

## **CHAPTER 3**

### **AGRICULTURE**

#### **Section A: General Provisions**

##### **Article 3.1: Definitions**

For the purposes of this Chapter:

**agricultural good** means agricultural products referred to in Article 2 of the Agreement on Agriculture;

**export subsidy** has the same meaning as assigned to “export subsidies” in Article 1(e) of the Agreement on Agriculture; and

**Agreement on Agriculture** means the *Agreement on Agriculture*, set out in Annex 1A to the WTO Agreement.

##### **Article 3.2: Scope**

1. This Chapter applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

2. In the event of any inconsistency between this Chapter and another provision of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

##### **Article 3.3: International Cooperation**

The Parties shall work together at the WTO to promote increased transparency and to improve and further develop multilateral disciplines on market access, domestic support, and export competition with the objective of substantial progressive reductions in support and protection resulting in fundamental reform.

##### **Article 3.4: Export Competition**

1. No Party shall adopt or maintain an export subsidy on any agricultural good destined for the territory of another Party.

2. If a Party considers that export financing support granted by another Party results or may result in a distorting effect on trade between the Parties, or considers that an export subsidy is being granted by another Party, with respect to an agricultural good, it may request a discussion on the matter with the other Party. The responding Party shall agree to discuss the matter with the requesting Party as soon as practicable.

### **Article 3.5: Export Restrictions – Food Security**

1. For the purpose of this Article, “foodstuff” includes fish and fish products intended for human consumption.

2. 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 a critical shortage, subject to meeting the conditions set out in Article 12.1 of the Agreement on Agriculture.

3. In addition to the conditions set out in Article 12.1 of the Agreement on Agriculture under which a Party may apply an export prohibition or restriction, other than a duty, tax, or other charge on a foodstuff, a Party that:

- (a) imposes an export prohibition or restriction on the exportation or sale for export of a foodstuff to another Party shall notify the measure to the other Parties at least 30 days prior to the date the measure takes effect, except when the critical shortage is caused by an event constituting *force majeure*, in which case the Party shall notify prior to the date the measure takes effect; or
- (b) maintains an export prohibition or restriction as of the date of entry into force of this Agreement shall notify the measure to the other Parties within 30 days of the date of entry into force of this Agreement.

4. A notification made pursuant to paragraph 3 must include: the reasons for adopting or maintaining the export prohibition or restriction, an explanation of how the measure is consistent with Article XI:2(a) of the GATT 1994, and an identification of alternative measures, if any, that the Party considered before imposing the export prohibition or restriction.

5. A Party is not required to notify an export prohibition or restriction pursuant to paragraphs 3 or 8 if the measure prohibits or restricts the exportation or sale for export only of a foodstuff that the Party has been a net importer during each of the three calendar years preceding the imposition of the measure, excluding the year in which the Party imposes the measure.

6. If a Party that adopts or maintains a measure referred to in paragraph 3 has been a net importer of each foodstuff subject to that measure during each of the three calendar years preceding imposition of the measure, excluding the year in which the Party imposes the measure, and that

Party does not provide the other Parties with a notification pursuant to paragraph 3, the Party shall, within a reasonable period of time, provide to the other Parties trade data demonstrating that it was a net importer of the foodstuff during these three calendar years.

7. A Party that is required to notify a measure under paragraph 3 shall:

- (a) on the request of another Party having a substantial interest as an importer of the foodstuff subject to the measure, consult with that Party with respect to any matter relating to the measure;
- (b) on the request of another Party having a substantial interest as an importer of the foodstuff subject to the measure, provide that Party with relevant economic indicators bearing on whether a critical shortage within the meaning of Article XI:2(a) of the GATT 1994 exists or is likely to occur in the absence of the measure, and on how the measure will prevent or relieve the critical shortage; and
- (c) respond in writing to any question posed by another Party regarding the measure within 14 days of receipt of the question.

8. A Party that considers that another Party should have notified a measure under paragraph 3 may bring the matter to the attention of that other Party. If the matter is not satisfactorily resolved promptly thereafter, the Party that considers that the measure should have been notified may itself bring the measure to the attention to the third Party.

9. A Party should ordinarily terminate a measure subject to notification under paragraphs 3 or 8 within six months of the date it is adopted. A Party contemplating continuation of a measure beyond six months from the date it adopted the measure shall notify the other Parties no later than five months after the date it adopted the measure and provide the information identified in paragraph 3. Unless the Party has consulted with the other Parties that are net importers of the foodstuff subject to the export prohibition or restriction, the Party shall not continue the measure beyond 12 months from the date the Party adopted the measure. The Party shall immediately discontinue the measure when the critical shortage, or threat thereof, ceases to exist.

10. No Party shall apply a measure that is subject to notification under paragraphs 3 or 8 to a foodstuff purchased for a non-commercial, humanitarian purpose.

### **Article 3.6: Domestic Support**

1. The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting effects and effects on production. If a Party supports its agricultural producers, the Party shall consider domestic support measures that have no, or at most minimal, trade distorting effects or effects on production.

2. If a Party raises concerns that another Party's domestic support measure has had a negative impact on trade between the Parties, the Parties shall share relevant information regarding the domestic support measure with each other and discuss the matter with a view to seeking to minimize any negative trade impact.

### **Article 3.7: Committee on Agricultural Trade**

1. The Parties hereby establish a Committee on Agricultural Trade ("Agriculture Committee"), composed of government representatives of each Party.

2. The Agriculture Committee's functions shall include:

- (a) promoting trade in agricultural goods between the Parties under this Agreement;
- (b) monitoring and promoting cooperation on the implementation and administration of this Chapter;
- (c) providing a forum for the Parties to consult and endeavor to address issues or trade barriers and improve access to their respective markets, in coordination or jointly with other committees, working groups, or any other subsidiary bodies established under this Agreement;
- (d) endeavoring to exchange information on trade in agricultural goods between the Parties, including information covered by Article 3.10.1 (Transparency and Consultations) or any other relevant transparency provision in this Chapter;
- (e) fostering cooperation among the Parties in areas of mutual interest, such as rural development, technology, research and development, and capacity building, and creating joint programs as mutually agreed between the agencies involved in agriculture, among others;
- (f) undertaking any additional work, including that the Commission may assign or another committee may refer;
- (g) recommending to the Commission any modification of or addition to this Chapter;  
and
- (h) reporting annually on its activities to the Commission.

3. The Agriculture Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.

4. The Agriculture Committee shall meet within one year of the date of entry into force of this Agreement and once each year thereafter unless the Parties decide otherwise.

### **Article 3.8: Consultative Committees on Agriculture**

1. The activities of the Consultative Committees on Agriculture (CCAs) established by:
  - (a) the *Canada-U.S. Consultative Committee on Agriculture Terms of Reference in accordance with the Record of Understanding Between the Governments of the United States of America and Canada Regarding Areas of Agricultural Trade* (ROU) on December 4, 1998;
  - (b) the *Memorandum of Understanding Between the U.S. Department of Agriculture and the Office of the U.S. Trade Representative, and the Secretariat of Agriculture, Livestock, Rural Development, Fish and Food and the Secretary of Economy of the United Mexican States Regarding Areas of Food and Agriculture Trade* (US-MX MOU) on October 1, 2001 and re-established on March 6, 2007; and
  - (c) the *Memorandum of Understanding between the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food of the United Mexican States and Agriculture and Agri-Food Canada for the establishment of the Mexico-Canada Agriculture Consultative Committee* (MX-CA MOU) on February 1, 2002 and re-established in March 2006,

shall as of the date of entry into force of this Agreement be organized under this Agreement.

2. The CCAs shall be governed by and operate according to their respective ROU or MOU, and all implementing or administrative documents, as may be amended.
3. The CCAs may inform the Agriculture Committee, the Committee on Sanitary and Phytosanitary Measures, or the Committee on Technical Barriers to Trade of their activities.

