution (Article 24.11) and to reduce marine litter (Article 24.12).

5.75. Each Party shall encourage enterprises organized or constituted under its laws, or operating in its territory, to adopt and implement voluntary best practices of corporate social responsibility related to the environment, such as those in internationally recognized standards and guidelines that the Party has endorsed, to strengthen coherence between economic and environmental objectives (Article 24.13). The use of flexible, voluntary mechanisms to protect the environment and natural resources is also encouraged (Article 24.14). Other provisions deal with trade and biodiversity (Article 24.15), invasive alien species (Article 24.16), marine wild capture fisheries (Article 24.17) sustainable fisheries management, conservation of marine species, fisheries subsidies and IUU fishing (Articles 24.18-21), conservation and trade (Article 24.22), sustainable forest management and trade (Article 24.23), environmental goods and services (Article 24.24), and environmental cooperation (Article 24.25).

5.76. Article 24.26 establishes an Environment Committee and contact points for each Party. The Environment Committee shall meet within one year of the date of entry into force of the Agreement, and thereafter, every two years unless it agrees otherwise. The Committee will oversee implementation of the Chapter and, among other functions provide a forum to discuss and review implementation of the Chapter. It will periodically inform the Commission and the Council for the Commission for Environmental Cooperation (Council) originally established under the North American Agreement on Environmental Cooperation (NAAEC) in 1993 and continued under the Agreement on Environmental Cooperation (ECA), regarding the implementation of the Chapter. The Council, along with a Secretariat and a Joint Public Advisory Committee are part of the Commission (Article 2 of the ECA) and shall convene at least once a year in regular session unless decided otherwise and in special session at the request of any Party (Article 3 of the ECA). The Council may also establish ad hoc or standing committees, working groups or expert groups, such as the Traditional Ecological Knowledge (TEK) Expert Group¹¹², seek the advice of non-governmental organizations or persons, or take other actions (Article 3 of the ECA). The Council shall also undertake a review of the implementation of the ECA with a view to improving its operation and effectiveness within five years of its entry into force of the ECA (Article 4 of the ECA). It may also periodically exchange information with the Environment Committee under Article 24.26 of the Agreement. The Secretariat shall provide technical, administrative and operational support to the Council and the committees or working or expert groups and other support required by the Council. The Joint Public Advisory Committee may provide advice to the Council on matters within the scope of the ECA and other functions as directed by the Council. Under Article 10 of the ECA, the Council shall develop and approve strategic priorities for the Commission and define a Work Programme, including specific goals, objectives, and areas for cooperation.¹¹³ (Article 11 of the ECA).

5.77. An Environment Cooperation and Customs Verification Agreement between the US and Mexico aims to strengthen cooperation and enforcement of environmental laws related to the obligations under Chapter 24. The Agreement establishes cooperation provisions for customs verification related to trade in illegally taken wild flora and fauna, including transshipment; fishing practices; and harvesting of forest products.¹¹⁴

¹¹² The mandate of the TEK expert Group, established under the CEC, is to identify opportunities to apply Traditional Environmental Knowledge to the CEC's operations and policy recommendations. The TEK Expert Group is the first traditional ecological knowledge panel to contribute to an intergovernmental organization like the CEC.

¹¹³ The Work Programme may include cooperative activities such as strengthening environmental governance; reducing pollution and supporting strong, low emissions, resilient economies; conserving and protecting biodiversity and habitats; promoting the sustainable management and use of natural resources; and supporting green growth and sustainable development.

¹¹⁴ *Environment Cooperation and Customs Verification Agreement between the United States and Mexico.*

5.13 Labour

5.78. The Parties reaffirm their obligations as members of the International Labour Organization (ILO) including those stated in the ILO Declaration on Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization (2008). They recognize the important role of workers' and employers' organizations in protecting internationally recognized labour rights and the goal of trading only in goods produced in compliance with Chapter 23. The Parties shall adopt and maintain in their statutes and regulations and practices thereunder, a number of rights included in the ILO Declaration on Rights at Work¹¹⁵ and statutes and regulations and practices for acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health (Article 23.3.2).

5.79. The Parties recognize under Article 23.4 that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws. They shall not therefore, in a manner affecting trade or investment, derogate from or offer to waive their statutes and regulations implementing labour rights (Article 23.3.1) if the derogation is inconsistent with these rights; and implementing Articles 23.3.1 and 23.3.2 if the waiver or derogation would weaken or reduce adherence to a right or condition of work set out in Articles 23.3.1 and 23.3.2 in a special trade or customs area (such as export processing or foreign trade zones) in their territories.¹¹⁶

5.80. The Parties shall not fail to enforce their labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.¹¹⁷ A decision made by any Party on the provision of enforcement resources cannot be used as an excuse to not comply with the obligations under the Chapter although each Party maintains discretion on enforcement and to make *bona fide* decisions on the distribution of enforcement resources between the labour enforcement activities that are the subjects of Articles 23.3.1 and 23.3.2 provided that the exercise of the discretion and decisions taken are not inconsistent with its obligations under the Chapter.¹¹⁸

5.81. Import of goods into the Parties' territories from other sources produced in whole or in part by forced or compulsory labour including forced or compulsory child labour is prohibited. The Parties shall establish cooperation for the identification and the movement of goods produced by forced labour (Article 23.6). Recognizing the rights of workers and labour organizations to exercise labour rights, the Parties shall address violence or threats of violence against workers directly related to exercising or attempting to exercise the labour rights identified in the Chapter, in a manner affecting trade or investment between the Parties (Article 23.7). They shall also ensure that migrant workers (both nationals and non-nationals of a Party) are protected under their labour laws (Article 23.8). With the goal of eliminating discrimination in employment and occupation, and support the goal of promoting equality of women in the workplace each Party shall implement policies that it considers appropriate to protect workers against employment discrimination on the basis of sex (including with regard to sexual harassment), pregnancy, sexual orientation, gender identity and caregiving responsibilities; provide job-protected leave for birth or adoption of a child and care of family members; and protect against wage discrimination (Article 23.9).

¹¹⁵ These include freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; the effective abolition of child labour and for the purposes of the Agreement, a prohibition on the worst forms of child labour; and the elimination of discrimination in employment and occupation (Article 23.3.1).

¹¹⁶ The Article defines a waiver or derogation "in a manner affecting trade or investment between the Parties" as involving: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

¹¹⁷ A course of action or inaction is "sustained" if it is consistent or ongoing, and is "recurring" if it occurs periodically or repeatedly and when the occurrences are related or the same in nature. A course of action or inaction does not include an isolated instance or case (Article 23.5).

¹¹⁸ Nothing in the Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of another Party (23.5.4).

5.82. Public awareness and procedural guarantee provisions in Article 23.10 require the publication of information on labour laws and enforcement and compliance procedures; as well as ensuring appropriate access to tribunals for enforcement of labour laws as provided for in each Party's laws.

5.83. A Labour Council is established and shall meet within one year from the date of entry into force of the Agreement and every two years thereafter, unless the Parties decide otherwise. It shall review the operation and effectiveness of the Chapter during the fifth year after the date of entry into force of the Agreement, or as otherwise decided by the Parties; it may thereafter hold reviews as decided by the Parties. The Labour Council held its first meeting on 29 June 2021. Contact points were to be designated 60 days upon entry into force of the Agreement to address matters related to the Chapter.

