



NAFTA Secretariat, Canadian Section

Performance Report

For the period ending
March 31, 2001

Canada

Improved Reporting to Parliament Pilot Document

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament.

The Estimates of the Government of Canada are structured in several parts. Beginning with an overview of total government spending in Part I, the documents become increasingly more specific. Part II outlines spending according to departments, agencies and programs and contains the proposed wording of the conditions governing spending which Parliament will be asked to approve.

The *Report on Plans and Priorities* provides additional detail on each department and its programs primarily in terms of more strategically oriented planning and results information with a focus on outcomes.

The *Departmental Performance Report* provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the spring *Report on Plans and Priorities*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of funds.

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Foreword

In the spring of 2000 the President of the Treasury Board tabled in Parliament the document “Results for Canadians: A Management Framework for the Government of Canada”. This document sets a clear agenda for improving and modernising management practices in federal departments and agencies.

Four key management commitments form the basis for this vision of how the Government will deliver their services and benefits to Canadians in the new millennium. In this vision, departments and agencies recognise that they exist to serve Canadians and that a “citizen focus” shapes all activities, programs and services. This vision commits the government of Canada to manage its business by the highest public service values. Responsible spending means spending wisely on the things that matter to Canadians. And finally, this vision sets a clear focus on results – the impact and effects of programs.

Departmental performance reports play a key role in the cycle of planning, monitoring, evaluating, and reporting of results through ministers to Parliament and citizens. Earlier this year, departments and agencies were encouraged to prepare their reports following certain principles. Based on these principles, an effective report provides a coherent and balanced picture of performance that is brief and to the point. It focuses on results – benefits to Canadians – not on activities. It sets the department’s performance in context and associates performance with earlier commitments, explaining any changes. Supporting the need for responsible spending, it clearly links resources to results. Finally the report is credible because it substantiates the performance information with appropriate methodologies and relevant data.

In performance reports, departments strive to respond to the ongoing and evolving information needs of parliamentarians and Canadians. The input of parliamentarians and other readers can do much to improve these reports over time. The reader is encouraged to assess the performance of the organization according to the principles outlined above, and provide comments to the department or agency that will help it in the next cycle of planning and reporting.

This report is accessible electronically from the Treasury Board of Canada Secretariat Internet site:

<http://www.tbs-sct.gc.ca/rma/dpr/dpre.asp>

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Canadian Section

**Departmental Performance Report
for the period ending March 31, 2001**

The Honourable Pierre Pettigrew
Minister for International Trade

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SECTION 1 – INTRODUCTION

1.1 The Minister's Message

Trade is the engine that drives our economic growth. In the year 2000, Canada's exports of goods and services represented over 45% of GDP, a substantially higher proportion than that of our major trading partners. This share is up from 43% in 1999 -- up from just 28% in 1990. Roughly 80% of the over two million new jobs created since 1993 can be attributed to our increased trade. That means one in every three jobs in Canada is now linked directly to our success in international trade.

These figures highlight the great importance that the North American Free Trade Agreement (NAFTA) has for our own prosperity and well-being. During the first seven years of the NAFTA, trade and investment in North America have risen sharply. Total trade in merchandise among the three NAFTA partners rose 128% from 1993 to reach over \$1 trillion in 2000. Canada and the United States have the largest and most comprehensive trading relationship in the world. Canada's merchandise exports to the United States reached \$361.2 billion in 2000, while imports from the United States amounted to \$241.6 billion. Canada's two-way trade with Mexico has tripled from its pre-NAFTA level to reach \$14.1 billion in 2000.

A remarkable achievement of the NAFTA's rules-based framework is that this huge trilateral trade, worth \$2.7 billion per day, flows with a relatively small number of disputes. However, when a trade issue becomes an irritant and, more rarely, a trade dispute, the NAFTA's dispute settlement process provides the necessary mechanisms to resolve it.