### **Article 3.9: Agricultural Special Safeguards**

Originating agricultural goods traded 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 Agreement on Agriculture.<sup>1</sup>

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<sup>1</sup> For greater certainty, an agricultural good for which most-favored-nation tariff treatment applies may be subject to additional duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture.

### **Article 3.10: Transparency and Consultations**

1. Each Party shall endeavor, as appropriate, to share with another Party, on request, available information regarding a measure relating to trade in agricultural goods taken by a regional level of government in its territory that may have a significant effect on trade between those Parties.
2. 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 as they affect trade between the Parties.

### **Article 3.11: Annexes**

1. Annex 3-A applies to trade in agricultural goods between Canada and the United States.
2. Annex 3-B applies to trade in agricultural goods between Mexico and the United States.
3. Annex 3-C applies to trade in distilled spirits, wine, beer, and other alcohol beverages.
4. Annex 3-D applies to proprietary formulas for prepackaged foods and food additives.

## **Section B: Agricultural Biotechnology**

### **Article 3.12: Definitions**

For the purposes of this Section:

**agricultural biotechnology** means technologies, including modern biotechnology, used for the deliberate manipulation of an organism to introduce, remove, or modify one or more heritable characteristics of a product for agriculture and aquaculture use and that are not technologies used in traditional breeding and selection;

**Low Level Presence (LLP) Occurrence** means low levels of recombinant deoxyribonucleic acid (DNA) plant materials that have passed a food safety assessment according to the Codex Guideline for the Conduct of a Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003) in one or more countries, which may on occasion 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;

**modern biotechnology** means the application of:

- (a) *in vitro* nucleic acid techniques, including recombinant DNA and direct injection of nucleic acid into cells or organelles; or
- (b) fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

**product of agricultural biotechnology** means an agricultural good, or a fish or fish product covered by Chapter 3 of the Harmonized System, developed using agricultural biotechnology, but does not include a medicine or a medical product; and

**product of modern biotechnology** means an agricultural good, or a fish or fish product covered by Chapter 3 of the Harmonized System, developed using modern biotechnology, but does not include a medicine or a medical product.

### **Article 3.13: Contact Points**

Each Party shall designate and notify a contact point or contact points for the sharing of information on matters related to this Section, in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

### **Article 3.14: Trade in Products of Agricultural Biotechnology**

1. The Parties confirm the importance of encouraging agricultural innovation and facilitating trade in products of agricultural biotechnology, while fulfilling legitimate objectives, including by promoting transparency and cooperation, and exchanging information related to the trade in products of agricultural biotechnology.

2. This Section does not require a Party to mandate an authorization for a product of agricultural biotechnology to be on the market.

3. Each Party shall make available to the public and, to the extent possible, online:

- (a) the information and documentation requirements for an authorization, if required, of a product of agricultural biotechnology;
- (b) any summary of any risk or safety assessment that has led to the authorization, if required, of a product of agricultural biotechnology; and
- (c) any list of the products of agricultural biotechnology that have been authorized in its territory.

4. To reduce the likelihood of disruptions to trade in products of agricultural biotechnology:
  - (a) each Party shall continue to encourage applicants to submit timely and concurrent applications to the Parties for authorization, if required, of products of agricultural biotechnology;
  - (b) a Party requiring any authorization for a product of agricultural biotechnology shall:
    - (i) accept and review applications for the authorization, if required, of products of agricultural biotechnology on an ongoing basis year-round,
    - (ii) adopt or maintain measures that allow the initiation of the domestic regulatory authorization process of a product not yet authorized in another country,
    - (iii) if an authorization is subject to expiration, take steps to help ensure that the review of the product is completed and a decision is made in a timely manner, and if possible, prior to expiration, and
    - (iv) communicate with the other Parties regarding any new and existing authorizations of products of agricultural biotechnology so as to improve information exchange.

#### **Article 3.15: LLP Occurrence**

1. Each Party shall adopt or maintain policies or approaches designed to facilitate the management of any LLP Occurrence.
2. To address an LLP Occurrence, and with a view to preventing future LLP Occurrences, on request of an importing Party, an exporting Party shall:
  - (a) provide any summary of the specific risk or safety assessments that the exporting Party conducted in connection with any authorization of the product of modern biotechnology that is the subject of the LLP Occurrence;
  - (b) provide, on receiving permission of the entity, if required, a contact point for any entity within its territory that received authorization for the product of modern biotechnology that is the subject of the LLP Occurrence and that is on the basis of this authorization, likely to possess:
    - (i) any existing, validated methods for the detection of the product of modern biotechnology that is the subject of the LLP Occurrence,



- (ii) any reference sample of the product of modern biotechnology that is the subject of the LLP Occurrence necessary for the detection of the LLP Occurrence, and
    - (iii) relevant information<sup>2</sup> that can be used by the importing Party to conduct a risk or safety assessment, if appropriate, in accordance with the relevant international standards and guidelines; and
  - (c) encourage the entity in its territory that received authorization related to the product of modern biotechnology that is the subject of the LLP Occurrence to share the information referred to in paragraph 2(b) with the importing Party.
3. In the event of an LLP Occurrence, the importing Party shall:
- (a) inform the importer or the importer's agent of the LLP Occurrence and of any additional information, including the information referenced in paragraph 2(b) of this Article, that will be required to be submitted to assist the importing Party to make a decision on the management of the LLP occurrence;
  - (b) on request, and if available, provide to the exporting Party a summary of any risk or safety assessment that the importing Party has conducted in accordance with its domestic law in connection with the LLP Occurrence;
  - (c) ensure that the LLP Occurrence is managed without unnecessary delay and that any measure<sup>3</sup> applied to manage the LLP Occurrence is appropriate to achieve compliance with the importing Party's laws and regulations and takes into account any risk posed by the LLP Occurrence; and
  - (d) take into account, as appropriate, any relevant risk or safety assessment provided, and authorization granted, by another Party or non-Party when deciding how to manage the LLP Occurrence.

### **Article 3.16: Working Group for Cooperation on Agricultural Biotechnology**

1. The Parties hereby establish a Working Group for Cooperation on Agricultural Biotechnology (Working Group) for information exchange and cooperation on policy and trade-related matters associated with products of agricultural biotechnology. The Working Group shall be co-chaired by government representatives of each of the Parties, and shall be comprised of

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<sup>2</sup> For example, relevant information includes the information contained in Annex 3 of the *Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants* (CAC/GL 45-2003).

<sup>3</sup> For purposes of this paragraph, "measure" does not include penalties.

policy officials responsible for issues related to agricultural biotechnology of each of the Parties. The Working Group shall report to the Agriculture Committee on its activities and progress on related matters.

2. The Working Group shall provide a forum for the Parties to:

- (a) exchange information on issues, including on existing and proposed domestic laws, regulations, and policies, and on any risk or safety assessments subject to appropriate confidentiality arrangements, related to the trade in products of agricultural biotechnology;
- (b) exchange information, and collaborate when possible, on issues pertaining to products of agricultural biotechnology, including on regulatory and policy developments;
- (c) consider work, based upon accumulated knowledge and experience of certain products, in areas of regulatory affairs and policy to facilitate trade in products of agricultural biotechnology;
- (d) collaborate to consider common approaches for the management of an LLP Occurrence; and
- (e) consider the work conducted under other trilateral cooperation mechanisms focused on agricultural biotechnology, including the Trilateral Technical Working Group, established by the Parties in 2003 and operating under Terms of Reference from February 2015.

3. The Working Group shall coordinate efforts to advance regulatory approaches and trade policies that are transparent, and based on science and on risk for products of agricultural biotechnology in other countries and in international organizations.

4. The Working Group shall meet annually, unless otherwise decided by the Parties, and may meet in person, or by any other means as determined by the Parties.