5.84. There are various channels for the settlement of disagreements. A Party may request dialogue with another Party on any matter arising under Chapter 23 at any time through a written request to the contact point established by that Party.¹¹⁹ Unless the dialoguing Parties decide otherwise, dialogue must commence within 30 days of a Party's receipt of a request for dialogue. If the dialoguing Parties resolve the matter, they shall document the outcome, including, if appropriate, specific steps and timelines that they have decided upon and make the outcome available to the public, unless they decide otherwise. Article 23.17 envisages consultations between the Parties to arrive at a mutually satisfactory resolution of any matter arising under the Chapter through written requests by a Party. The consultations may be held without prejudice to the commencement or continuation of a cooperative labour dialogue under Article 23.13. Unless the consulting Parties decide otherwise, the consultations shall be held within 30 days of the request and the Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter. Failing resolution, they may make a written request to their relevant Ministers or their designees to convene to consider the matter. If they in turn are unable to resolve the matter within 75 days of the request, or any other period agreed by the consulting Parties, the requesting Party may request the establishment of a Panel under the Agreement's dispute settlement mechanism in Chapter 31. However, the Parties must first seek to resolve the matter in accordance with Article 23.17. In addition, Annexes 31-A and 31-B provide for a Facility-Specific Rapid Response Labour Mechanism respectively, between Mexico and the United States and between Canada and Mexico.

5.14 Electronic commerce

5.85. Provisions on electronic commerce are found in Chapter 19 on digital trade. It applies to measures adopted or maintained by the Parties that affect trade by electronic means but does not apply to government procurement or to information held or processed by or on behalf of the Parties or measures relating to that information or its collection (except for Article 19.18 on Open Government Data).¹²⁰

5.86. Customs duties, fees or other charges in connection with imports or exports of digital products transmitted electronically between persons of the Parties, shall not be imposed by the Parties; internal taxes, fees or other charges may be imposed on a digital product transmitted electronically, provided they are imposed in a manner that is consistent with the Agreement (Article 19.3).

5.87. Article 19.4 ensures non-discriminatory treatment by the Parties of digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or digital products of which the author, performer, producer, developer or owner is a person of another Party.¹²¹ There are also provisions to ensure that the Parties maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce, 1996 (Article 19.5), do not deny the legal validity of a signature solely on the basis that the signature is in electronic form except in circumstances provided for in

¹¹⁹ The contact points established under Article 23.15 are: in the case of Mexico, the Secretariat of Labour and Social Welfare and the Secretariat of Economy. In the case of the United States, the Department of Labor's Bureau of International Labor Affairs (ILAB), in regular consultation and coordination with USTR's Office of Labor Affairs.

¹²⁰ A measure affecting the supply of a service delivered or performed electronically is subject to Chapter 14 on investment, Chapter 15 on cross border trade in services, and Chapter 17 on financial services, including any exception or non-conforming measure in the Agreement that is applicable to obligations in these Chapters (Article 19.2).

¹²¹ Except for a subsidy or grant provided by a Party, including a government supported loan, guarantee or insurance.

their respective laws (Article 19.6), adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities when consumers engage in online commercial activities (Article 19.7) adopt or maintain a legal framework that provides for personal information protection for users of digital trade (Article 19.8) and endeavour to accept of a trade administration document submitted electronically as the legal equivalent of the paper version of that document (Article 19.9).¹²² Articles 19.11 and 19.12 prohibit the Parties from prohibiting or restricting the cross border transfer of information, including personal information, by electronic means if the activity is for the conduct of the business of a covered person¹²³, and requiring a covered person to use or locate computing facilities in a Party's territory as a condition for conducting business in that territory. Article 19.16 prohibits the Parties from requiring the transfer of, or access to, a source code of software owned by a person of another Party, or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of that software or of products containing that software in its territory.

5.88. The Parties shall adopt or maintain measures to limit unsolicited commercial electronic communications and shall endeavour to adopt or maintain measures that enable consumers to reduce or prevent unsolicited commercial electronic communications sent other than to electronic mail addresses. They shall also provide recourse under the law against suppliers of unsolicited commercial electronic communications that do not comply with the above measures (Article 19.13).

5.89. The Parties shall endeavour to exchange information and share experiences on regulations, policies, enforcement, and compliance relating to digital trade (Article 19.14) and to build the capabilities of their respective national entities responsible for cybersecurity incident response and strengthen their cooperation in the area (Article 19.15). With regard to interactive computer services, the Parties commit to not adopt or maintain measures that treat a supplier or user of such a service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed or made available by the service, except to the extent the supplier or user has, in whole or in part created, or developed the information (Article 19.17). Annex 19-A provides a three-year transition to Mexico to implement Article 19.17.

5.15 Small and medium-sized enterprises

5.90. Recognizing the role of SMEs in maintaining dynamism and enhancing competitiveness in their economies, the Parties agree to foster closer cooperation between their SMEs and cooperate to promote jobs and growth in SMEs. Chapter 25 therefore includes provisions on cooperation to support small business infrastructure; the promotion of SME's owned by under-represented groups including women, indigenous peoples, youth and minorities; exchange information and best practices in areas including SME access to capital and credit; and encourage participation in platforms, including web based, to share information and best practices. The Parties also agree to make the Agreement (including text, and summary of the Agreement as well as information relevant for SMEs) available on their own, free, publicly accessible website with links to the websites of the other Parties and relevant agencies of the Parties.¹²⁴

5.91. In addition to the provisions in Chapter 25 the Parties recognize that there are provisions in other parts of the Agreement that benefit SMEs. These include provisions on rules of origin procedures, Government procurement, cross border trade in services, digital trade, intellectual property rights, labour, environment, competitiveness, anti-corruption and good regulatory practices.

¹²² Article 32.8 furthermore requires the Parties to adopt or maintain a legal framework to protect personal information taking into account principles and guidelines of relevant international bodies such as the APEC Privacy Framework and the OECD Recommendation of the Council Concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013).

¹²³ The Parties may adopt or maintain a measure that is inconsistent with this prohibition to achieve a legitimate public policy objective, provided the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and does not impose restrictions on transfers of information greater than are necessary to achieve the objective.

¹²⁴ Paragraph 3 of Article 25.2 provides an indicative list of information to be provided, including customs regulations, procedures or enquiry points; regulations or procedures on IPRs; technical standards, SPS measures; foreign investment regulations; business registration procedures; trade promotion and SME financing programmes. The information, if possible, provided in English, and in another language as appropriate, is to be reviewed regularly and be kept up to date.

5.92. The Agreement's dispute settlement provisions do not apply to the SME Chapter.

5.93. Under Article 25.4 a Committee on SME Issues (SME Committee) is established to *inter alia* identify ways to assist the Parties' SMEs, to take advantage of the commercial opportunities resulting from the Agreement and to strengthen their competitiveness and to identify and recommend ways for further cooperation between the Parties. It shall submit on an annual basis, a report of its findings and make recommendations to the Commission. It shall also convene a trilateral SME dialogue (SME dialogue) annually unless otherwise agreed and may include participants from the private sector, non-government organizations, academic experts, SMEs owned by diverse and under-represented groups and other stakeholders from each Party. It shall convene within a year of entry into force of the Agreement and annually thereafter, unless the Parties decide otherwise.

5.16 Other provisions

5.16.1 Good Regulatory Practices

5.94. Chapter 28 sets out specific obligations with respect to good regulatory practices.¹²⁵ The chapter clarifies that no provision prevents a Party from pursuing public policy objectives, including health, safety, and environmental goals and that a Party is not prevented from determining the appropriate method to implement its obligations in this Chapter, within the framework of its own legal system and institutions. There are commitments relating to internal consultation, coordination and review (Article 28.4); publication of annual plans of expected regulations (Article 28.6); public consultations on draft texts of regulations; and reliance on evidence-based analysis and explanations of the scientific or technical basis for new regulations (Article 28.9). The Parties recognize that regulatory impact assessments (RIAs) are a tool to assist regulatory authorities in assessing the need for and potential impacts of regulations and the use of RIAs is encouraged in appropriate circumstances when developing proposed regulations that have anticipated costs or impacts exceeding certain thresholds established by the Party (Article 28.11). Each Party agrees to maintain certain procedures when conducting an RIA.