The NAFTA Secretariat, comprised of Canadian, American and Mexican Sections, is responsible for the administration of the dispute settlement provisions of the NAFTA. Additionally, the Canadian Section was mandated in 1997, to administer the dispute settlement provisions of the Canada-Israel and Canada-Chile Free Trade Agreements.

From the inception of the Canada-US Free Trade Agreement (CUSFTA) in 1989 to March 31, 2001, a total of 135 CUSFTA, NAFTA and Softwood Lumber Proceedings have been filed with the Secretariat and 97 decisions and reports have been issued. On the whole, the dispute settlement provisions have worked remarkably well, lending stability, predictability and transparency to the conduct of business across North America which in turn has helped to minimize disputes.

A rules-based international trade dispute settlement system is extremely important for providing stability and transparency for Canadian businesses and investors as they continue to seek new opportunities and secure market access abroad. Maintaining an efficient NAFTA dispute settlement mechanism is, therefore, a critical part of Canada's trade policy priorities.

The Honourable Pierre Pettigrew

1.2 Strategic Context

1.2.1 Overview of the Dispute Settlement Provisions

The principal dispute settlement mechanisms of the North American Free Trade Agreement (NAFTA) are found in Chapters 11, 19 and 20 of the Agreement. As well, disputes relating to government procurement provisions of Chapter 10 and financial services provisions of Chapter 14 may be referred to dispute settlement procedures under Chapter 20. Disputes relating to the non-compliance of a Party with a final award under the investment provisions of Chapter 11 may be referred to dispute settlement under Chapter 20.

Chapter 19 establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases, with review by independent binational panels. A Panel is established when a *Request for Panel Review* is filed with the Secretariat by an industry asking for a review of a decision involving imports from a NAFTA country. In Canada, it is the Canada Customs and Revenue Agency (CCRA), which makes dumping and subsidy determinations, while the Canadian International Trade Tribunal (CITT) conducts injury inquiries as to whether or not the dumping or subsidy has caused injury to the domestic industry. The dumping, subsidy and injury determinations of these two agencies or those of their equivalent in the U.S. or Mexico, can also be appealed, in Canada to the Federal Court of Appeal, in the U.S. to the Court of International Trade and in Mexico to the Tribunal Fiscal de la Federación. Therefore, the dispute settlement mechanisms agreed upon by the three NAFTA countries in this Chapter, provide for an alternative to judicial review by domestic courts.

The dispute settlement provisions of Chapter 20 are applicable to all disputes regarding the interpretation or application of the NAFTA. The steps set out in Chapter 20 are intended to resolve disputes by agreement, if at all possible. The process begins with government-to-government (the “Parties”) consultations. If the dispute is not resolved, a Party may request a meeting of the NAFTA Free-Trade Commission (comprised of the Ministers responsible for Trade of the Parties). If the Commission is unable to resolve the dispute, a consulting Party may call for the establishment of a five-member panel.

1.2.2 Roster Members

The Parties have established several rosters of individuals from which panelists are appointed to settle disputes. Members of these rosters are of good character, high standing and repute and have been chosen strictly on the basis of objectivity, reliability, sound judgement and with a general familiarity with international trade law. Currently, there are NAFTA rosters (one per country) for Chapter 11 (Investment), Chapter 14 (Financial Services), Chapter 19 (Antidumping and Countervailing Duty Matters and Extraordinary Challenge Procedure) and Chapter 20 (Institutional Arrangements and Dispute Settlement Procedures). In Canada, the Governor-in-Council appoints roster members, on the recommendation of the Minister of International Trade.

1.2.3 Panel Selection

When a dispute arises under Chapter 19, a panel of five members is selected from the national Roster list by the Minister for International Trade and his counterpart in the United States or Mexico (Chapter 19 panels are always binational in composition). Each involved government in the dispute appoints two panelists, in consultation with the other involved government. The fifth panelist is from one of the two countries and generally alternates with each dispute.

Under Chapter 20, an arbitral panel is established using a reverse selection process. Under this process, each disputing Party selects two panelists who are citizens of the other disputing Party. The chair of the panel is selected by the disputing Parties and may be a citizen of a NAFTA Party or any other country.

