North American Free Trade Agreement

An Overview and Description

Canada
Mexico
United States

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Canada

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Foreword

This document, *The North American Free Trade Agreement: Overview and Description,* has two parts.

The Overview, prepared by the Government of Canada, outlines the principles behind the Agreement, provides a brief history of the negotiations and presents in summary form the key issues addressed in the North American Free Trade Agreement (NAFTA). It also describes the Government's objectives and how they were achieved in these negotiations.

The second part is a description of the proposed agreement. It has been agreed upon by Canada, Mexico and the United States. While the description accurately reflects the contents of the NAFTA, it is important to note that it does not constitute a legal text. The legal text will be refined in the coming weeks and made public when detailed drafting is complete. The final Agreement will be signed later this year and will enter into force after the necessary implementing legislation is approved in all three countries.

Overview of the Proposed North American Free Trade Agreement

On June 12, 1991, the trade ministers of Canada, the United States and Mexico met in Toronto to open negotiations for a North American Free Trade Agreement (NAFTA). This was an historic occasion. For the first time ever, a developing country agreed to sit down with two industrialized countries to craft an agreement that would open its economy to full competition with the other two countries. If successful, the agreement promised to make the whole North American continent into one economic zone and set an important precedent for trade and economic co-operation between the wealthy countries of the North and the less developed countries of the South. The challenge before them was both exciting and daunting.

A little more than a year later, the three ministers met again in Washington, to put the finishing touches on a new North American Free Trade Agreement. In less than fourteen months, they and their negotiators had successfully met the challenge and put together a new trading framework for North America. The Agreement provides a new set of rules to cover investment and more than $300 billion in annual three-way trade. It will open the door to a vast new potential in trade and investment relations among the three countries.

The Agreement extends the benefits of the Canada-U.S. Free Trade Agreement (FTA) to include Mexico. It also strengthens and expands that accord to provide an even firmer foundation for trade and investment. It provides a framework of rules within which private entrepreneurs can seek to expand their market and investment activities. It is tailored for the demanding conditions of a large, open economy. It will make the three economies more capable of taking on broader competition on a global basis.

The Context: A More Competitive Global Economy

The NAFTA represents both a response and a challenge to the changing nature of international business. The past decade has seen the emergence of a truly global economy in which, for the first time, every country can participate by taking the steps to adjust to the challenge of global competition. The decades immediately following the Second World War saw a tremendous expansion in international economic exchanges. Trade in goods, for example, grew twice as fast as production, thanks in part to the liberating effect of the reductions in tariff and other barriers achieved under the auspices of the General Agreement on Tariffs and Trade (GATT). Some three trillion dollars in goods are now exchanged annually around the globe. The most impressive increase has been in intra-industry trade, and thus consumers around the world have benefited from increased specialization and choice.

Over the past few years, the internationalization of the economy has accelerated. Spurred on by improvements in communications and transportation, and the resulting advances in business organization and finance, the natural barriers to international trade have shrunk to relative insignificance. Flows of capital and knowledge are at least as important as the flow of goods in international exchange.

The international economy of which we are now an integral part is both complex and challenging. The competition for markets is keen and the number of players much greater than in the past. The game is played differently. In the past, tariffs and other border measures were the issue. Today, the competition is over domestic policies that attract both domestic and international investors. The competition for investment is tough to the point where many countries are opening their economies unilaterally, adopting more open and market-oriented fiscal and regulatory policies.

The Challenge: A More Prosperous Canada through Trade

Canada has not been immune to the process of globalization. Canadian firms have become increasingly integrated into the global economy, while Canadian consumers have been able to choose from an ever widening array of goods and services. Canadians have adapted well to these changes. One quarter of Canada's wealth is now generated by the exports of Canadian goods and services. Canada's future prosperity is critically dependent on our continuing capacity for change and adjustment.

Canada is a medium-sized, open and trade-dependent economy. It has always been at the forefront of those advocating that the internationalization of the economy must be on the basis of clear rules, mutually agreed and fairly administered. Even large economies, such as the United States and the European Community, recognize that it is to their advantage to ensure that there are clear rules to guide global economic integration.