5.95. Transparency provisions cover requirements to publish key information online, including draft regulations (notice and comment) in Article 28.9 and final regulations (Article 28.12) and descriptions of regulatory agencies' functions and legal authorities; applicable forms used by regulatory agencies; fees associated with licensing, inspection, audits, etc.; and judicial or administrative procedures available to challenge regulations (Article 28.15).

5.96. The chapter provides for the possibility of relying on expert advisory groups, and it is recognized that obtaining advice and recommendations by these groups should be a complement instead of a substitute for the processes for seeking public comments (Article 28.10). There are also provisions on information quality (Article 28.5), and the opportunity for any interested person to submit to any regulatory authority written suggestions to propose issuing, modifying or repealing a regulation (Article 28.14). There is also a non-comprehensive list of mechanisms that support regulatory compatibility and cooperation, as appropriate to the particular circumstances (Article 28.17).

5.97. A Committee on Good Regulatory Practices is established under Article 28.18 to consider issues associated with the implementation and operation of the Chapter, and consider developments in the areas of good regulatory practices with a view to making recommendations to the Commission for improvements to the Chapter to enhance the benefits of the Agreement. The Committee must provide an annual report to the Commission on its activities and meet at least once a year, unless the Parties decide otherwise. The Committee has already met and reported to the Commission on its activities.

5.98. The provisions of this Chapter are subject to dispute settlement under Chapter 31 (Dispute Settlement) only to address a sustained or recurring course of action or inaction that is inconsistent with a provision of this Chapter (Article 28.20), although the Parties recognize that a mutually acceptable solution can often be found outside of recourse to dispute resolution. As such, a Party

¹²⁵ Good governance procedures to promote transparency, predictability and accountability when developing and implementing the Parties' respective regulations.

shall exercise its judgement as to whether recourse to dispute settlement under Chapter 31 would be fruitful.

5.16.2 Anti-corruption

5.99. Chapter 27 includes commitments by the Parties to prevent and combat bribery and corruption in international trade and investment; they also support the principles contained in the *APEC Conduct Principles for Public Officials*, July 2007, and encourage observance of the *APEC Code of Conduct for Business: Business Integrity and Transparency Principles for the Private Sector*, September 2007. They also affirm the Parties' adherence to the *United Nations Convention against Corruption*, 31 October 2003.

5.100. The Parties commit to adopt or maintain legislative and other measures as may be necessary to combat and prevent corruption (Article 27.6) and to promote integrity among their public officials (Article 27.4). No Party shall fail to enforce its laws or other measures adopted or maintained to comply with Article 27.3 on measures to combat corruption through a sustained or recurring course of action or inaction, after entry into force of the Agreement, to encourage trade and investment (Article 27.6). The Parties also affirm their commitments under applicable international agreements or arrangements to cooperate with each other to enhance law enforcement effectiveness with regard to corruption.

5.16.3 Macroeconomic policies and exchange rate

5.101. The Parties affirm their obligations under the IMF Articles of Agreement to avoid manipulating exchange rates or the international monetary system to prevent effective balance of payments adjustments or to gain an unfair competitive advantage.¹²⁶ Any Party intervening with regard to another Party's currency should inform that Party promptly and discuss if needed when the intervention has been carried out (Article 33.4). Transparency and reporting requirements including public disclosure of data on monthly foreign-exchange reserves and forward positions, monthly interventions in spot and forward foreign exchange markets, quarterly balance of payments portfolio capital flows, and on quarterly exports and imports. The Parties also agree to consent to the public disclosure of IMF Article IV Staff Reports and the Party's participation in the IMF COFER database (Article 33.5).

5.102. A Macroeconomic Committee is established by the Agreement to monitor the implementation of the Chapter and its further development. It shall meet within one year after the date of entry into force of the Agreement and at least annually thereafter unless decided otherwise by the Parties. It shall consider the macroeconomic and exchange rate policies of each Party and their consequences on various macroeconomic variables; issues, challenges or efforts to strengthen capacity with respect to transparency or reporting; and undertaking other activities as it may decide. The Macroeconomic Committee may also decide to amend the provisions of the Chapter except Article 33.3 (Scope).

5.103. A Party may request expedited bilateral consultations on policies or measures of another Party that the Party considers is associated with competitive devaluation, the targeting of exchange rates for competitive purposes, fulfilment of requirements under Article 33.5 or any other issues under Articles 33.4 or 33.5. The Party not engaged in the consultations may also be invited to participate. If the consultations do not resolve the issue raised under Article 33.5 the consulting Parties may request the IMF to undertake rigorous surveillance of the macroeconomic and exchange rate policies and data transparency and reporting policies of the requested Party, or initiate formal consultations and provide input, as appropriate (Article 33.7). Only claims that a Party has failed to carry out an obligation on transparency and reporting in a recurring or persistent manner and has not remediated the action through consultations, are subject to the dispute settlement mechanism of the Agreement (Article 33.8).¹²⁷ If the Panel finds in favour of the complainant the complaining Party may not suspend benefits that are in excess of benefits equivalent to the effect of the failure of the obligation under Article 33.5.

¹²⁶ This includes achieving and maintaining a market determined exchange rate regime; to refrain from competitive devaluation including by intervening in the foreign exchange market; and strengthening underlying economic fundamentals which reinforces the conditions for macroeconomic and exchange rate stability.

¹²⁷ Procedural changes are made to the dispute settlement mechanism under Chapter 31 for the purpose of disputes on transparency and reporting (Article 33.8).

ANNEX 1

1. A comparison between the scheduled elimination of tariffs by the Parties under the Agreement is shown in Table A1.1 and A1.2, by HS Chapters 1-24 (agricultural products), 25-97 (industrial products) and total products. Applied MFN duty rates in 2020 serve as a comparison.

2. Canada's overall average applied MFN tariff rate in 2020 was 5.8% (Table A1.1). The average applied tariff on agricultural goods (HS 1-24) was considerably higher at 17.6%, compared to an average applied tariff of 2.6% on industrial goods. Duty-free tariff lines accounted for 70.4% of the tariff, while the share of duty-free lines was 57.3% for agricultural products and 74.1% for industrial products.

3. In 2020 when the Agreement came into force, Canada's average applied tariff for imports from the United States was 3.1% overall (giving US exporters a relative margin of preference of 46.6%) and 14.1% and zero for agricultural and industrial products (resulting in a relative margin of preference for US exporters of 19.9% for agricultural products and 100% for industrial products). The share of duty-free tariff lines rose to 98.4% overall and to 93% and 100% respectively for agricultural and industrial products. By the end of implementation in 2030, the share of duty-free lines is expected to rise to 98.5% overall and to 93.2% and 100% for agricultural and industrial products respectively. With regard to imports from Mexico, Canada's average applied tariff for imports was 3.1% overall (giving Mexican exporters a relative margin of preference of 46.6%); the average applied tariff for Mexico was 14.3% and zero respectively for imports of agricultural and industrial products, giving Mexican exporters a relative margin of preference of 18.8% for agricultural products and 100% for industrial products. The share of duty-free tariff lines for imports from Mexico was 97.9% overall (90.3% and 100% respectively for agriculture and industrial products).