To be selected to serve on a specific panel, roster candidates must complete Disclosure Statements pursuant to the NAFTA Code of Conduct. The Code is fundamental to the process. The governing principle is that a roster candidate and panel member must disclose any interest, relationship or matter that is likely to affect his/her independence or impartiality or that might create an appearance of impropriety or bias.

1.2.4 Rules of Procedure

Chapter 19 panel review is a quasi-judicial process. It is guided by detailed rules of procedure. The rules include time limits for each step in the process. 315 days is the ideal time it takes from the date of a request for a panel review to the issuance of a panel decision.

Chapter 20 is also guided by Model Rules of Procedure and the process is scheduled to take approximately five months. Under this process, the participants may submit written submissions to the panel and at least one hearing will take place in the capital of the country complained against.

1.2.5 Panel Decisions and Reports

The decision of a panel under Chapter 19 is binding on the involved Parties. In its decision, a panel may do one of two things. It may uphold the final determination (see 1.2.1), or it may remand it - i.e. send it back - to the investigating authority. In the later case, the panel may issue a decision on the agency's determination on remand and it may affirm or remand it again to the investigating authority.

Panel decisions under Chapter 20 are called "reports", as they contain findings of fact and any recommendation the panel may have to resolve the dispute.

Panels decisions and reports are available on-line and in the official languages of the NAFTA participative countries by accessing the NAFTA Secretariat tri-lateral website (www.nafta-sec-alena.org).

1.2.6 Extraordinary Challenge Procedure

Although Chapter 19 panel decisions are binding on the involved Parties, there is one level of review of binational panel decisions that a NAFTA Party may initiate in extraordinary circumstances. This is known as the Extraordinary Challenge Committee (ECC) procedure. The challenge is not an appeal of right but a safeguard to preserve the integrity of the panel process. If either government believes that the decision has been materially affected, by either a panel member having a serious conflict of interest, or the panel having departed from a fundamental rule of procedure or having exceeded its authority under the Agreement, either government may invoke review by a three-person, binational Extraordinary Challenge Committee, comprised of judges and former judges. This three-pronged ECC test is set out in the Agreement. ECC decisions, like Chapter 19 binational panel decisions, are binding as to the particular matter addressed. Under the Canada-U.S. Free Trade Agreement (CUFTA) there were three ECC proceedings. All failed as not having met the test. There is one active ECC proceeding under the NAFTA involving the United States and Mexico.

SECTION 2 – OPERATING ENVIRONMENT

2.1 The Mandate of the NAFTA Secretariat

The NAFTA Secretariat comprised of the Canadian, U.S. and Mexican national Sections is a unique organization, established by the Free Trade Commission. The national Sections are located in Ottawa, Washington and Mexico City and are headed by the Canadian Secretary, the United States Secretary and the Mexican Secretary (see Annex A for an Organizational Chart).

The mandate of the Secretariat is set out in Article 2002.3 of the North American Free Trade Agreement (NAFTA) and reads:

The Secretariat shall:

- (a) *provide assistance to the Commission;*
- (b) *provide administrative assistance to:*
 - (i) *panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908, and*
 - (ii) *panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and*
- (c) *as the Commission may direct:*
 - (i) *support the work of other committees and groups established under this Agreement, and*
 - (ii) *otherwise facilitate the operation of this Agreement.*

Additionally, the national Sections have responsibilities relating to the administration of non-NAFTA dispute settlement processes. For instance, the Mexican Section of the Secretariat, administers other agreements such as the Mexico-Costa-Rica Free Trade Agreement. Similarly, the U.S. Section oversees the U.S.-Israel Free Trade Agreement.

In 1997 the Canadian Section's mandate was expanded to include the administration of the dispute settlement processes under the following trade agreements:

- the Canada-Israel Free Trade Agreement (CIFTA); and
- the Canada-Chile Free Trade Agreement (CCFTA).

