

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 play in the North American region 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 services associated with such energy and basic petrochemical 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) Chapter 27 (excluding: subheadings 2707.10, 2707.20, 2707.30, 2707.40, 2707.60, 2707.91, 2707.99 (except solvent naphtha, rubber extender oils and carbon black feedstocks), and in subheading 2710.00 (only normal paraffin mixtures in the range of C9 to C15), and in heading 2711 (only ethylene, propylene, butylene and butadiene, in purities over 50 percent));
 - (b) subheading 2612.10;
 - (c) subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings);
 - (d) subheading 2845.10;
 - (e) subheading: 2901.10 (ethane, butanes, pentanes, hexanes, and heptanes only);
3. Except as otherwise 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 imposes 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 imposes a restriction on imports of an energy or basic petrochemical good from non-Party countries, the Parties, upon 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. Parties may administer a system of import and export licensing for energy and 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. In addition, the Parties recognize the provisions of Annex 603.6.

Article 604: Export Taxes

No Party shall maintain or introduce any tax, duty, or charge on the export of any energy or basic petrochemical good to the territory of any other Party, unless such tax, duty, or charge is also maintained or introduced on such energy or basic

petrochemical good when destined for domestic consumption.

Article 605: Other Export Measures

A Party may maintain or introduce a restriction otherwise justified under the provisions of Articles XI:2(a) and XX(g), (i) and (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 a specific energy or basic petrochemical good made available to such 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 involved may agree;

(b) the Party does not impose a higher price for exports of an energy or basic petrochemical good to such other Party than the price charged for such energy 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 which 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 such other Party or normal proportions among specific energy or basic petrochemical goods supplied to the 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; or

(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

1. No Party shall maintain or introduce 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.

2. The Parties recognize the provisions of Annex 607.2.

Article 608: Miscellaneous Provisions

1. Canada and the United States shall act in accordance with the terms of Annexes 902.5 and 905.2 of the Canada - United States Free Trade Agreement.

2. 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.

3. Canada and the United States intend no inconsistency between the provisions of this Chapter and the Agreement on an International Energy Program (IEP). In the event of any unavoidable inconsistency between the IEP and this Chapter, the provisions of the IEP shall prevail to the extent of that inconsistency as between Canada and the United States.

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;

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

or any other means;

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;

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

Independent Power Producer (IPP) means a facility that is used for the generation of electric energy exclusively for sale to an electric utility for further resale;

investment means investment as defined in Chapter Eleven (Investment);

total supply means shipments to domestic users and foreign users from:

(a) domestic production;

(b) domestic inventory; and

(c) other imports, as appropriate; and

total export shipments means the total shipments from total supply to users located in the territory of the other Party.

ANNEX 602.3

1. The Mexican State reserves to itself the following strategic activities and investment in such activities:

(a) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production of artificial gas, basic petrochemicals and their feedstocks; and pipelines; and

(b) foreign trade; transportation, storage and distribution, up to and including first hand sales of the following goods: crude oil; natural and artificial gas; goods covered by this Chapter obtained from the refining or processing of crude oil and natural gas; and basic petrochemicals.

2. In the event of an inconsistency between Annex 602.3, paragraphs 1, 5(a) and 6, and another provision of this Agreement, the provisions of Annex 602.3, paragraphs 1, 5(a) and 6, shall prevail to the extent of that inconsistency.

3. Natural Gas and Petrochemical Feedstock Trade

Where end-users and suppliers of natural gas or basic petrochemical goods consider that cross-border trade in such goods may be in their interests, the Parties agree that such end-users and suppliers, and state enterprises of the Parties as may be required under their domestic law, shall have the right to negotiate supply contracts.

The modalities of implementing such arrangements are left to the end-users, suppliers and state enterprises of the Parties as may be required under their domestic law and may take the form of individual contracts between the state enterprise and each of the other entities. Such contracts may be subject to regulatory approval.

4. Performance Contracts

The Parties shall allow state enterprises to negotiate performance clauses in their service contracts.