Table A1.1 Canada: Indicators of MFN tariff rates and preferential rates for imports from the United States and Mexico

Origin of goods	Year	ALL PRODUCTS			HS Chapters 1-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2020	5.8	20.1	70.4	17.6	44.8	57.3	2.6	10.1	74.1
USA	2020	3.1	227.2	98.4	14.1	227.2	93.0	0.0	0.0	100.0
	2021	3.1	226.6	98.4	14.1	226.6	93.0	0.0	0.0	100.0
	2022	3.1	226.0	98.4	14.1	226.0	93.0	0.0	0.0	100.0
	2023	3.0	225.4	98.4	14.0	225.4	93.0	0.0	0.0	100.0
	2024	3.0	224.8	98.4	14.0	224.8	93.0	0.0	0.0	100.0
	2025	3.0	226.7	98.5	13.9	226.7	93.2	0.0	0.0	100.0
	2026	3.0	226.5	98.5	13.9	226.5	93.2	0.0	0.0	100.0
	2027	3.0	226.3	98.5	13.9	226.3	93.2	0.0	0.0	100.0
	2028	3.0	226.1	98.5	13.9	226.1	93.2	0.0	0.0	100.0
	2029	3.0	225.9	98.5	13.9	225.9	93.2	0.0	0.0	100.0
	2030	3.0	228.2	98.5	13.9	228.2	93.2	0.0	0.0	100.0
Mexico	2020	3.1	177.6	97.9	14.3	177.6	90.3	0.0	0.0	100.0

Note: Tariff lines subject to in-quota rates are excluded in the computation; For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the Canadian authorities and the WTO-IDB.

4. Mexico's overall average applied MFN tariff rate in 2020 was 5.8% (Table A1.2). The average applied tariff on agricultural goods (HS 1-24) was considerably higher at 14.5%, compared to an average applied tariff of 4.7% on industrial goods. Duty-free tariff lines accounted for 56.7% of the tariff, while the share of duty-free lines was 16.4% for agricultural products and 61.7% for industrial products. In 2020 when the Agreement came into force, Mexico's overall average applied tariff for imports from the United States was zero, giving US exporters to Mexico a relative margin of preference of 100%. For imports from Canada the overall average applied rate was 0.2% (giving Canadian exporters to Mexico a relative margin of preference of 96.6%). The overall average tariff for agricultural products was 1.9% for agricultural products and zero for industrial products, thereby giving Canadian exporters a relative margin of preference of 86.9% for agricultural products and 100% for industrial products. The share of duty-free tariff lines rose to 99.2% overall and 93.3% for agricultural products and 100% for industrial products.

Table A1.2 Mexico: Indicators of MFN tariff rates and preferential rates for imports from the United States and Canada

Origin of goods	Year	ALL PRODUCTS			HS Chapters 1-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2020	5.8	13.4	56.7	14.5	17.4	16.4	4.7	12.3	61.7
USA	2020	0.0	0.0	100.0	0.0	0.0	100.0	0.0	0.0	100.0
Canada	2020	0.2	31.8	99.2	1.9	32.4	93.3	0.0	7.5	100.0

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from the Mexican authorities and the WTO-IDB.

5. The United States' overall average applied MFN tariff rate in 2020 was 4.9% (Table A1.3). The average applied tariff on agricultural goods (HS 1-24) was double that of the tariff on industrial products (8.4%, compared to an average applied tariff of 4.1% on industrial goods). Duty-free tariff lines accounted for 37.8% of the tariff, while the share of duty-free lines was 28.6% for agricultural products and 40% for industrial products. In 2020 when the Agreement came into force, the United States' overall average applied tariff for imports from Canada was 0.5%, giving Canadian exporters to the United States a relative margin of preference of 89.8% over the MFN rate. The share of duty-free tariff lines rose to 98.4% overall and to 91.7% and 99.9% respectively for agricultural and industrial products. At the end of implementation in 2030 the share of duty-free lines is expected to rise to 98.5% overall and to 92.1% and 100% respectively for agricultural and industrial products. For imports from Mexico the overall average applied rate was zero compared to the MFN rate of 4.9% in 2020 when the Agreement came into force.

Table A1.3 United States: Indicators of MFN tariff rates and preferential rates for imports from Canada and Mexico

Origin of goods	Year	ALL PRODUCTS			HS Chapters 1-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2020	4.9	7.9	37.8	8.4	11.8	28.6	4.1	6.8	40.0
Canada	2020	0.5	34.3	98.4	2.7	34.3	91.7	0.0	0.0	99.9
	2021	0.5	34.0	98.4	2.7	34.0	91.7	0.0	0.0	99.9
	2022	0.5	33.7	98.4	2.7	33.7	91.7	0.0	0.0	99.9

Origin of goods	Year	ALL PRODUCTS			HS Chapters 1-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
	2023	0.5	33.4	98.4	2.7	33.4	91.7	0.0	0.0	99.9
	2024	0.5	33.1	98.4	2.6	33.1	91.7	0.0	0.0	99.9
	2025	0.5	33.2	98.5	2.6	33.2	92.1	0.0	0.0	100.0
	2026	0.5	33.2	98.5	2.6	33.2	92.1	0.0	0.0	100.0
	2027	0.5	33.2	98.5	2.6	33.2	92.1	0.0	0.0	100.0
	2028	0.5	33.2	98.5	2.6	33.2	92.1	0.0	0.0	100.0
	2029	0.5	33.2	98.5	2.6	33.2	92.1	0.0	0.0	100.0
	2030	0.5	33.2	98.5	2.6	33.2	92.1	0.0	0.0	100.0
Mexico	2020	0.0	0.0	100.0	0.0	0.0	100.0	0.0	0.0	100.0

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages; specific rates are excluded, and the *ad valorem* parts of the alternate rates are included and AVEs (*ad valorem* equivalent) are used to the tariff lines where USA has provided. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by the USA and the WTO-IDB.

6. Tables A1.4-A1.5 show market access conditions for the top 25 global exports of the United States and Mexico in Canada as a result of the Agreement. The top 25 global exports of the United States accounted during 2017-19 for 26.9% of its exports and were covered by 52 tariff lines at the HS 6-digit level. Of these lines 34 were already duty-free on an MFN basis in 2020. The remaining 18 tariff lines were duty free for imports from the United States in 2020. Mexico's top 25 global exports accounted during 2017-19 for 44.4% of its exports and were covered by 76 tariff lines at the HS 6-digit level. Of these lines 41 were already duty-free on an MFN basis in 2020. The remaining 35 tariff lines were duty free for imports from Mexico in 2020.

Table A1.4 Canada: Market access opportunities under the agreement for USA's top 25 exports to the world

United States top export products in 2017 - 2019			Access Conditions to Canada's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty-free in 2020
			Average MFN rate (%)	Duty-free	Dutiable lines	
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel, n.e.s.	3.2	1.0	4	1	1
270900	Petroleum oils and oils obtained from bituminous minerals, crude	2.8	0.0	1		
271012	Light oils and preparations, of petroleum or bituminous minerals	2.1	1.7	2	1	1
854231	Electronic integrated circuits as processors and controllers	1.3	0.0	1		
120190	Soya beans, whether or not broken	1.2	0.0	1		
710812	Gold, incl. gold plated with platinum, unwrought, for non-monetary purposes	1.2	0.0	1		
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.2	6.1		1	1
710239	Diamonds, worked, but not mounted or set	1.1	0.0	1		
300490	Medicaments	1.1	0.0	1		
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data	1.1	0.0	1		

United States top export products in 2017 - 2019			Access Conditions to Canada's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty- free in 2020
			Average MFN rate (%)	Duty-free	Dutiable lines	
870324	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.1	6.1		1	1
847330	Parts and accessories of automatic data-processing machines or for other machines of heading 8471, n.e.s.	1.0	0.0	3		
901890	Instruments and appliances used in medical, surgical or veterinary sciences, n.e.s.	0.8	0.0	3		
271112	Propane, liquefied	0.8	6.3	1	1	1
848620	Machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits	0.7	0.0	1		
851712	Telephones for cellular networks "mobile telephones" or for other wireless networks	0.7	0.0	1		
854239	Electronic integrated circuits	0.7	0.0	1		
270112	Bituminous coal, whether or not pulverised, non-agglomerated	0.6	0.0	1		
870899	Parts and accessories, for tractors, motor vehicles	0.6	3.3	4	5	5
870431	Motor vehicles for the transport of goods	0.6	6.1		1	1
300215	Immunological products, put up in measured doses or in forms or packings for retail sale	0.6	0.0	1		
100590	Maize	0.6	0.0	1		
970110	Paintings	0.6	2.8	1	1	1
870829	Parts and accessories of bodies for tractors, motor vehicles	0.6	3.8	3	4	4
711319	Articles of jewellery and parts thereof	0.6	5.8		2	2
Total of the above		26.9		34	18	18

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by the authorities and UNSD, Comtrade database.