2.2 The Canadian Section

2.2.1 Mission Statement

The NAFTA Secretariat, Canadian Section is committed to administering the dispute settlement provisions of the NAFTA and other bilateral Agreements, in a manner which ensures the highest quality of administration and support to its stakeholders, which is impartial, equitable, timely and transparent.*

** For the purposes of this document, they are the Canada- Israël Free Trade Agreement and the Canada-Chile Free Trade Agreement.*

2.2.2 Program Objective

The NAFTA Secretariat, Canadian Section's primary objective is to implement the dispute settlement provisions of the North American Free Trade Agreement (NAFTA), the Canada – Israël Free Trade Agreement (CIFTA) and the Canada - Chile Free Trade Agreement (CCFTA), by providing support to panels established under the relevant Agreements and by maintaining a court-like registry system relating to panels, committees, working groups and tribunal proceedings of the relevant Agreements.

The Canadian Section abides by the objectives of the NAFTA especially the need for transparency, for the effective resolution of disputes and for the establishment of a framework toward further trilateral, regional and multilateral cooperation¹.

The Guiding Principles for achieving the program objective are described in Annex B.

Between 1998 and 2000, the NAFTA Secretariat, Canadian Section was asked to administer three arbitral panel proceedings initiated under Article V of the Softwood Lumber Agreement (1996) between Canada and the United States. Both governments had agreed to utilize the dispute resolution framework of the NAFTA to facilitate the implementation of the Softwood Lumber Agreement.

In the administration of the dispute settlement provisions of the relevant Agreements, the NAFTA Secretariat, Canadian Section's staff members are dedicated to providing in a fair, equitable and timely manner, administration, professional and advisory support to panels and committees and to managing a court-like registry system.

More specifically, the core activities include:

- organizing hearings;
- providing logistical support to hearings;
- receiving, filing and serving pleading documents;

¹ The Deputy Secretary of the NAFTA Secretariat, Canadian Section, has recently returned to Canada after serving as the first ever Executive Director of the Free Trade Area of the Americas (FTAA) Secretariat.

- publishing notices of requests, decisions and completions of panel reviews in the *Canada Gazette*;
- preparing and preserving authentic copies of panel proceedings records;
- coordinating the issuance of panel orders, decisions and/or reports;
- providing cost management of panel reviews;
- controlling access to confidential/proprietary information in accordance with the Rules of procedure;
- participating in Chapter 19 Working Group meetings; and
- assisting in panel selection processes.

In support of the administration of the dispute settlement processes, the Canadian Section also provides information and research services. This is achieved through initiatives such as:

- the establishment of an Internet Website (www.nafta-sec-alena.org);
- the maintenance of a motions and orders database and of a library and reference center; and
- the conduct of research and analysis of trade related issues.

Legislation governing the work of the Canadian section is as follow:

- *the North American Free Trade Agreement Implementation Act;*
- *the Special Imports Measures Act;*
- *the Canada-Israel Free Trade Agreement Implementation Act; and*
- *the Canada-Chile Free Trade Agreement Implementation Act.*

The reporting structure for Parliamentary accountability is through the Minister for International Trade (see Annex C). The Canadian Section's principal officer is the Canadian Secretary, responsible for overseeing corporate resource management and registrar functions, communications and outreach activities with all levels of government and non governmental organizations, in the interest of furthering public understanding of the Secretariat's role.

The NAFTA Secretariat's work is of special interest and importance to Canadian taxpayers, domestic producers and their workforce, importers, exporters, members of the legal community and consultants involved in trade matters (see Annex D for Financial Tables).

SECTION 3 – PERFORMANCE ACHIEVEMENTS

3.1 Professional Support to Panels and Registry Operations

In perspective:

In 2000, trilateral trade among the NAFTA partners, Canada, United States and Mexico, reached over \$1 trillion.

Canada's merchandise trade relationship with the United States is the largest between any two countries in the world.

The dispute resolution mechanisms reinforce the continuity of these relationships.