## ANNEX 3-A

### AGRICULTURAL TRADE BETWEEN CANADA AND THE UNITED STATES

#### Article 3.A.1: Tariff Classifications

1. Canada shall notify the United States of any change to Canada's Schedule to the *Customs Tariff* that increases the rate of a customs duty applied to a dairy, poultry, or egg product when imported into Canada from the United States<sup>4</sup> prior to finalization of such change. To the maximum extent possible, Canada shall provide such notification immediately after publication of the proposal for the change, so as to provide a sufficient opportunity for the United States to review the proposal prior to its implementation. If the United States requests, Canada shall promptly provide information to the United States, and respond to questions from the United States, pertaining to any change to Canada's Schedule to the *Customs Tariff* that increases the rate of a customs duty applied to a dairy, poultry, or egg product when imported into Canada from the United States, whether or not the United States has been previously notified of the change.
2. The United States shall notify Canada of any change to the *Harmonized Tariff Schedule of the United States* that increases the tariff rate applied to a sugar, sugar containing product (SCP), or dairy product when imported into the United States from Canada<sup>5</sup> prior to finalization of such change. To the maximum extent possible, the United States shall provide such notification immediately after publication of the proposal for the change, so as to provide sufficient opportunity for Canada to review the proposal prior to its implementation. If Canada requests, the United States shall promptly provide information to Canada, and respond to questions from Canada, pertaining to any change to the *Harmonized Tariff Schedule of the United States* that increases the tariff rate applied to a sugar, SCP, or dairy product when imported into the United States from Canada, whether or not Canada has been previously notified of the change.
3. On the request of the other Party, a Party shall meet to discuss any measures or policies that may affect trade between the Parties of a sugar, SCP, dairy, poultry, or egg product within 30 days of the request.

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<sup>4</sup> For purposes of this paragraph, a "change to Canada's Schedule to the *Customs Tariff* that increases the rate of a customs duty applied to a dairy, poultry, or egg product when imported into Canada from the United States" means a change to Canada's Schedule to the *Customs Tariff* that changes the classification of any good not previously classified under a tariff item listed in Appendix A that results in the good being classified under a tariff item listed in Appendix A.

<sup>5</sup> For purposes of this paragraph, a "change to the *Harmonized Tariff Schedule of the United States* that increases the tariff rate applied to a sugar, SCP, or dairy product when imported into the United States from Canada" means a change to the *Harmonized Tariff Schedule of the United States* that changes the classification of any good not classified before the change under a tariff item listed in Appendix B to this Annex that results in the good being classified under a tariff item listed in Appendix B.

### **Article 3.A.2: Tariff-Rate Quota Administration**

1. For the purposes of this Article:

**allocation mechanism** means any system in which access to the tariff rate quota is granted on a basis other than first-come first-served; and

**tariff rate quota** (TRQ) means a mechanism that provides for the application of a preferential rate of customs duty to imports of a particular originating good up to a specified quantity (in-quota quantity), and at a different rate to imports of that good that exceed that quantity.

2. For the purposes of this Article, TRQ refers only to those TRQs established under this Agreement as set out in a Party's Schedule to Annex 2-B (Tariff Commitments). For greater certainty, this Article shall not apply to TRQs set out in a Party's Schedule to the WTO Agreement.

3. Each Party shall implement and administer its TRQs in accordance with Article XIII of GATT 1994, including its interpretative notes, the Import Licensing Agreement and Article 2.15 (Transparency in Import Licensing). All TRQs established by a Party under this Agreement shall be set out in that Party's Schedule to Annex 2-B (Tariff Commitments).

4. Each Party shall ensure that its procedures for administering its TRQs:

- (a) are transparent;
- (b) are fair and equitable;
- (c) use clearly specified timeframes, administrative procedures, and requirements;
- (d) are no more administratively burdensome than necessary;
- (e) are responsive to market conditions; and
- (f) are administered in a timely manner.

5. The Party administering a TRQ shall publish, on its designated website and at least 90 days prior to the beginning of the TRQ year, all information concerning its TRQ administration, including the size of quotas and eligibility requirements.

6. Each Party shall administer its TRQs in a manner that allows importers the opportunity to utilize TRQ quantities fully.

- (a) Except as provided in subparagraph (b) and (c), no Party shall introduce a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ for importation of an agricultural good, including in relation to specification or grade,

permissible end-use of the imported product, or package size beyond those set out in its Schedule to Annex 2-B (Tariff Commitments). For greater certainty, paragraph 6 shall not apply to conditions, limits, or eligibility requirements that apply regardless of whether or not the importer utilizes the TRQ when importing the agricultural good.

- (b) A Party seeking to introduce a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ for importation of an agricultural good shall notify the other Party at least 45 days prior to the proposed effective date of the new or additional condition, limit, or eligibility requirement. If the other Party has a demonstrable commercial interest in supplying the agricultural good, that Party may submit a written request for consultations within 30 days of the notification to the Party seeking to introduce the new or additional condition, limit, or eligibility requirement. On receipt of such a request for consultations, the Party seeking to introduce the new or additional condition, limit, or eligibility requirement shall promptly undertake consultations with the other Party, in accordance with Article 3.10 (Transparency and Consultations).
- (c) The Party seeking to introduce the new or additional condition, limit, or eligibility requirement may do so if the other Party with a demonstrable commercial interest in supplying the agricultural good has not submitted a written request for consultations within 30 days of the notification pursuant to subparagraph (b) or, in the case when the other Party has submitted a written request for consultations pursuant to subparagraph (b) if:
  - (i) the Party has consulted with the other Party, and
  - (ii) the other Party has not objected, after the consultation, to the introduction of the new or additional condition, limit, or eligibility requirement.
- (d) A new or additional condition, limit, or eligibility requirement that is the outcome of any consultation held pursuant to subparagraph (c) shall be circulated to the other Party prior to its implementation.

7. Notwithstanding paragraph 6, a Party shall not implement a condition, limit, or eligibility requirement:

- (a) regarding the quota applicant's nationality, or headquarters location; or
- (b) requiring the quota applicant's physical presence in the territory of the Party, except that a Party may require that the quota applicant either:
  - (i) do business and have a business office, or

- (ii) have an employee, an agent for service of process, or a legal representative, in the territory of the Party.

8. On entry into force of this Agreement, if either Party maintains a TRQ in its Schedule to Annex 2-B (Tariff Commitments) that is administered through issuance of permits by either Party, then the Party maintaining the TRQ shall have:

- (a) consulted with the other Party with respect to all procedures for the allocation and use of the TRQ, and any condition or requirement applicable on or in connection with the allocation or use of the TRQ; and
- (b) adopted and implemented regulations or policies containing all of its procedures for the allocation and use of the TRQ and any condition or requirement of that Party applicable on or in connection with the allocation or use of the TRQ.

9. If a TRQ is administered by an allocation mechanism, the administering Party shall, prior to any change to the allocation mechanism:

- (a) publish for public comment the proposed regulations or policies containing all of its procedures for the allocation and use of the TRQ and any condition or requirement applicable on or in connection with the allocation or use of the TRQ no less than 60 days in advance of the date on which comments are due;
- (b) take any comments into account in the development of the final regulations or policies; and
- (c) adopt, implement, and publish the final regulations or policies on its designated website at least 90 days prior to the beginning of each TRQ year.

10. If a TRQ is administered by an allocation mechanism, then the administering Party shall provide that the mechanism allows for importers that have not previously imported the agricultural good subject to the TRQ (new importers), who meet all eligibility criteria other than import performance, to be eligible for a quota allocation. The Party administering the TRQ allocation mechanism shall not discriminate against new importers when allocating the TRQ.