Table A1.5 Canada: Market access opportunities under the agreement for Mexico's top 25 exports to the world

Mexico's top export products in 2017 - 2019			Access Conditions to Canada's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty- free in 2020
			Average MFN rate (%)	Duty-free	Dutiable lines	
270900	Petroleum oils and oils obtained from bituminous minerals, crude	5.2	0.0	1		
847150	Processing units for automatic data-processing machines	3.9	0.0	1		
870431	Motor vehicles for the transport of goods	3.6	6.1		1	1
870340	Motor cars and other motor vehicles principally designed for the transport of <10 persons	3.2	6.1		2	2
870360	Motor cars and other motor vehicles principally designed for the transport of <10 persons	3.2	6.1		2	2
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data	3.1	0.0	1		
852872	Reception apparatus for television	2.4	3.7	4	11	11

Mexico's top export products in 2017 - 2019			Access Conditions to Canada's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty- free in 2020
			Average MFN rate (%)	Duty-free	Dutiable lines	
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	2.3	6.1		1	1
870120	Road tractors for semi-trailers	1.8	6.1		1	1
854430	Ignition wiring sets and other wiring sets for vehicles, aircraft or ships	1.8	0.0	1		
847149	Data-processing machines, automatic	1.5	0.0	1		
870829	Parts and accessories of bodies for tractors, motor vehicles	1.3	3.8	3	4	4
940190	Parts of seats	1.3	0.0	1		
853710	Boards, cabinets and similar combinations of apparatus for electric control or the distribution of electricity	1.0	0.0	9		
220300	Beer made from malt	0.9	0.0	1		
870899	Parts and accessories, for tractors, motor vehicles	0.9	3.3	4	5	5
870840	Gear boxes and parts thereof	0.9	3.0	2	2	2
870850	Drive-axles with differential	0.9	3.0	3	3	3
870422	Motor vehicles for the transport of goods	0.9	6.1		1	1
840734	Spark-ignition reciprocating piston engine	0.8	0.0	3		
901890	Instruments and appliances used in medical, surgical or veterinary sciences	0.8	0.0	3		
841810	Combined refrigerator-freezers, with separate external doors	0.7	4.0	1	1	1
870322	Motor cars and other motor vehicles principally designed for the transport of <10 persons	0.7	6.1		1	1
840991	Parts suitable for use solely or principally with spark-ignition internal combustion piston engine	0.7	0.0	1		
901839	Needles, catheters, cannulae and the like	0.6	0.0	1		
Total of the above		44.4		41	35	35

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by the authorities and UNSD, Comtrade database.

7. Tables A1.6-A1.7 show market access conditions for the top 25 global exports of the United States and Canada in Mexico as a result of the Agreement. Of the 225 lines covering the top 25 exports of the United States, 154 were already duty-free on an MFN basis in 2020. The remaining 71 tariff lines were duty free for imports from the United States in 2020. Canada's top 25 global exports were covered by 152 tariff lines at the HS 6-digit level. Of these lines 115 were already duty-free on an MFN basis in 2020. The remaining 37 tariff lines were duty free for imports from Canada in 2020.

Table A1.6 Mexico: Market access opportunities under the agreement for USA's top 25 exports to the world

United States top export products in 2017 - 2019			Access Conditions to Mexico's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty- free in 2020
			Average MFN rate (%)	Duty-free	Dutiable lines	
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel, n.e.s.	3.2	0.3	10	1	1
270900	Petroleum oils and oils obtained from bituminous minerals, crude	2.8	0.0	4		
271012	Light oils and preparations, of petroleum or bituminous minerals	2.1	0.0	11		
854231	Electronic integrated circuits as processors and controllers	1.3	0.0	3		
120190	Soya beans, whether or not broken	1.2	7.5	1	1	1
710812	Gold, incl. gold plated with platinum, unwrought, for non-monetary purposes	1.2	0.0	1		
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.2	35.0		2	2
710239	Diamonds, worked, but not mounted or set	1.1	0.0	1		
300490	Medicaments	1.1	1.8	36	14	14
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data	1.1	0.0	17		
870324	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.1	35.0		2	2
847330	Parts and accessories of automatic data-processing machines or for other machines of heading 8471, n.e.s.	1.0	0.0	3		
901890	Instruments and appliances used in medical, surgical or veterinary sciences, n.e.s.	0.8	5.6	11	21	21
271112	Propane, liquefied	0.8	0.0	1		
848620	Machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits	0.7	0.0	2		
851712	Telephones for cellular networks "mobile telephones" or for other wireless networks	0.7	0.0	2		
854239	Electronic integrated circuits	0.7	0.0	2		
270112	Bituminous coal, whether or not pulverised, non-agglomerated	0.6	0.0	1		
870899	Parts and accessories, for tractors, motor vehicles	0.6	1.3	11	4	4
870431	Motor vehicles for the transport of goods	0.6	22.0		5	5
300215*	Immunological products, put up in measured doses or in forms or packings for retail sale	0.6	3.9	8	15	15
100590	Maize	0.6	4.0	4	1	1
970110	Paintings	0.6	0.0	1		
870829	Parts and accessories of bodies for tractors, motor vehicles	0.6	0.8	21	4	4
711319	Articles of jewellery and parts thereof	0.6	3.8	3	1	1
Total of the above		26.9		154	71	71

* Equivalent HS 2012 Subheading in the Mexican tariff is 300210. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the authorities, WTO-IDB and the UNSD, Comtrade database.

Table A1.7 Mexico: Market access opportunities under the agreement for Canada's top 25 exports to the world

Canada's top export products in 2017 - 2019			Access Conditions to Mexico's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty-free under the Agreement (2020)
			Average MFN rate (%)	Duty-free	Dutiable lines	
270900	Petroleum oils and oils obtained from bituminous minerals, crude	14.4	0.0	4		
870324	Motor cars and other motor vehicles principally designed for the transport of <10 persons	4.4	35.0		2	2
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	3.5	35.0		2	2
710812	Gold	3.1	0.0	1		
271121	Natural gas in gaseous state	1.7	0.0	1		
271019	Medium oils and preparations, of petroleum or bituminous minerals	1.6	0.3	10	1	1
870322	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.3	35.0		2	2
270112	Bituminous coal	1.2	0.0	1		
271012	Light oils and preparations, of petroleum or bituminous minerals	1.1	0.0	11		
440719 *	Coniferous wood sawn or chipped lengthwise, sliced or peeled	1.0	2.0	3	2	2
310420	Potassium chloride for use as fertiliser	1.0	0.0	1		
120510	Low erucic acid rape or colza seeds "yielding a fixed oil which has an erucic acid	1.0	0.0	1		
100199	Wheat and meslin	1.0	7.5	1	1	1
880240	Aeroplanes and other powered aircraft of an of an unladen weight > 15.000 kg	1.0	0.0	1		
870829	Parts and accessories of bodies for tractors, motor vehicles	0.9	0.8	21	4	4
470321	Semi-bleached or bleached coniferous chemical wood pulp, soda or sulphate	0.9	0.0	2		
300490	Medicaments	0.9	1.8	36	14	14
760110	Aluminium	0.7	0.0	2		
260300	Copper ores and concentrates	0.6	0.0	1		
760120	Unwrought aluminium alloys	0.6	0.0	2		
260111	Non-agglomerated iron ores and concentrates	0.6	0.0	1		
870899	Parts and accessories, for tractors, motor vehicles	0.5	1.3	11	4	4
840734	Spark-ignition reciprocating piston engine, of a kind used for vehicles of chapter 87, of a cylinder capacity > 1.000 cm ³	0.5	0.0	3		
271600	Electrical energy	0.5	0.0	1		
870431	Motor vehicles for the transport of goods	0.5	22.0		5	5
Total of the above		44.5		115	37	37

* Equivalent HS 2012 Subheading in the Mexican tariff is 440710. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the authorities, WTO-IDB and the UNSD, Comtrade database.