In 2000-2001, the NAFTA Secretariat administered twenty-eight (28) panel reviews under Chapter 19, one (1) arbitral panel proceeding under Chapter 20 and one (1) committee proceeding under ECC. The Canadian Section also administered two (2) arbitral panel proceedings under Article V of the Softwood Lumber Agreement. In the same period, two (2) Chapter 19 panel decisions, one (1) chapter 20 report and one (1) Softwood Lumber report were issued. As well, six (6) panel reviews were terminated and the remaining proceedings were still under review as of March 31, 2001.

The Registry staff efficiently handled its workload by utilizing its Integrated Registry Information System. The Registry has processed, tracked and monitored panel review documents, ensuring confidentiality, speedy service, timely communication and research activities throughout the life of the panel proceedings.

3.2 Collaborative Arrangements

In order to realize savings and efficiencies, the Canadian Section uses existing services in other government departments and agencies.

For instance, the Canadian Section does not have its own hearing room facilities. A memorandum of understanding has allowed the Canadian Section to use the Competition Tribunal hearing room.

In order to receive support related to pay and benefits and other human resources functions, collaborative arrangements have also been concluded with Public Works and Government Services Canada.

3.3 Financial Information Strategy

As of April 1st, 2001, pursuant to the Treasury Board directive, the NAFTA Secretariat, Canadian Section became FIS compliant. The FIS is a Federal Government-wide initiative that requires all departments and agencies to manage their finances using an accrual accounting model. In order to be compliant by April 1st, 2001, the Canadian Section completed a business case, identifying the most appropriate solution which best met the government's requirements and business needs of the Canadian Section.

With dedicated staff, the Canadian Section achieved its goal of being FIS compliant by reengineering its information technology infrastructure to accommodate a new financial system (CDFS - Common Departmental Financial System) and a new material management system (AMMIS - Automated Material Management Internal System). Additionally, and in line with the Federal Government's Comptrollership Model of Financial Management, a revised financial accountability model (results-based management) was introduced whereby each Responsibility Center Manager at the Canadian Section was provided with specific tasks and a corresponding budget to support their tasks.

The Canadian Section engaged an external consulting firm to program the systems and train staff in regards to this initiative. The Canadian Section expensed \$180,000 on this project. These systems have resulted in the quicker processing of transactions, both with Canadian and foreign-based clients, more accurate and timely financial reporting for Canadians, the ability to report on an accrual basis and more directed decision-making.

3.4 Communications and Service Delivery

The Canadian Section continues to enhance its service delivery to its clientele in both official languages. The services include the provision of information regarding the NAFTA Secretariat's mandate, dispute settlement mechanisms, status of panel reviews, panel decisions and reports.

In support of the Government of Canada's commitment to provide the highest quality of service to the public² and to continue improvements to the current service delivery model, the NAFTA Secretariat, Canadian Section concentrated its effort in developing a strategy to outline the activities critical to successfully meet the targets presented in the Government On-line (GoL) strategy, and improve on its service delivery channels.

To meet this new strategic outcome, the Canadian Section established and staffed an Archives and Information Management (AIM) unit. Three of the key objectives of the unit are:

- to review the current information management regulatory framework in the context of the GoL strategy and the information technology infrastructure;
- to finalize the development plan; and
- to plan the related multi-year implementation.

Contracting resources were used during the strategy development phase and the Canadian Section expensed \$25,000 for consultants to support the Government On-Line initiatives.

² Results for Canadians - A Management Framework for the Government of Canada

The launch of the on-line information access and service delivery improvement exercise has helped the Secretariat re-examine its current service delivery model from the clients perspective to ensure that the proposed enhancement initiatives are based on the needs and technological readiness of its clientele.

3.5 Training Programs for Assistants to Panelists

Developing training programs to improve the effectiveness of the panel review process is a priority for the Canadian Section. The first step connected with this priority involved identifying relevant courses already available in Canadian universities and research centres.