The intricate world of the 1990s has led to a more complex approach to rule making. In addition to the multilateral framework of rules provided by the GATT, Canada must also be alert to opportunities that arise on a regional or bilateral basis. Regional responses to the internationalization of economic exchanges in Europe and Asia, as well as in the Americas, have presented Canada with a direct challenge. The Canada-U.S. Free Trade Agreement was the first response to that challenge. The Canada-U.S.-Mexico negotiations built on that achievement, but took account of developments and opportunities that have become clearer since then.

The Government's Strategy to Meet the Challenge

Eight years ago, when the Government took office, it concluded that Canada's past prosperity had made it complacent about the precarious position it faced as a trading nation. The Government determined to take the steps necessary to renew and strengthen the Canadian economy. Rather than resisting the forces of global change, Canada needed to harness them to its advantage. At the heart of the Government's approach was the determination to make the private sector the driving force of this economic renewal. Government policies would create an environment to encourage and reward entrepreneurship and facilitate adaptation to the changing international economic demands. By opening Canada's economy to greater competition and by encouraging Canadian-based firms to adopt global business

strategies, Canada could remain one of the most prosperous societies on earth.

Three interrelated and mutually reinforcing goals were at the heart of the Government's economic strategy. It set out to:

- remove obstacles to growth;
- encourage entrepreneurship and risk taking; and
- support those in genuine need who could not adapt quickly enough to changing circumstances.

This strategy was based on domestic policies aimed at encouraging Canadian-based firms to produce products that the world would buy at prices the world is prepared to pay. Directly related to these policies were efforts to create a more open economy and promote more diversified trade and investment relations. As both markets and production were becoming global in scope and outlook, Canada was in danger of being pushed to the margins of the world economy if it did not participate in this trend. Not only were we not well equipped to expand our participation in global markets; we were in danger of losing our own market. Canada needed more companies able to take on the competition both at home and abroad. We had to change from a branch-plant to a world-class economy. And we needed rules of the game that would give firms and workers both the incentive and the reward for taking on the competition.

The FTA — Key to Our Strategy

To make Canada a good place in which to do business, we required stable prices, sufficient venture capital, a hospitable regulatory climate and a fair tax system. But, as a trading nation, the key to this strategy was getting our trade relationship with the United States right. The Canada-U.S. Free Trade Agreement proved a practical way to address that goal. It placed our economic relationship on a stronger, more open, rule-based footing. It allowed us to maintain our position as a strong and sovereign nation, while reaping the benefits of a closer trade and economic relationship with the largest economy in the world.

The FTA not only tackled the traditional barriers to trade in goods, but also made it possible for the many export-oriented service firms in Canada to take on U.S. competition on an equal footing. It put in place rules to govern bilateral investment flows and made business-related cross-border travel easier. It resolved a number of long-standing irritants and contained procedures to make it easier to address the inevitable disputes that arise in a $250-billion-a-year economic relationship.

A Broadly Based Strategy

The FTA was but one element in Canada's trade strategy. Concurrently, we were at the forefront in launching a new round of global trade talks at the GATT. We launched various trade promotion initiatives including Going Global, Pacific 2000 and Europe 1992. Each component is part of a strategy aimed at making Canada a good trading partner and a better place to do business, and promoting our international business activities. It will ensure that competitive Canadian companies are able to take advantage of opportunities around the globe. The Government has now succeeded, together with the United States and Mexico, in transforming the FTA into a broader agreement for all of North America, open to others prepared to accept its rules and obligations.

Canada's goal in each of these negotiations has been a simple one: gain as much access to world markets as possible for competitive Canadian producers, workers and investors; secure that access with balanced, mutually advantageous rules; and enshrine that access in an agreement that includes equitable and expeditious procedures for resolving any problems. In return, Canada should be prepared to open its own market to the same extent, to the benefit of Canadian firms and consumers who thus gain access to capital, goods and services in greater variety and at world prices. The details may vary as circumstances warrant, but the goal is constant.