5. Electricity

(a) In Mexico the supply of electricity as a public service is a strategic area reserved to the State. Except as provided in subparagraph (b) below the activities encompassed by the supply of electricity as a public service in Mexico include the generation, transmission, transformation, distribution and sale of electricity.

(b) The opportunities for private investment in Mexico in electricity generating facilities include:

(i) Production for Own Use

Enterprises of the other Parties may acquire, establish, and/or operate an electrical generating facility to meet its own supply needs. Electricity generated in excess of the enterprise's own supply requirements must be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

(ii) Co-generation

Enterprises of the other Parties may acquire, establish, and/or operate co-generation facilities which generate electricity using heat, steam or other energy sources associated with an industrial process. Owners of the industrial facility need not be the owners of the co-generating facility. Electricity generated in excess of the enterprise's own supply requirements must be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

(iii) Independent Power Production

Enterprises of the other Parties may acquire, establish, and/or operate electricity generating facilities for independent power production (IPP) in Mexico. Electricity generated by IPP facilities for sale in Mexico shall be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise. Where an IPP located in Mexico and an electric utility of another Party consider that cross-border trade in electricity may be in their interest, the Parties agree that these entities and CFE shall have the right to negotiate the terms and conditions of power purchase and power sale contracts. The modalities of implementing such supply arrangements is left to the end-users, suppliers and CFE and may take the form of individual contracts between the state enterprise and each of the other entities. Such contracts shall be subject to regulatory approval.

6. Nuclear

The generation of nuclear energy; the exploration, exploitation and processing of radioactive minerals; the nuclear fuel cycle; the use and reprocessing of nuclear fuels and the regulation of their applications for other purposes; the transportation and storage of nuclear wastes; and the production of heavy water, are reserved to the Mexican state.

7. Pursuant to Article 1101(3), private investment is not permitted in reserved activities listed above in paragraphs 1, 5(a) and 6. Chapter Twelve (Cross Border Trade in Services) shall only apply to activities involving the provision of services covered in paragraphs 1, 5(a) and 6 when Mexico permits a contract to be granted in respect of such activities and only to the extent of that contract.

ANNEX 603.6

United Mexican States:

1. For only those goods listed below, Mexico may restrict the granting of import and export licenses for the sole purpose of reserving foreign trade in these goods to itself.

2707.50 Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distills at 250 C by the ASTM D 86 method.

2707.99 Rubber extender oils, solvent naphtha and carbon black feedstocks only.

2709 Petroleum oils and oils obtained from bituminous minerals, crude.

2710 aviation gasoline; gasoline and motor fuel blending stocks (except aviation gasoline) and reformates when used as motor fuel blending stocks; kerosene; gas oil and diesel oil; petroleum ether; fuel oil; paraffinic oils other than for lubricating purposes; pentanes; carbon black feedstocks; hexanes; heptanes and naphthas.

2711 Petroleum gases and other gaseous hydrocarbons other than: ethylene, propylene, butylene and butadiene, in purities over 50 percent.

2712.90 only paraffin wax containing by weight more than 0.75% of oil, in bulk (Mexico classifies these goods under HS 2712.90.02) and only when imported to be used for further refining.

2713.11 Petroleum coke not calcined.

2713.20 Petroleum bitumen (except when used for road surfacing purposes under HS 2713.20.01).

2713.90 Other residues of petroleum oils obtained from bituminous materials.

2714 Bitumen and asphalt, natural; bituminous or oil shale and tar sands, asphaltites and asphaltic rocks (except when used for road surfacing purposes under HS 2714.90.01).

2901.10 Ethane, butanes, pentanes, hexanes, and heptanes only.

2. Notwithstanding any other provision of this Chapter, the provisions of Article 605 shall not apply as between the other Parties and Mexico.

ANNEX 607.2

1. The provisions of Article 607(1) shall impose no obligations and confer no rights on Mexico.

2. Notwithstanding Article 607(1), the provisions of Article 2102 (National Security) shall apply as between the other Parties and Mexico.