The second step in developing training programs consisted in inventorying the needs and expectations of panel members with regard to their assistants. To this end, a survey was conducted of a sampling of members representative of all Canadian regions, based on their accumulated experience in proceedings under NAFTA Chapters 19 and 20 and their affiliation with either university faculties or law offices. The Secretariat is now in a position to concretely assess the relevance of a training program tailored to meet identified needs.

Resources spent on this activity included \$30,000 in consultation fees and approximately six weeks of preparation, analysis and follow up by the Secretary and counsel of the Canadian Section.

It should be noted that the original idea of developing training programs for the various parties involved in the dispute settlement process evolved into the development of criterias for qualifying assistants. In fact, the research conducted revealed that training on the rules of international trade is already available and that the real need lies in recognizing the competencies of the assistants to panel members.

3.6 Collaboration with Other Governments

Tri-lateral working groups represented by staff of the three national Sections of the Secretariat have been established to assess proposed service delivery improvements. This was necessary because the Government on line exercise is affecting the information technology systems critical to the effective operations of the three national Sections (systems include the Integrated Registry Information System, FIS and the tri-lateral web site).

These working groups are currently involved in drafting a detailed plan for implementing, gradually and in collaboration with the other two national Sections, the suggested improvements to the current information management and technology infrastructures.

HOW TO CONTACT US

Contacts and other relevant information:

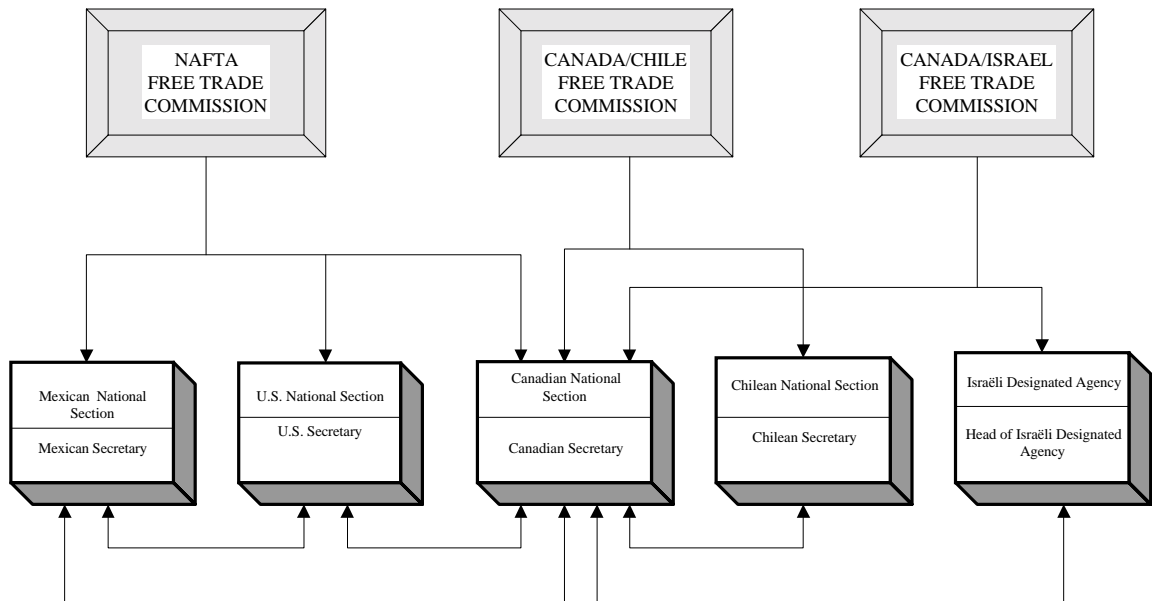
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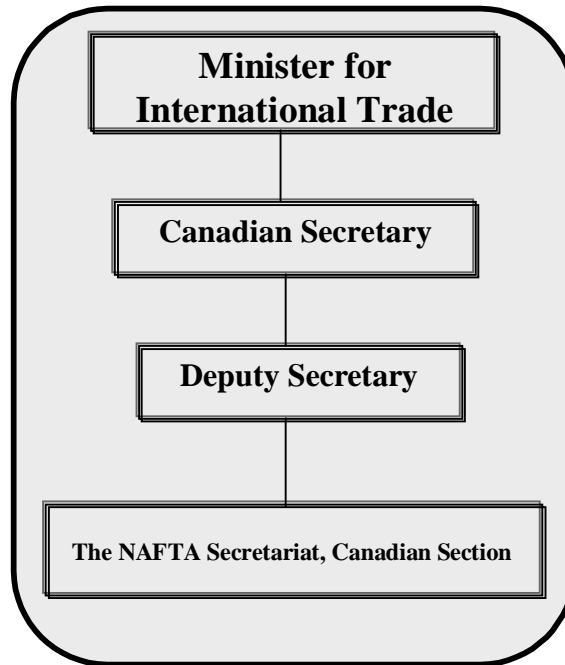
Organizational Chart