11. A Party administering an allocated TRQ shall ensure that:

- (a) any person of the other Party that fulfils the importing Party's eligibility requirements is able to apply and be considered for a quota allocation under the TRQ;
- (b) unless otherwise agreed by the Parties, it does not allocate any portion of the quota to a producer group, condition access to an allocation on the purchase of domestic

production, or limit access to an allocation to processors;

- (c) each allocation is made in commercially viable shipping quantities and, to the maximum extent possible, in the quantities that the TRQ applicant requests;
- (d) an allocation for in-quota imports is applicable to any tariff items subject to the TRQ and is valid throughout the TRQ year;
- (e) if the aggregate TRQ quantity requested by applicants exceeds the quota size, allocation to eligible applicants shall be conducted by equitable and transparent methods;
- (f) applicants have at least four weeks after the opening of the application period to submit their applications; and
- (g) quota is allocated no later than four weeks before the opening of the quota period, unless the allocation is based in whole or in part on import performance during the 12-month period immediately preceding the quota period. If the administering Party bases the allocation in whole or in part on import performance during the 12-month period immediately preceding the quota period, then that Party shall make a provisional allocation of the full quota amount no later than four weeks before the opening of the quota period. All final allocation decisions, including any revisions, shall be made and communicated to applicants by the beginning of the quota period.

12. If less than 12 months remain in the first TRQ year on the date of entry into force of this Agreement, then a Party administering a TRQ allocation shall make available to quota applicants, beginning on the date of entry into force of this Agreement, the quota quantity established in its Schedule to Annex 2-B (Tariff Commitments), multiplied by a fraction the numerator of which shall be a whole number consisting of the number of months remaining in the TRQ year on the date of entry into force of this Agreement, including the entirety of the month in which this Agreement enters into force, and the denominator of which shall be 12. The administering Party shall make the entire quota quantity established in its Schedule to Annex 2-B (Tariff Commitments) available to quota applicants beginning on the first day of each TRQ year that the quota is in operation.

13. A Party administering a TRQ shall not require the re-export of an agricultural good as a condition for the application for, or utilization of, a quota allocation.

14. Any quantity of agricultural goods imported under a TRQ pursuant to Section B of Appendix 2 (Tariff Schedule of Canada (Tariff Rate Quotas)) to the Tariff Schedule of Canada in Annex 2-B (Tariff Commitments) or Section B of Appendix 2 (Tariff Schedule of the United States (Tariff Rate Quotas)) to the Tariff Schedule of the United States in Annex 2-B (Tariff Commitments) shall not count towards, or reduce the in-quota quantity of,

any TRQ provided for that agricultural good in a Party's Schedule to the WTO Agreement or under any other trade agreement.<sup>6</sup>

15. If a TRQ is administered by an allocation mechanism, then the administering Party shall ensure that there is a mechanism for the return and reallocation of unused allocations in a timely and transparent manner that provides the greatest possible opportunity for the TRQ to be filled.

16. Each Party shall publish, on a regular basis and on its designated publicly available website, information concerning quantities allocated, quantities returned, and, if available, quota utilization rates. In addition, each Party shall publish, on the website designated to provide TRQ information, the quantities available for reallocation and the application deadline, at least two weeks prior to the date on which the Party will begin accepting applications for reallocations.

17. Each Party shall identify the entity or entities responsible for administering its TRQs and designate and notify at least one contact point, in accordance with Article 30.5 (Agreement Coordinator and Contact Points), to facilitate communications between the Parties on matters relating to the administration of its TRQs. Each Party shall promptly notify the other Party of any amendments to the details of its contact point.

18. If a TRQ is administered by an allocation mechanism, then the administering Party shall publish the name and address of allocation holders on its designated publicly available website.

19. If a TRQ is administered on a first-come, first-served basis, the importing Party's administering authority shall publish the utilization rates and remaining available quantities for that TRQ, over the course of each TRQ year, in a timely and on-going basis, and on its designated website.

20. When a TRQ administered on a first-come, first-served basis is filled, the administering Party shall publish a notice to this effect on its designated publicly available website within 10 days.

21. When a TRQ administered by an allocation mechanism is filled, the administering Party shall publish a notice to this effect on its designated publicly available website as early as practicable.

22. On the written request of the exporting Party, the Party administering a TRQ shall consult with the exporting Party regarding the administration of its TRQ within 30 days of the request, under normal circumstances.

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<sup>6</sup> For greater certainty, nothing in this paragraph shall prevent an administering Party from applying an in-quota rate of customs duty to agricultural goods from the other Party, as set out in the administering Party's Schedule to Annex 2-B (Tariff Commitments), that is different than the rate of customs duty applied to the same agricultural good of Mexico or a non-Party under a TRQ established under the WTO Agreement. Furthermore, nothing in this paragraph requires an administering Party to change the in-quota quantity of any TRQ established under the WTO Agreement.



### Article 3.A.3: Dairy Pricing and Exports

1. For the purposes of this Article:

**assumed processor margin** means the estimated cost to a processor of converting raw milk into a specified manufactured wholesale commodity or milk product, which may then be used in the calculation of a milk class price and may also be referred to as a make allowance;

**dairy year** means August 1 to July 31;

**eligible goods** means goods that a processor may manufacture using the milk or milk components provided at a milk class price;

**infant formula** means a good classified in HS subheading 1901.10 containing more than 10 percent on a dry weight basis of cow milk solids;

**milk class** means an end use for which processors may utilize milk or milk components provided at milk class prices;

**milk class price** means the price, minimum price, or milk component price at which milk or milk components are billed or provided to processors based on their end use;

**milk component** means butterfat, protein, other solids, and any other component of milk for which a Party sets a milk class price;

**milk protein concentrate** means goods classified in HS subheading 0404.90;

**skim milk powder** means goods classified in HS subheading 0402.10;

**USDA nonfat dry milk price** means the nonfat dry milk price published by the United States Department of Agriculture (USDA) in its Announcement of Class and Component Prices, as used in the calculation of the Nonfat Milk Solids price in the United States; and

**yield factor** means the estimated ratio of a given volume of skim milk powder to the volume of non-fat solids required to manufacture that volume skim milk powder as determined by the Party.

2. This Article applies to any milk class pricing system for dairy adopted or maintained by a Party, where for:

- (a) Canada, milk class pricing system refers to price setting under the supply management system for dairy; and
- (b) the United States, milk class pricing system refers to price setting under the federal milk marketing orders.

3. Canada shall ensure that milk class 6 and milk class 7, including their associated milk class prices, are eliminated six months after entry into force of this Agreement.

4. Six months after entry into force of this Agreement, Canada shall ensure that products and ingredients formerly classified under milk classes 6 and 7 are reclassified and that their associated milk class prices are established appropriately based on end use.

5. Notwithstanding paragraph 4, Canada shall ensure that the prices for non-fat solids used to manufacture milk protein concentrates, skim milk powder, and infant formula are no lower than the applicable price determined by the following formula:

$$\begin{aligned} & \text{(The USDA nonfat dry milk price} \\ & \qquad \text{minus} \\ & \text{Canada's applicable assumed processor margin)} \\ & \qquad \text{multiplied by} \\ & \text{Canada's applicable yield factor.} \end{aligned}$$

6. Paragraph 5 shall not apply to domestic sales of milk components for non-human consumption, such as for use as animal feed.

7. Canada shall monitor its global exports of milk protein concentrates, skim milk powder, and infant formula and provide information regarding those exports to the United States as specified in paragraph 13.

8. In a given dairy year, if global exports of:

- (a) both milk protein concentrates and skim milk powder from Canada together exceed the following thresholds:

| Year | MPC plus SMP Thresholds |
|------|-------------------------|
| 1    | 55,000 MT               |
| 2    | 35,000 MT               |

then, Canada shall apply an export charge of CAD 0.54 per kilogram to global exports of these goods in excess of the thresholds set out above for the remainder of the dairy year.

- (b) infant formula from Canada exceeds the following thresholds:

| Year | Infant Formula Thresholds |
|------|---------------------------|
| 1    | 13,333 MT                 |
| 2    | 40,000 MT                 |

then, Canada shall apply an export charge of CAD 4.25 per kilogram to global exports of these goods in excess of the thresholds set out above for the remainder of the dairy year.