8. Tables A1.8-A1.9 show market access conditions for the top 25 global exports of Canada and Mexico in the United States as a result of the Agreement. The top 25 global exports of the United States were covered by 69 tariff lines at the HS 6-digit level. Of these lines 29 were already duty-free on an MFN basis in 2020. The remaining 40 tariff lines were duty free for imports from Canada in 2020. Mexico's top 25 global exports were covered by 111 tariff lines at the HS 6-digit level. Of these lines 56 were already duty-free on an MFN basis in 2020. The remaining 55 tariff lines were duty-free for imports from the Mexico in 2020.

Table A1.8 United States: Market access opportunities under the agreement for Canada's top 25 exports to the world

Canada's top export products in 2017 - 2019			Access Conditions to USA's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty-free under the Agreement (2020)
			Average MFN rate (%)	Duty-free	Dutiable lines	
270900	Petroleum oils and oils obtained from bituminous minerals, crude	14.4	0.1		2	2
870324	Motor cars and other motor vehicles principally designed for the transport of <10 persons	4.4	2.5		1	1
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	3.5	2.5		1	1
710812	Gold	3.1	2.1	1	1	1
271121	Natural gas in gaseous state	1.7	0.0	1		
271019	Medium oils and preparations, of petroleum or bituminous minerals	1.6	2.0		11	11
870322	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.3	2.5		1	1
270112	Bituminous coal	1.2	0.0	1		
271012	Light oils and preparations, of petroleum or bituminous minerals	1.1	1.7		5	5
440719	Coniferous wood sawn or chipped lengthwise, sliced or peeled	1.0	0.0	3		
310420	Potassium chloride for use as fertiliser	1.0	0.0	1		
120510	Low erucic acid rape or colza seeds "yielding a fixed oil which has an erucic acid	1.0	0.4		1	1
100199	Wheat and meslin	1.0	1.7		1	1
880240	Aeroplanes and other powered aircraft of an of an unladen weight > 15.000 kg	1.0	0.0	1		
870829	Parts and accessories of bodies for tractors, motor vehicles	0.9	1.9	1	3	3
470321	Semi-bleached or bleached coniferous chemical wood pulp, soda or sulphate	0.9	0.0	1		
300490	Medicaments	0.9	0.0	2		
760110	Aluminium	0.7	1.3	1	1	1
260300	Copper ores and concentrates	0.6	0.8		1	1
760120	Unwrought aluminium alloys	0.6	1.6	1	2	2
260111	Non-agglomerated iron ores and concentrates	0.6	0.0	1		
870899	Parts and accessories, for tractors, motor vehicles	0.5	0.8	9	4	4
840734	Spark-ignition reciprocating piston engine, of a kind used for vehicles of chapter 87, of a cylinder capacity > 1.000 cm ³	0.5	1.3	4	4	4
271600	Electrical energy	0.5	0.0	1		
870431	Motor vehicles for the transport of goods	0.5	25.0		1	1
Total of the above		44.5	1.9	29	40	40

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages; specific rates are excluded, and the *ad valorem* parts of the alternate rates are included and AVEs (*ad valorem* equivalent) are used as provided by the United States. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by the authorities and UNSD, Comtrade database.

Table A1 9 United States: Market access opportunities under the agreement for Mexico's top 25 exports to the world

Mexico's top export products in 2017 - 2019			Access Conditions to USA's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Duty-free under the Agreement (2020)
			Average MFN rate (%)	Duty-free	Dutiable lines	
270900	Petroleum oils and oils obtained from bituminous minerals, crude	5.2	0.1		2	2
847150	Processing units for automatic data-processing machines	3.9	0.0	1		
870431	Motor vehicles for the transport of goods	3.6	25.0		1	1
870340	Motor cars and other motor vehicles principally designed for the transport of <10 persons	3.2	2.5		1	1
870360	Motor cars and other motor vehicles principally designed for the transport of <10 persons	3.2	2.5		1	1
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data	3.1	0.0	1		
852872	Reception apparatus for television	2.4	2.8	8	14	14
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	2.3	2.5		1	1
870120	Road tractors for semi-trailers	1.8	4.0		1	1
854430	Ignition wiring sets and other wiring sets for vehicles, aircraft or ships	1.8	5.0		1	1
847149	Data-processing machines, automatic	1.5	0.0	1		
870829	Parts and accessories of bodies for tractors, motor vehicles	1.3	1.9	1	3	3
940190	Parts of seats	1.3	0.0	6		
853710	Boards, cabinets and similar combinations of apparatus for electric control or the distribution of electricity	1.0	2.0	1	3	3
220300	Beer made from malt	0.9	0.0	1		
870899	Parts and accessories, for tractors, motor vehicles	0.9	0.8	9	4	4
870840	Gear boxes and parts thereof	0.9	1.1	4	3	3
870850	Drive-axes with differential	0.9	1.5	6	9	9
870422	Motor vehicles for the transport of goods	0.9	14.5		2	2
840734	Spark-ignition reciprocating piston engine	0.8	1.3	4	4	4
901890	Instruments and appliances used in medical, surgical or veterinary sciences	0.8	0.0	10		
841810	Combined refrigerator-freezers, with separate external doors	0.7	0.0	1		
870322	Motor cars and other motor vehicles principally designed for the transport of <10 persons	0.7	2.5		1	1
840991	Parts suitable for use solely or principally with spark-ignition internal combustion piston engine	0.7	2.0	1	4	4
901839	Needles, catheters, cannulae and the like	0.6	0.0	1		
Total of the above		44.4	2.9	56	55	55

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages; specific rates are excluded, and the *ad valorem* parts of the alternate rates are included and AVEs (*ad valorem* equivalent) are used as provided by the United States. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by the authorities and UNSD, Comtrade database.

ANNEX 2

Table A2.1 Canada: Tariff Rate Quotas for imports from the United States

In-Quota			Out-of-Quota		Aggregate Quantity
Product/ HS Code	In-quota rate	MFN 2020	HS Code	MFN 2020	
Milk					
0401.10.10 0401.20.10	0	7.5%	0401.10.20 0401.20.20	241% but not less than CAD34.50/hl	8,333 MT in year 1 to 56,905 by year 19 and onwards ^a
Cream					
0401.40.10 0401.50.10	0	7.5%	0401.40.20 0401.50.20	292.5% but not less than CAD2.48/kg	1,750 MT in year 1 to 11,950 by year 19 and onwards ^a
Skim milk powder					
0402.10.10	0	3.32¢/kg	0402.10.20	201.5% but not less than CAD2.01/kg	1,250 MT in year 1 to 8,536 MT by year 19 and onwards ^a
Butter and cream powder					
0402.21.21 0402.29.21 0405.10.10 0405.20.10 0405.90.10	0	6.5% 6.5% 11.38¢/ kg 7.0% 7.5%	0402.21.22 0402.29.22 0405.10.20 0405.20.20 0405.90.20	295.5% but not less than CAD4.29/kg 298.5% but not less than CAD4.00/kg 274.5% but not less than CAD2.88/kg 313.5% but not less than CAD5.12/kg	750 MT in year 1 to 5,121 MT by year 19 and onwards ^a
Industrial cheeses; cheese of all types					
0406.20.11 0406.90.11 0406.10.10 0406.20.91 0406.30.10 0406.40.10 0406.90.21 0406.90.31 0406.90.41 0406.90.51 0406.90.61 0406.90.71 0406.90.81 0406.90.91 0406.90.93 0406.90.95	0	2.84¢/kg 3.32¢/kg	0406.20.12 0406.90.12 0406.10.20 0406.20.92 0406.30.20 0406.40.20 0406.90.22 0406.90.32 0406.90.42 0406.90.52 0406.90.62 0406.90.72 0406.90.82 0406.90.92 0406.90.94 0406.90.99	245.5% but not less than CAD3.58/kg 245.5% but not less than CAD3.53/kg 245.5% but not less than CAD4.52/kg 245.5% but not less than CAD5.11/kg 245.5% but not less than CAD4.34/kg 245.5% but not less than CAD5.33/kg 245.5% but not less than CAD5.78/kg 245.5% but not less than CAD5.50/kg	1,042 MT in year 1 to 7,113 MT by year 19 and onwards