Guiding Principles

<p><i>Commitment to an Unbiased and Equitable Administrative Process</i></p>	<p>The NAFTA Secretariat, Canadian Section, is committed to administering the dispute settlement provisions of the relevant Free Trade Agreements and other Bilateral Agreements as directed by the Parties in a manner which ensures unbiased administrative processes, equity, security and fairness.</p>
<p><i>Commitment to Service Quality</i></p>	<p>The NAFTA Secretariat, Canadian Section, is committed to maintaining the highest quality of administration to all dispute settlement proceedings and to investing in technologies that will sustain future operations.</p>
<p><i>Support to Stakeholders</i></p>	<p>The NAFTA Secretariat, Canadian Section, is committed to supporting and providing services to its stakeholders in dispute resolution in a manner that is impartial, responsive, accessible and timely.</p>
<p><i>Openness and Accountability</i></p>	<p>The NAFTA Secretariat, Canadian Section, is committed to the promotion of a corporate culture implementing transparent management processes and accountability, both to the NAFTA Free Trade Commission and to the public.</p>
<p><i>Operational Efficiency</i></p>	<p>The NAFTA Secretariat, Canadian Section, is committed to pursuing alternative service delivery to enhance information access and sharing and to improve operating practices.</p>
<p><i>Continuous Learning</i></p>	<p>The NAFTA Secretariat, Canadian Section is committed in having in place professional and motivated employees and in offering them to advance their careers through continuous learning.</p>

The NAFTA Secretariat, Canadian Section's Parliamentary Accountability Structure



Financial Tables

Table # 1 - Summary of Voted Appropriations

Financial Requirements by Authority (\$ 000)				
Vote		2000-2001		
		Planned Spending	Total ³ Authorities	Actual
	NAFTA Secretariat, Canadian Section			
50	Program	2,110	2,140	1,777
(S)	Contributions to Employee Benefit Plans (EBP)	140	140	140
	Total Agency	2,250	2,280⁴	1,917⁵

Table # 2 - Historical Comparison of Total Planned to Actual Spending

Historical Comparison of Total Planned to Actual Spending (\$ 000)					
Business Line	2000-2001				
	Actual 1998 - 99	Actual 1999-2000	Planned	Total Authorities	Total
NAFTA Secretariat, Canadian Section	1,496	1,681	2,110	2,140	1,777
Total	1,496	1,681	2,110	2,140	1,777

Table # 3 - Non-respendable Revenues

Non-respendable Revenues (\$ 000)					
Business Line	2000-2001				
	Actual 1998 - 99	Actual 1999-2000	Planned	Total Authorities	Actual
NAFTA Secretariat, Canadian Section	1	130	300	300	348
Total	1	130	300	300	348

³ Total Authorities are the Secretariat's Main Estimates.

⁴ The increase of \$ 30,000 in the Total Authorities over the Planned Spending for 2000-2001 is due to Collective Bargaining Agreements.

⁵ Actual Expenditures less than Planned Spending for 2000-2001 is due primarily to the lower than anticipated proceedings filed under the NAFTA.