9. With regard to the thresholds established in paragraphs 8(a) and 8(b), after Year 2 each threshold shall increase at a rate of 1.2 percent annually on a dairy year basis.

10. Each Party shall publish on, or link to, a central government website, the following information:

- (a) laws and regulations at the central or regional level of government of a Party that govern or implement a milk class pricing system for dairy, including any replacement or amendment thereof;
- (b) the assumed processor margin;
- (c) each milk class price, including for each milk component by each milk class; and
- (d) the yield factor.

Each Party shall publish this information as of entry into force of this Agreement for existing measures, and thereafter, a Party shall publish the information as soon as possible.

11. (a) No later than six months after entry into force of this Agreement, each Party shall provide to the other Party or publish on, or link to, a central government website the requirements, terms, and conditions for obtaining and using milk and milk components at milk class prices, including:
- (i) a list or description of the goods for which processors are eligible to receive milk or milk components at a milk class price, and
  - (ii) a list or description of the products that eligible goods can be used to manufacture.<sup>7</sup>

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<sup>7</sup> For greater certainty, the information to be provided or published in subparagraph (a) is not confidential and does not include information regarding individual contractual arrangements.

Thereafter, each Party shall provide to the other Party or publish on, or link to, a central government website any revisions or amendments to this information as soon as possible. The first time that the information in subparagraph (a) is provided or published, the Party shall also provide or publish this information since entry into force of this Agreement.

- (b) No later than six months after entry into force of this Agreement, each Party shall provide to the other Party or publish on, or link to, a central government website the milk utilization by milk class and by month, including quantities sold, prices, and revenues for milk and each milk component.<sup>8</sup> Thereafter, each Party shall provide or publish this monthly data on a quarterly basis. The first time that this data is provided or published the Party shall also provide or publish this data since entry into force of this Agreement.

12. Before the adoption, amendment, or revision to a milk class,<sup>9</sup> a Party shall:

- (a) notify the other Party of, or publicly announce, its intent to adopt, amend, or revise a milk class at least one calendar month before the effective date of the adoption, amendment, or revision, so as to provide a sufficient opportunity for the other Party to review the proposed measure containing the adoption, amendment, or revision to a milk class prior to its implementation;
- (b) consult with the other Party on request, or allow participation in any public regulatory process, regarding the proposed measure containing the adoption, amendment, or revision to a milk class, and take any comments into account in the decision to adopt, amend, or revise a milk class; and
- (c) publish the final measure, and to the extent possible, allow for an interval between the publication of the final measure and its effective date.

13. Further to paragraph 7, Canada shall make available to the United States data regarding Canada's global exports of milk protein concentrates, skim milk powder, and infant formula, at the HS subheading level, on a monthly basis, and no later than 30 days after the close of each month.

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<sup>8</sup> For greater certainty, the data to be provided or published in subparagraph (b) is aggregated data. The Parties understand that aggregated data is not confidential and that if certain data cannot be aggregated, then it may be considered confidential.

<sup>9</sup> For the purposes of this paragraph an "adoption, amendment or revision to a milk class" means the creation of a new milk class, the removal of a milk class, and the amendment of the eligible goods in a milk class or how a milk class price is set. Amendments to how a milk class price is set means changes to the formula used to calculate a milk class price, the source of data used in the formula, the value of the assumed processor margin, or the value of the yield factor. For greater certainty, "adoption, amendment, or revision to a milk class" does not include routine updates to a milk class price due to the input of updated data, and "amendment of the eligible goods" does not include changes that are clerical in nature.

14. Within 30 days of a request from the other Party, the Parties shall meet in a jointly agreed location, or by electronic means, to discuss any matter associated with the application of this Section.

15. Recognizing that new products and new consumer preferences may impact the demand for and exports of skim milk powder, milk protein concentrates, and infant formula, if the trade monitoring mechanism established in paragraphs 7 through 9 is unsatisfactory to either Party, the Parties shall, within 30 days of a written request of a Party, enter consultations to consider and, if appropriate, seek to amend the provisions of paragraphs 7 through 9 pursuant to Article 34.3 (Amendments).

16. Five years after entry into force of this Agreement and every two years thereafter, Canada and the United States shall meet to consider whether conditions have changed such that this Article should be terminated or modified. Modifications, including termination, may be made at that time or at any other time by mutual consent of Canada and the United States.

#### **Article 3.A.4: Grain**

1. Each Party shall accord to originating wheat imported from the territory of the other Party treatment no less favorable than that it accords to like wheat of domestic origin with respect to the assignment of quality grades, including by ensuring that any measure it adopts or maintains regarding the grading of wheat for quality, whether on a mandatory or voluntary basis, is applied to imported wheat on the basis of the same requirements as domestic wheat.

2. No Party shall require that a country of origin statement be issued on a quality grade certificate for originating wheat imported from the territory of the other Party, recognizing that phytosanitary or customs requirements may require such a statement.

3. At the request of the other Party, the Parties shall discuss issues related to the operation of a domestic grain grading or grain class system, including issues related to the seed regulatory system associated with the operation of any such system, through existing mechanisms. The Parties shall endeavor to share best practices with respect these issues, as appropriate.

4. Canada shall exclude from the application of the Maximum Grain Revenue Entitlement, established under the *Canada Transportation Act*, or any modification, replacement, or amendment thereof, movements of agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States.

#### **Article 3.A.5: Sugar and Sugar Containing Products**

1. For the purposes of paragraphs 2 through 5:

“product of Canada” means a good that qualifies to be marked as a good of Canada pursuant to U.S. law<sup>10</sup> without regard to whether the good is marked.

2. Consistent with Article XIII of the GATT 1994, the United States shall allocate to Canada:

- (a) a share of the in-quota quantity of its refined sugar TRQ<sup>11</sup> of not less than 10,300 metric tons, raw value, for sugar that is a product of Canada; and
- (b) a share of the in-quota quantity of its SCP TRQ<sup>12</sup> of not less than 59,250 metric tons for SCPs that are the product of Canada.

3. Further to paragraph 2, the United States shall permit access for sugar that is the product of Canada to any in-quota quantity of the refined sugar TRQ that is not allocated among supplying countries. The United States shall permit access to the unallocated amounts in a TRQ period without regard to whether the share allocated to Canada for that period has been filled.

4. Further to paragraph 2, if the United States allocates the refined sugar TRQ reserved for specialty sugar, then the United States shall do so consistent with its WTO obligations and in consultation with Canada.

5. Further to paragraph 2, if for any TRQ period Canada informs the United States that Canada will not supply the full amount of the share of SCP TRQ allocated to Canada pursuant to paragraph 2, then the United States shall transfer the quantity of the share that Canada will not supply to the quantity of SCP TRQ that is not allocated among supplying countries. The United States shall provide Canada reasonable advance notice of the date on which such a transfer will take effect. Any transfer under this paragraph will not affect the amount of the share of the SCP TRQ allocated to Canada pursuant to paragraph 2 in subsequent TRQ periods.

### **Article 3.A.6: Other**

1. Canada shall ensure that imports of dairy, poultry, or egg products eligible for Canada’s Duties Relief Program (DRP) and Import for Re-export Program (IREP) as of September 1, 2018,

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<sup>10</sup> Any change to U.S. regulations regarding the marking of refined sugar and sugar containing products shall be undertaken consistent with U.S. law, meaning that any proposed amendments or revisions will be published in the Federal Register normally allowing at least 60 days for public comment, including comments from Canada, and the United States shall take all public comments timely submitted into account before finalizing any new regulation.

<sup>11</sup> The refined sugar TRQ of the United States is as provided for in Additional U.S. Note 2 to chapter 17 of the Schedule of the United States annexed to the *Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994*.