In-Quota			Out-of-Quota		Aggregate Quantity
Product/ HS Code	In-quota rate	MFN 2020	HS Code	MFN 2020	
0406.90.98				245.5% but not less than CAD4.23/kg 245.5% but not less than CAD5.08/kg 245.5% but not less than CAD3.53/kg 245.5% but not less than CAD4.34/kg 245.5% but not less than CAD5.26/kg 245.5% but not less than CAD4.34/kg 245.5% but not less than CAD5.08/kg 245.5% but not less than CAD3.53/kg	
Milk powders					
0402.21.11	0	3.32¢/kg	0402.21.12	243% but not less than	115 MT in year 1 to 785 MT by year 19 and onwards ^a
0402.29.11			0402.29.12	CAD2.82/kg	
Concentrated or condensed milk					
0402.91.10	0	2.84¢/kg	0402.91.20	259% but not less than	230 MT in year 1 to 1,571 MT by year 19 and onwards
0402.99.10			0402.99.20	78.9¢/kg 255% but not less than 95.1¢/kg	
Yoghurt and buttermilk					
0403.10.10	0	6.5%	0403.10.200403.90.92	237.5% but not less than	689 MT in year 1 to 4,706 MT by year 19 and onwards
0403.90.91		7.5%		46.6¢/kg 216.5% but not less than CAD2.15/kg	
Powdered buttermilk					
0403.90.11	0	3.32¢/kg	0403.90.12	208% but not less than CAD2.07/kg	87 MT in year 1 to 592 MT by year 19 and onwards
Whey powder					
0404.10.21	0	3.32¢/kg	0404.10.22*	208% but not less than CAD2.07/kg Preferential tariffs (out-quota): 2021: 189% but not <CAD1.88/kg to 0% in 2030	689 MT in year 1 to 4,303 MT by year 10 and eliminated thereafter ^a
Products consisting of natural milk constituents					
0404.90.10	0	3.0%	0404.90.20	270% but not less than CAD3.15/kg	460 MT in year 1 to 3,141 MT by year 19 and onwards

In-Quota			Out-of-Quota		Aggregate Quantity
Product/ HS Code	In-quota rate	MFN 2020	HS Code	MFN 2020	
Ice cream and ice cream mixes					115 MT in year 1 to 785 MT by year 19 and onwards
1806.20.21	0	5.0%	1806.20.22	265% but not less than	
1806.90.11		6.5%	1806.90.12	CAD1.15/kg	
1901.90.31	7.5%		1901.90.32	267.5% but not less than	
1901.90.51			1901.90.52	\$1.16/kg	
2105.00.91			2105.00.92	277% but not less than	
2202.99.32			2202.99.33	CAD1.16/kg	
					256% but not less than
					CAD36.67/hl
Other dairy					115 MT in year 1 to 785 MT by year 19 and onwards
1517.90.21	0	7.5%	1517.90.22*	218% but not less than	
				CAD2.47/kg	
				Preferential tariffs (out-quota):	
				2020: 181.5% but not	
1901.20.11		4.0%	1901.20.12	<CAD2.05/kg	
1901.20.21		3.0%	1901.20.22	to 0% from year 2025	
1901.90.33		6.5%	1901.90.34	246% but not less than	
1901.90.53		5.0%	1901.90.54	CAD2.85/kg	
2106.90.31		7.0%	2106.90.32	244% but not less than	
2106.90.33		2.0%	2106.90.34	CAD2.83/kg	
2106.90.93			2106.90.94	250.5% but not less than	
2309.90.31			2309.90.32	CAD2.91/kg	
					212% but not less than
					CAD2.11/kg
					274.5% but not less than
					CAD2.88/kg
					205.5% but not less than
					CAD1.64/kg
Chicken					47,000 MT (eviscerated product basis) in year 1 to 62,963 MT (eviscerated product basis) by year 16 and onwards
0105.94.91	0	1.9¢/kg	0105.94.92	238% but not less than	
0207.11.91		5% but not	0207.11.92	CAD1.25/kg	
0207.12.91		<4.74¢/	0207.12.92	238% but not less than	
0207.13.91		kg or >9.48¢/	0207.13.92	CAD1.67/kg	
		kg	0207.13.93	249% but not less than	
					CAD3.78/kg
					249% but not less than
					CAD6.74/kg
					238% but not less than
					CAD6.45/kg

Product/ HS Code	In-Quota		Out-of-Quota		Aggregate Quantity
	In-quota rate	MFN 2020	HS Code	MFN 2020	
0207.14.21 0207.14.91 0209.90.10 0210.99.11 1601.00.21 1602.20.21 1602.32.12 1602.32.93	0	0 5% but not less than 4.74 ¢/kg or more than 9.48 ¢/kg 12.5% 0 7.5% 5% but not less than 4.74 ¢/kg or more than 9.48 ¢/kg	0207.14.22 0207.14.92 0207.14.93 0209.90.20 0210.99.12 0210.99.13 1601.00.19 1602.20.22 1602.32.13 1602.32.94	238% but not less than CAD6.45/kg 249% but not less than CAD3.78/kg 249% but not less than CAD6.74/kg 249% but not less than CAD5.81/kg 249% but not less than CAD10.36/kg 0 238% 253% but not less than CAD5.91/kg 249% but not less than CAD5.81/kg	
Eggs and egg products					
0407.11.91 0407.21.10 0407.90.11 0408.11.10 0408.19.10 0408.91.10 0408.99.10 2106.90.51 3502.11.10 3502.19.10	0	1.51¢/dozen 8.5% 6.63¢/kg 8.5% 6.63¢/kg 6.68¢/kg 8.5% 6.63 ¢/kg	0407.11.92 0407.21.20 0407.90.12 0408.11.20 0408.19.20 0408.91.20 0408.99.20 2106.90.52 3502.11.20 3502.19.20	163.5% but not less than 79.9 ¢/dozen CAD6.12/kg CAD1.52/kg CAD6.12/kg CAD1.52/kg CAD1.45/kg CAD6.12/kg CAD1.52/kg	1,666,667 dozen eggs in year 1 to 11,046,221 dozen eggs by year 16 and onwards

a From 1 August to 31 July (dairy year basis).

* The out-of-quota preferential tariffs for tariff lines 0404.10.22 and 1517.90.22 are not the MFN duties.

Source: Section B of Appendix 2 of the Agreement, WTO-IDB and the authorities.

