Chapter Six: Energy and Basic Petrochemicals

Article 601: Principles

1. The Parties confirm their full respect for their Constitutions.

2. The Parties recognize that it is desirable to strengthen the important role that trade in energy and basic petrochemical goods plays in the free trade area and to enhance this role through sustained and gradual liberalization.

3. The Parties recognize the importance of having viable and internationally competitive energy and petrochemical sectors to further their individual national interests.

Article 602: Scope and Coverage

1. This Chapter applies to measures relating to energy and basic petrochemical goods originating in the territories of the Parties and to measures relating to investment and to the cross-border trade in services associated with such goods, as set forth in this Chapter.

2. For purposes of this Chapter, energy and basic petrochemical goods refer to those goods classified under the Harmonized System as:

   a) subheading 2612.10;

   b) headings 27.01 through 27.06;

   c) subheading 2707.50;

   d) subheading 2707.99 (only with respect to solvent naphtha, rubber extender oils and carbon black feedstocks);

   e) headings 27.08 and 27.09;

   f) heading 27.10 (except for normal paraffin mixtures in the range of C9 to C15);

   g) heading 27.11 (except for ethylene, propylene, butylene and butadiene in purities over 50 percent);

   h) headings 27.12 through 27.16;

   i) subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings);

   j) subheading 2845.10; and

   k) subheading 2901.10 (only with respect to ethane, butanes, pentanes, hexanes, and heptanes).

3. Except as specified in Annex 602.3, energy and petrochemical goods and activities shall be governed by the provisions of this Agreement.

Article 603: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties incorporate the provisions of the General Agreement on Tariffs and Trade (GATT), with respect to prohibitions or restrictions on trade in energy and basic petrochemical goods. The Parties agree that this language does not incorporate their respective protocols of provisional application to the GATT.

2. The Parties understand that the provisions of the GATT incorporated in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum or maximum export - price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum or maximum import-price requirements.

3. In circumstances where a Party adopts or maintains a restriction on importation from or exportation to a non-Party of an energy or basic petrochemical good, nothing in this Agreement shall be construed to prevent the Party from:

   a) limiting or prohibiting the importation from the territory of any Party of such energy or basic petrochemical good of the non-Party; or

   b) requiring as a condition of export of such energy or basic petrochemical good of the Party to the territory of any other Party that the good be consumed within the territory of the other Party.
4. In the event that a Party adopts or maintains a restriction on imports of an energy or basic petrochemical good from non-Party countries, the Parties, on request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Each Party may administer a system of import and export licensing for energy or basic petrochemical goods provided that such system is operated in a manner consistent with the provisions of this Agreement, including paragraph 1 and Article 1502 (Monopolies and State Enterprises).

6. This Article is subject to the reservations set out in Annex 603.6.

Article 604: Export Taxes

No Party may adopt or maintain any duty, tax or other charge on the export of any energy or basic petrochemical good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

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

b) any such good when destined for domestic consumption.

Article 605: Other Export Measures

Subject to Annex 605, a Party may adopt or maintain a restriction otherwise justified under Articles XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of an energy or basic petrochemical good to the territory of another Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of the specific energy or basic petrochemical good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

b) the Party does not impose a higher price for exports of an energy or basic petrochemical good to that other Party than the price charged for such good when consumed domestically, by means of any measure such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific energy or basic petrochemical goods supplied to that other Party, such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

Article 606: Energy Regulatory Measures

1. The Parties recognize that energy regulatory measures are subject to the disciplines of:

a) national treatment, as provided in Article 301;

b) import and export restrictions, as provided in Article 603; and

c) export taxes, as provided in Article 604.

2. Each Party shall seek to ensure that in the application of any energy regulatory measure, energy regulatory bodies within its territory avoid disruption of contractual relationships to the maximum extent practicable, and provide for orderly and equitable implementation appropriate to such measures.

Article 607: National Security Measures

Subject to Annex 607, no Party may adopt or maintain a measure restricting imports of an energy or basic petrochemical good from, or exports of an energy or basic petrochemical good to, another Party under Article XXI of the GATT or under Article 2102 (National Security), except to the extent necessary to:

a) supply a military establishment of a Party or enable fulfillment of a critical defense contract of a Party;

b) respond to a situation of armed conflict involving the Party taking the measure;

c) implement national policies or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or
d) respond to direct threats of disruption in the supply of nuclear materials for defense purposes.

**Article 608: Miscellaneous Provisions**

1. The Parties agree to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.

2. Annex 608.2 applies only to the Parties specified in that Annex with respect to other agreements relating to trade in energy goods.

**Article 609: Definitions**

For purposes of this Chapter:

- **consumed** means transformed so as to qualify under the rules of origin set out in Chapter Four (Rules of Origin), or actually consumed;

- **cross-border trade in services** means "crossborder trade in services" as defined in Article 1213 (Cross-Border Trade in Services Definitions);

- **energy regulatory measure** means any measure by federal or sub-federal entities that directly affects the transportation, transmission or distribution, purchase or sale, of an energy or basic petrochemical good;

- **enterprise** means "enterprise" as defined in Article 1139 (Investment-Definitions);

- **enterprise of a Party** means "enterprise of a Party" as defined in Article 1139;

- **facility for independent power production** means a facility that is used for the generation of electric energy exclusively for sale to an electric utility for further resale;

- **first hand sale** refers to the first commercial transaction affecting the good in question;

- **investment** means investment as defined in Article 1139;

- **restriction** means any limitation, whether made effective through quotas, licenses, permits, minimum or maximum price requirements or any other means;

- **total export shipments** means the total shipments from total supply to users located in the territory of the other Party; and

- **total supply** means shipments to domestic users and foreign users from:
  
  a) domestic production;
  
  b) domestic inventory, and
  
  c) other imports, as appropriate.