<sup>12</sup> The SCP TRQ of the United States is as provided for in Additional U.S. Note 6 to chapter 17 of the Schedule of the United States annexed to the *Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994*.

continue to be eligible for these programs, as well as any subsequent or successor programs to DRP and IREP, as long as Canada maintains such programs.

2. Notwithstanding the product specific rules of origin in Annex 4-B (Product Specific Rules of Origin), the rule of origin for a good traded between Canada and the United States in subheading 1517.10 shall allow that good to be originating if there is a change from heading 15.11 or any other chapter.

## Appendix 1

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## Appendix 2

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23099028, 23099044, 23099048

## ANNEX 3-B

### AGRICULTURAL TRADE BETWEEN MEXICO AND THE UNITED STATES

1. For the purposes of this Annex:

**qualifying good** means an originating good that is an agricultural good, except that in determining whether the good is an originating good, operations performed in or materials obtained from Canada shall be considered as if they were performed in or obtained from a non-Party;

**sugar** means raw or refined sugar derived directly or indirectly from sugar cane or sugar beets, including liquid refined sugar;

**sugar-containing product** means a good containing sugar;

**sugar or syrup good** means:

- (a) for imports into Mexico, a good provided for in any of the current HS subheading 1701.91 (except those that contain added flavoring matter) and the current tariff items 1701.12.01, 1701.12.04, 1701.13.01, 1701.14.01, 1701.14.04, 1701.99.01, 1701.99.02, 1701.99.99, 1702.90.01, 1806.10.01, and 2106.90.05 of the General Import and Export Duty Act ("*Ley de los Impuestos Generales de Importación y de Exportación*"); and
- (b) for imports into the United States, a good provided for in any of the current tariff items 1701.12.05, 1701.12.10, 1701.12.50, 1701.13.05, 1701.13.10, 1701.13.20, 1701.13.50, 1701.14.05, 1701.14.10, 1701.14.20, 1701.14.50, 1701.91.05, 1701.91.10, 1701.91.30, 1701.99.05, 1701.99.10, 1701.99.50, 1702.90.05, 1702.90.10, 1702.90.20, 1702.90.35, 1702.90.40, 1702.90.52, 1702.90.54, 1702.90.58, 1702.90.64, 1702.90.68, 1702.90.90, 1806.10.43, 1806.10.45, 1806.10.55, 1806.10.65, 1806.10.75, and 2106.90.42, 2106.90.44, and 2106.90.46 of the U.S. Harmonized Tariff Schedule, without regard to the quantity imported; and

**Tariff rate quota (TRQ)** means a mechanism that provides for the application of a customs duty at a certain rate to imports of a particular good up to a specific quantity (in-quota quantity), and at a different rate to imports of that good that exceed that quantity.

2. This Annex applies only as between Mexico and the United States.

3. With the exception of TRQs set out in its schedule to the WTO Agreement, Mexico shall ensure that the customs duty for any TRQ it maintains for sugar or syrup goods on a most-favored-

nation (MFN) basis is not less than the prevailing MFN rate of the United States for the same sugar and syrup goods.

4. Mexico shall not be required to apply the applicable preferential duty rate provided in this Agreement to a sugar or syrup good, or sugar-containing product, that is a qualifying good when the United States has granted or will grant benefits under any re-export program or any like program in connection with the export of the good, including a good covered in paragraph 6(f) of Article 2.5 (Drawback and Duty Deferral Programs). The United States shall notify Mexico in writing within two business days of any export to Mexico of a good for which the benefits of any re-export program or any other like program have been or will be claimed by the exporter.

5. Notwithstanding Chapter 4 (Rules of Origin), or General Note 7 to the Tariff Schedule of the United States, for the purposes of applying the preferential duty rate provided in this Agreement to a good, the United States may consider a good not to be originating if it is provided for in U.S. tariff items 1702.90.05, 1702.90.10, 1702.90.20, 1702.90.35, 1702.90.40, 1702.90.52, 1702.90.54, 1702.90.58, 1702.90.64, 1702.90.68, 1702.90.90, 1806.10.43, 1806.10.45, 1806.10.55, 1806.10.65, 1806.10.75, 2106.90.42, 2106.90.44, or 2106.90.46 that is exported from the territory of Mexico, if any material provided for in HS subheading 1701.99 used in the production of that good is not a qualifying good.

6. Notwithstanding Chapter 4 (Rules of Origin) or General Note 4 to the Tariff Schedule of Mexico, for the purposes of applying the preferential duty rate provided in this Agreement to a good, Mexico may consider a good not to be originating if it is a good provided for in: Mexican tariff item 1702.90.01, 1702.90.99, 1806.10.01, or 2106.90.05 that is exported from the territory of the United States, if any material provided for in HS subheading 1701.99 used in the production of that good is not a qualifying good.

7. Each Party shall ensure that any measure it adopts or maintains regarding the grading of agricultural goods for quality, whether on a mandatory or voluntary basis, shall be applicable to imported agricultural goods, on the basis of the same regulatory framework, including the same requirements and based on the same criteria as domestic agricultural goods.

8. A Party that provides for the assignment of grades shall ensure that the same quality grade certificate requiring the same information is used for domestic and imported like products. No Party shall require:

- (a) a country of origin statement on any quality grade certificate; or
- (b) that any quality grade certificate state that the agricultural good is foreign or domestic.

9. No Party shall make domestic registration of grain and oilseed varieties:

- (a) a requirement for importation; or

- (b) a consideration in the assignment of quality grades or classes to imported grain and oilseed.

10. Mexico and the United States shall establish a technical working group, which will be comprised of, and co-chaired by, representatives of the governments of Mexico and the United States. The technical working group shall meet on an annual basis, unless otherwise decided. The technical working group shall review matters related to agricultural grade and quality standards, technical specifications, and other standards in each Party and their application and implementation insofar as they affect trade between the Parties. The technical working group shall work to resolve issues that may arise regarding the application and implementation of the standards, including when feasible and appropriate, considering joint mechanisms, such as training programs, or work plans for quality inspections at the point of origin to facilitate trade between the Parties.

11. Beginning on the date of entry into force of this Agreement, no Party may refund the amount of customs paid, or waive or reduce the amount of customs duties owed, on any agricultural good imported into its territory that is substituted for an identical or similar good that is subsequently exported to the territory of the other Party.

## ANNEX 3-C

### DISTILLED SPIRITS, WINE, BEER, AND OTHER ALCOHOL BEVERAGES

#### Article 3.C.1: Internal Sale and Distribution of Distilled Spirits, Wine, Beer, or other Alcohol Beverages

1. For the purposes of this Article:

**commercial considerations** means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry;

**distilled spirits** include distilled spirits and distilled spirit containing beverages; and

**wine** includes wine and wine-containing beverages.

2. This Article applies to a measure related to the internal sale and distribution of distilled spirits, wine, beer, or other alcohol beverages.<sup>13</sup>

3. Except as otherwise provided in this Article, Article 2.3 (National Treatment) shall not apply to:

- (a) a non-conforming provision of a measure related to wine or distilled spirits in existence on October 4, 1987;
- (b) the continuation or prompt renewal of a non-conforming provision of a measure referred to in subparagraph (a); or
- (c) an amendment to a non-conforming provision of a measure referred to in subparagraph (a) to the extent that the amendment does not decrease its conformity with Article 2.3 (National Treatment).

4. A Party asserting that paragraph 3 applies to a measure shall have the burden of establishing that the measure meets the conditions set out in paragraph 3.

5. Measures related to distribution of distilled spirits, wine, beer, or other alcohol beverages shall conform with Article 2.3 (National Treatment).

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<sup>13</sup> Paragraphs 3 and 4 of this Article do not apply to Mexico.