Table A2.2 United States: Tariff Rate Quotas for imports from Canada

Products/Tariff lines	Tariff rate		MFN 2021	Aggregate quantity per year
	In-Quota	Out-of-Quota		
TRQ – US 1: Fluid Cream, Sour Cream, Ice Cream, and Milk Beverages				From 1,750 litres in year 1 to 10,500 litres by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
0401.40.25, 0401.50.25, 0403.90.16	0	MFN	77.2 cents/litre	
2105.00.20	0	MFN	50.2 cents/kg + 17%	
2202.99.28	0	MFN	23.5 cents/litre + 14.9%	
TRQ – US 2: Skim Milk Powder				From 1,250 litres in year 1 to 7,500 litres by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
0402.10.50, 0402.21.25	0	MFN	86.5 cents/kg	
TRQ – US 3: Butter, Cream, and Cream Powder				From 750 metric tonnes (MT) in year 1 to 4,500 MT by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
0405.10.20	0	MFN	USD1.541/kg	
0405.20.70	0	MFN	70.4 cents/kg + 8.5%	
0402.21.90, 0403.90.65	0	MFN	USD1.556/kg	
0401.50.75, 0403.90.78	0	MFN	USD1.646/kg	
0405.90.20	0	MFN	USD1.865/kg + 8.5%	
0405.20.30, 2106.90.26, 2106.90.36	0	MFN	USD1.996/kg	
TRQ – US 4: Cheese				From 2,083 MT in year 1 to 12,500 MT by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
0406.10.38, 0406.20.39, 0406.20.71, 0406.30.38, 0406.30.71, 0406.90.54, 0406.90.84	0	MFN	USD1.055/kg	
0406.10.78, 0406.20.87, 0406.30.87, 0406.90.94, 1901.90.36	0	MFN	USD1.128/kg	
0406.10.28, 0406.20.33, 0406.20.67, 0406.30.28, 0406.30.67, 0406.90.12, 0406.90.78	0	MFN	USD1.227/kg	
0406.10.68, 0406.20.83, 0406.30.53, 0406.30.83, 0406.90.92	0	MFN	USD1.386/kg	
0406.10.08, 0406.10.88, 0406.20.91, 0406.30.91, 0406.90.97	0	MFN	USD1.509/kg	
0406.10.48, 0406.20.48, 0406.20.75, 0406.30.48, 0406.30.75, 0406.90.18, 0406.90.88	0	MFN	USD1.803/kg	
0406.90.48	0	MFN	USD1.877/kg	
0406.10.58, 0406.20.53, 0406.20.79, 0406.30.79, 0406.90.32, 0406.90.37, 0406.90.42, 0406.90.68	0	MFN	USD2.146/kg	
0406.10.18, 0406.20.28, 0406.20.63, 0406.30.18, 0406.30.63, 0406.40.70, 0406.90.74	0	MFN	USD2.269/kg	
TRQ – US 5: Whole Milk Powder				From 115 MT in year 1 to 690 MT by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
0402.21.50	0	MFN	USD1.092/kg	
0402.29.50	0	MFN	USD1.104/kg + 14.9%	
2309.90.28, 2309.90.48	0	MFN	80.4 cents/kg + 6.4%	

Products/Tariff lines	Tariff rate		MFN 2021	Aggregate quantity per year
	In-Quota	Out-of-Quota		
TRQ – US 6: Dried Yogurt, Sour Cream, Whey, and Products of Milk Constituents				From 1,838 MT in year 1 to 11,030 MT by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
0403.90.95	0	MFN	USD1.034/kg + 17%	
0403.10.50	0	MFN	USD1.035/kg + 17%	
0404.10.15	0	0% by 2030	USD1.035/kg + 8.5%	
0403.90.55	0	MFN	USD1.092/kg	
0404.90.50	0	MFN	USD1.189/kg + 8.5%	
0403.90.45	0	MFN	87.6 cents/kg	
0404.10.90	0	0% by 2030	87.6 cents/kg	
TRQ – US 7: Concentrated Milk				From 230 MT in year 1 to 1,380 MT by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
0402.91.70, 0402.91.90	0	MFN	31.3 cents/kg	
0402.99.90	0	MFN	46.3 cents/kg + 14.9%	
0402.99.45, 0402.99.55	0	MFN	49.6 cents/kg	
TRQ – US 8: Other Dairy				From 317 MT in year 1 to 1,900 MT by year 6. From year 7 the quota will increase at a compound rate of 1%/year for 13 years
1901.10.66, 1901.90.65, 1901.10.56, 1901.90.62	0	MFN	USD1.035/kg + 13.6%	
1901.10.16, 1901.10.26, 1901.10.36, 1901.10.44	0	MFN	USD1.035/kg + 14.9%	
2106.90.87	0	MFN	28.8 cents/kg + 8.5%	
1517.90.60	0	0% by 2026	34.2 cents/kg	
1806.20.26, 1806.20.36, 1806.32.06, 1806.32.16	0	MFN	37.2 cents/kg + 4.3%	
1806.32.70, 1806.90.08, 1806.90.18, 1806.90.28	0	MFN	37.2 cents/kg + 6%	
1806.20.82, 1806.20.87	0	MFN	37.2 cents/kg + 8.5%	
1704.90.58	0	MFN	40 cents/kg + 10.4%	
1901.20.15, 1901.20.50	0	MFN	42.3 cents/kg + 8.5%	
2105.00.40	0	MFN	50.2 cents/kg + 17%	
1806.20.28, 1806.20.38, 1806.32.08, 1806.32.18	0	MFN	52.8 cents/kg + 4.3%	
1806.32.80, 1806.90.10, 1806.90.20, 1806.90.30	0	MFN	52.8 cents/kg + 6%	
1806.20.83, 1806.20.89	0	MFN	52.8 cents/kg + 8.5%	
2106.90.66	0	MFN	70.4 cents/kg + 8.5%	
2106.90.09	0	MFN	86.2 cents/kg	
TRQ – US 9: Sugar				9,600 MT per year but must be wholly obtained from sugar beet produced in Canada.
1701.13.50, 1701.14.50	0	MFN	33.87 cents/kg	
1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20	0	MFN	35.74 cents/kg	
TRQ – US 10: Sugar Containing Products				9,600 MT per year
1702.20.28, 1702.30.28	0	MFN	16.9 cents/kg of total sugars + 5.1%	
1806.10.15	0	MFN	21.7 cents/kg	
1901.10.76, 1901.90.68, 1901.90.71	0	MFN	23.7 cents/kg + 8.5%	

Products/Tariff lines	Tariff rate		MFN 2021	Aggregate quantity per year
	In-Quota	Out-of-Quota		
2106.90.91, 2106.90.94, 2106.90.97	0	MFN	28.8 cents/kg + 8.5%	
2103.90.78	0	MFN	30.5 cents/kg + 6.4%	
1806.20.73, 1806.20.77, 2101.12.38, 2101.12.48, 2101.12.58, 2101.20.38, 2101.20.48, 2101.20.58	0	MFN	30.5 cents/kg + 8.5%	
1806.10.28, 1806.10.38, 1806.10.55, 1806.10.75	0	MFN	33.6 cents/kg	
1701.91.48, 1701.91.58, 1702.40.28, 1702.60.28, 1702.90.58, 1702.90.68	0	MFN	33.9 cents/kg + 5.1%	
2106.90.46	0	MFN	35.74 cents/kg	
1806.90.39, 1806.90.49, 1806.90.59	0	MFN	37.2 cents/kg + 6%	
1806.20.94, 1806.20.98	0	MFN	37.2 cents/kg + 8.5%	
1704.90.68, 1704.90.78	0	MFN	40 cents/kg + 10.4%	
1901.20.25, 1901.20.35, 1901.20.60, 1901.20.70	0	MFN	42.3 cents/kg + 8.5%	
2106.90.72, 2106.90.76, 2106.90.80	0	MFN	70.4 cents/kg + 8.5%	

Source: Chapter 2, Appendix 2: Tariff Schedule of the United States.