6. Notwithstanding paragraph 5, and provided that distribution measures otherwise ensure conformity with Article 2.3 (National Treatment), Canada may maintain a measure in existence on October 4, 1987, requiring private wine store outlets in existence on October 4, 1987, in the provinces of Ontario and British Columbia to discriminate in favor of wine of those provinces to a degree no greater than the discrimination required by that measure in existence on October 4, 1987.

7. Nothing in this Agreement shall prohibit the Province of Quebec from requiring that wine sold in grocery stores in Quebec be bottled in Quebec, provided that alternative outlets are provided in Quebec for the sale of wine of the other Parties, whether or not that wine is bottled in Quebec.

8. If a Party requires that distilled spirits, wine, beer, or other alcohol beverages be listed to be distributed or sold in its territory, measures related to listing shall:

- (a) conform with Article 2.3 (National Treatment);
- (b) not create disguised barriers to trade;
- (c) be based on commercial considerations; and
- (d) be transparent, including providing transparent criteria for decisions regarding listing.

9. If a Party requires that distilled spirits, wine, beer, or other alcohol beverages be listed to be distributed or sold in its territory, that Party shall, with regard to the decisions of the entity exercising governmental authority regarding the listing:

- (a) provide for a prompt decision on any listing application;
- (b) provide prompt written notification of decisions regarding a listing application to the applicant and, in the case of a negative decision, provide for a statement of the reason for refusal; and
- (c) establish administrative appeal procedures for listing decisions that provide for prompt, fair, and objective rulings.

10. If a distributor or retailer exercises governmental authority regarding internal sale or distribution of distilled spirits, wine, beer, or other alcohol beverages, any price mark-ups charged by that entity shall conform with Article 2.3 (National Treatment) and that entity shall accord treatment to distilled spirits, wine, beer, or other alcohol beverages of another Party no less favorable than the treatment accorded to a like product of another Party or a non-Party.

11. If a distributor or retailer exercises governmental authority regarding internal sale or distribution of distilled spirits, wine, beer, or other alcohol beverages, that entity may charge the actual cost-of-service differential between distributing or selling distilled spirits, wine, beer, or other alcohol beverages of another Party and distributing or selling domestic or regional product. The cost-of-service shall be reasonable and commensurate with service. Any cost-of-service differential referred to above shall not exceed the actual amount by which the audited cost of service for the product of the exporting Party exceeds the audited cost of service for the product of the importing Party.

12. A Party may maintain or introduce a measure limiting on premise sales by a winery or distillery to those wines or distilled spirits produced on its premises.

13. No Party shall adopt or maintain a measure requiring that distilled spirits, wine, beer, or other alcohol beverages imported from another Party for bottling be blended with distilled spirits, wine, beer, or other alcohol beverages of the importing Party.

#### **Article 3.C.2: Distinctive Products**

1. Canada and Mexico shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. Mexico and the United States shall recognize Canadian Whisky as a distinctive product of Canada. Accordingly, Mexico and the United States shall not permit the sale of any product as Canadian Whisky, unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian Whisky for consumption in Canada.

3. Canada and the United States shall recognize Tequila and Mezcal as distinctive products of Mexico. Accordingly, Canada and the United States shall not permit the sale of any product as Tequila or Mezcal unless it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing the manufacture of Tequila and Mezcal.

#### **Article 3.C.3: Wine and Distilled Spirits**

1. For the purposes of this Article and Article 3.C.4 (Other Provisions):

**container** means a bottle, barrel, cask, or other closed receptacle, irrespective of size or of the material from which it is made, used for the retail sale of wine or distilled spirits;



**distilled spirits** means a potable alcoholic distillate including spirits made from wine, whiskey, rum, brandy, gin, tequila, mezcal, liqueurs, cordials, and vodka and dilutions or mixtures thereof for consumption;

**label** means a brand, mark, pictorial, or other descriptive matter that is written, printed, stenciled, marked, embossed, or impressed on, or firmly affixed to a primary container of wine or distilled spirits;

**mandatory information** means information required by a Party to appear on a wine or distilled spirits container, label, or packaging;

**oenological practices** means winemaking materials, processes, treatments, and techniques, but does not include labeling, bottling, or packaging for final sale;

**single field of vision** means a part of the surface of a primary container, excluding its base and cap, that can be seen without having to turn the container; and

**wine** means a beverage that is produced by the complete or partial alcoholic fermentation exclusively of fresh grapes, grape must, or products derived from fresh grapes and as defined by each Party's laws and regulations.<sup>14</sup>

2. This Article shall apply to the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures adopted or maintained by each Party at the central level of government that may affect trade in wine and distilled spirits between the Parties, other than sanitary or phytosanitary measures or technical specifications prepared by a governmental body for production or consumption requirements of governmental bodies.

3. Each Party shall make its laws and regulations concerning wine and distilled spirits available online.

4. A Party may require that a wine or distilled spirits label be:

- (a) clear, specific, truthful, accurate, and not misleading to the consumer;
- (b) legible to the consumer; and
- (c) firmly affixed to the container if the label is not an integral part of the container.

5. Each Party shall permit mandatory information to be displayed on a supplementary label affixed to a distilled spirits container. Each Party shall permit those supplementary labels to be affixed to an imported distilled spirits container after importation but prior to the product being

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<sup>14</sup> For the United States, the alcohol content of wine must be not less than seven percent and not more than 24 percent.

offered for sale in the Party's territory. A Party may require that the supplementary label be affixed prior to release from customs. For greater certainty, a Party may require that the information indicated on a supplementary label meet the requirements in paragraph 4.

6. A Party may require that information indicated on a supplementary label affixed to a distilled spirits container or wine container not conflict with information on an existing label.

7. Each Party shall permit the alcoholic content by volume indicated on a wine or distilled spirits label to be expressed by alcohol by volume (alc/vol), for example 12% alc/vol or alc12%vol, and to be indicated in percentage terms to a maximum of one decimal point, for example 12.1%.

8. Each Party shall permit the use of the term "wine" as a product name. A Party may require a wine label to indicate the type, category, class, or classification of the wine.

9. With respect to wine labels, each Party shall permit the information set out in paragraphs 11(a) through (d) to be presented in a single field of vision for a container of wine. If this information is presented in a single field of vision, then the Party's requirements with respect to placement of this information are satisfied. A Party shall accept any of the information that appears outside a single field of vision if that information satisfies that Party's laws, regulations, and requirements.

10. Notwithstanding paragraph 9, a Party may require net contents to be displayed on the principal display panel for a subset of less commonly used container sizes if specifically required by that Party's laws or regulations.

11. If a Party requires a wine label to indicate information other than:

- (a) product name;
- (b) country of origin;
- (c) net contents; or
- (d) alcohol content,

it shall permit the information to be indicated on a supplementary label affixed to the wine container. A Party shall permit the supplementary label to be affixed to the container of the imported wine after importation but prior to the product being offered for sale in the Party's territory, and may require that the supplementary label be affixed prior to release from customs. For greater certainty, a Party may require that information on a supplementary label meet the requirements set out in paragraph 4.

12. If there is more than one label on a container of imported wine or distilled spirits, a Party may require that each label be visible and not obscure mandatory information on another label.

13. If a Party has more than one official language, it may require that information on a wine or distilled spirits label appear in equal prominence in each official language.

14. Each Party shall permit placement of a lot identification code on a wine or distilled spirits container, if the code is clear, specific, truthful, accurate, and not misleading, and shall not impose requirements regarding:

- (a) where to place the lot identification code on the container, provided that the code does not cover up mandatory information printed on the label; and
- (b) the specific font size, readable phrasing, and formatting for the code, provided that the lot identification code is legible by physical means, and if permitted, by electronic means.

15. A Party may impose penalties for the removal or deliberate defacement of any lot identification code on the container.

16. No Party shall require a date mark on a wine or distilled spirits container, label, or packaging, including the following or iterations of the following:

- (a) date of production or manufacture;
- (b) use-by date (recommended last consumption date, expiration date);
- (c) date of minimum durability (best-before date), best quality before date;
- (d) sell-by date;
- (e) date of packaging; or
- (f) date of bottling,

except that a Party may require the display of a date of minimum durability or use-by date on products that could have a shorter date of minimum durability or expiration than would normally be expected by the consumer because of their packaging or container, for example, bag-in-box wines or individual serving size wines, or because of the addition of perishable ingredients.

17. No Party shall require a wine or distilled spirits label or packaging to include translation of a trademark or brand name. A Party may require that a trademark or brand name not conflict with any mandatory information on the label.

18. No Party shall prevent imports of wine from other Parties on the basis that the wine label includes the following terms: chateau, classic, clos, cream, crusted, crusting, fine, late bottled

vintage, noble, reserve, ruby, special reserve, solera, superior, sur lie, tawny, vintage, or vintage character.<sup>15</sup>

19. No Party shall require a wine label or packaging to disclose an oenological practice, except to meet a legitimate human health or safety objective with respect to that oenological practice.

20. Each Party shall permit wine to be labeled as Icewine, ice wine, ice-wine or a similar variation of those terms, only if the wine is made exclusively from grapes naturally frozen on the vine.

21. Each Party shall endeavor to base its quality and identity requirements for any specific type, category, class, or classification of distilled spirits solely on minimum ethyl alcohol content and raw materials, added ingredients, and production procedures used to produce that specific type, category, class, or classification of distilled spirits.

22. No importing Party shall require imported wine or distilled spirits to be certified by an official certification body of the Party in which territory the wine or distilled spirits were produced or by a certification body recognized by the Party in whose territory the wine or distilled spirits were produced regarding:

- (a) vintage, varietal, regional, or appellation of origin claims for wine; or
- (b) raw materials and production processes for distilled spirits,

except that the importing Party may require:

- (i) that wine or distilled spirits be certified regarding subparagraph (a) or (b) if the Party in which territory the wine or distilled spirits were produced requires that certification, or
- (ii) that wine be certified regarding subparagraph (a) if the importing Party has a reasonable and legitimate concern about a vintage, varietal, regional, or appellation of origin claim for wine, or that distilled spirits be certified regarding subparagraph (b) if certification is necessary to verify claims such as age, origin, or standards of identity.

23. A Party shall normally permit submission of any required certification (other than those required pursuant to paragraph 22 of this Article), test result, or sample only with the initial shipment of a particular brand, producer, and lot. If a Party requires submission of a sample of the product for the Party's procedure to assess conformity with its technical regulation or

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<sup>15</sup> Nothing in this paragraph shall be construed to require Canada to apply this paragraph in a manner inconsistent with its obligations under Article A(3) of Annex V of the EU-Canada Wine Agreement, as amended on September 21, 2017.

standard, it shall not require a sample quantity larger than the minimum quantity necessary to complete the relevant conformity assessment procedure. Nothing in this provision precludes a Party from undertaking verification of test results or certification, for example, if the Party has information that a particular product may be non-compliant.

24. Each Party shall endeavor to assess the other Parties' laws, regulations, and requirements in respect of oenological practices, with the aim of reaching agreements that provide for the Parties' acceptance of each other's mechanisms for regulating oenological practices, if appropriate.

25. If an importing Party requires certification for wine or distilled spirits from the Party in whose territory the wine or distilled spirits were produced, the importing Party shall not deny the certification on the basis that the certification was issued from a conformity assessment body accredited and approved by the Party in whose territory the wine or distilled spirits were produced.

26. Each Party shall permit a wine or distilled spirits label to include:

- (a) statements regarding quality;<sup>16</sup>
- (b) statements regarding production processes; and
- (c) drawings, figures, or illustrations,

provided they are not false, misleading, obscene, or indecent, as defined in each Party's law.

27. Nothing in paragraph 26 affects mandatory information requirements or a Party's ability to enforce its intellectual property, health, or safety laws and regulations.

#### **Article 3.C.4: Other Provisions**

1. Unless urgent problems of human health or safety arise or threaten to arise, a Party shall normally allow a reasonable period of time, as determined by the authority responsible, following the date of entry into force of a measure before requiring wine or distilled spirits that were entered into commerce in the territory of that Party prior to that date of entry into force to comply with the measure in order to allow time for the sale of those products.

2. For the purpose of paragraph 1, a "measure" means a technical regulation, standard, conformity assessment procedure, or sanitary or phytosanitary measure adopted by a Party at the central level of government that may affect trade in wine and distilled spirits between the Parties, other than technical specifications prepared by a governmental body for production or consumption requirements of governmental bodies.

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<sup>16</sup> Statements regarding quality would include, for example, "premium" or "ultra premium."

3. If a Party imposes a mandatory food allergen labelling requirement at the central level of government for wine or distilled spirits, that Party shall:

- (a) not apply the requirement to wines and distilled spirits if no protein from a food allergen is present in the product; or
- (b) provide an exemption<sup>17</sup> for food allergen sources that have been used in the production of the beverage if:
  - (i) the finished product or class of products does not cause an allergic response that poses a risk to human health, or
  - (ii) the finished product does not contain protein from a food allergen.

For the purpose of this paragraph, “food allergen” means those food allergens that a Party requires to be declared on a wine or distilled spirits label.

4. Each Party shall apply a risk-based approach regarding whether to require, for wine, certificates of analysis for pathogenic microorganisms. In applying a risk-based approach, each Party shall take into account that wine is a microbiological low risk food product.

5. If an authority at the central level of government deems that certification of wine is necessary to protect human health or safety or to achieve other legitimate objectives, that Party shall consider the use of the generic model official certificate in the *Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates* (CAC/GL 38-2001), as amended, or the APEC model wine export certificate. A Party requiring certification of wine shall ensure any certification requirements are transparent and non-discriminatory.

6. The Committee on Agricultural Trade established in Article 3.7 (Committee on Agricultural Trade) shall provide a forum for the Parties to:

- (a) monitor and promote cooperation on the implementation and administration of this Annex;
- (b) if appropriate consult on matters and positions relevant to trade in alcohol beverages in international organizations;
- (c) promote trade in alcohol beverages between the Parties under this Agreement; and
- (d) discuss any other matters related to this Annex.

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<sup>17</sup> For greater certainty, a Party may require the producer, bottler, or importer of the product to establish eligibility for an exemption from the Party’s allergen labeling requirement using a scientifically validated testing methodology.

## ANNEX 3-D

### PROPRIETARY FORMULAS FOR PREPACKAGED FOODS AND FOOD ADDITIVES

1. This Annex applies to the preparation, adoption, and application of technical regulations and standards of central government bodies related to prepackaged foods and food additives, other than sanitary or phytosanitary measures or technical specifications prepared by a governmental body for production or consumption requirements of a governmental body.
2. For the purposes of this Annex, “food”, “food additive”, and “prepackaged” have the same meanings as set out in the *Codex General Standard for the Labelling of Pre-Packaged Food* (CODEX STAN 1-1985) and the *Codex General Standard for the Labelling of Food Additives When Sold as Such* (CODEX STAN 107-1981), as amended.
3. When requesting information relating to proprietary formulas for prepackaged foods or food additives, a Party shall:
  - (a) ensure that its information requirements are limited to what is necessary to achieve its legitimate objective; and
  - (b) protect the confidential information received about products originating in the territory of another Party in the same manner as for domestic products and in a manner that protects legitimate commercial interests.
4. A Party may use confidential information it has obtained relating to proprietary formulas in administrative and judicial proceedings in accordance with its law, provided the Party maintains procedures to protect the confidentiality of the information in the course of those proceedings.
5. Nothing in paragraph 3 prevents a Party from requiring ingredients to be listed on labels consistent with CODEX STAN 1-1985 and CODEX STAN 107-1981, as they may be amended, except when those standards would be an ineffective or inappropriate means for the fulfilment of a legitimate objective.