Positioning Canada to Reap the Benefits

Implementing this strategy has not been without pain. To gain something of value, we have to be prepared to invest in ourselves. Trade agreements provide opportunities; results come when firms and workers take advantage of those opportunities. The object of the game is to promote change in an orderly manner so that we are better positioned to keep what we have and take advantage of new possibilities.

Over the past few years, the Government has taken steps to strengthen Canada's capacity to adjust to changes in the economy. It has streamlined unemployment insurance programs and made them more generous. It has placed greater emphasis on retraining and job counselling. It is working with the provinces to ensure that both federal and provincial programs are attuned to local circumstances. In 1992 alone, the Federal Government will spend $3.55 billion on training and adjustment programs for some 650,000 unemployed Canadians — in addition to the almost $19 billion in unemployment insurance benefits. Spending on adjustment programs represents a $1.53-billion (76 per cent) increase over the $2.02 billion spent in 1988, a year in which some 451,000 Canadians were helped.

Direct government assistance to workers and industry is only one factor in the adjustment equation. More important for Canada's future prosperity are the steps being taken to make the Canadian economy more competitive. It is evident that Canadians need to concentrate more energy on technological innovation; developing new partnerships between business, labour, educators, a variety of interest groups and government; reducing internal trade barriers; finding more effective ways to raise investment capital; and improving our education and training system. The government has focused attention on these issues during the last year through an extensive series of consultations with Canadians under the Prosperity Initiative. It will shortly announce how it plans to respond to the many ideas brought forward during these consultations. Canadians are recognizing their competitive strengths. They are also realizing that they must adapt to the demands of today's world economy.

In the next few years, as the combined effect of economic recovery and government cost cutting makes more funds

available, the Federal Government will be able to strengthen further programs aimed at developing Canada's greatest asset in the economy of the future, a highly motivated, well-educated work force. But the key to these initiatives will be our capacity to generate the wealth to pay for them: we cannot spend what we have not earned.

The Strategy is Working

Canadian inflation now is the lowest among industrial countries. Inflation is lower than it has been for thirty years, and interest rates have also fallen significantly. With price stability comes new confidence among both investors and consumers, the kind of confidence that will underpin the development of a more vibrant, growing economy. During 1991, as Canada, along with most of the rest of the Organization for Economic Co-operation and Development (OECD) struggled with recession, we experienced a significant improvement in our manufacturing productivity performance.

Real manufacturing output per person in Canadian industry rose by 0.4 per cent in 1991, unprecedented in a recession. Because of the confidence many firms had in Canada and the adjustments they have made, Canada is now poised for a strong recovery led by the exports of manufactured products. Various think tanks suggest that our productivity performance may improve by as much as 8 to 10 per cent in 1992 and 1993. This will put Canadian manufacturers at the leading edge, willing and able to take on the competition at home and abroad, and strengthening the Canadian economy as a whole.

Canada's declining productivity performance in the 1980s was one of the more worrying signs that we were in danger of being left by the wayside. That is now changing. The Government's policies have helped it to take the lead in the economy's recovery. In 1984, when it took office, there were some 36,000 manufacturing establishments in Canada, many of them less than a dozen years old. Today, there are about 40,000, again with more than half newly established in the past ten or so years. New, dynamic, outward-looking companies are replacing older, inward-looking firms. They promise a brighter future.

Exports and Employment Up

The employment picture is also turning around. After hitting a low in March, 1992, manufacturing employment reached 1.8 million in June. The Canadian economy generated more than a million new jobs over the past eight years. The FTA was a critical component in ensuring that these jobs have a future. In the past three years alone, for example, employment in managerial, administrative, professional and technical occupations increased by nearly 200,000. We need more jobs, but the economy will not be able to sustain them unless we are prepared to become competitive on a world scale. Canada is meeting that challenge.

The fundamentals are coming together. Canada's economy is successfully restructuring and our trade performance is leading the way. Not only did Canadian merchandise trade with the United States increase by 10.7 per cent during the first three years of FTA implementation — from $292.5 billion in 1986-88 to $323.7 billion in 1989-91, but our trade is also becoming steadily more diversified and more competitive as new exporters, new products and new markets are added to our export profile.

To maintain the momentum developed by the FTA and other components of the Government's trade and economic strategy, we must be continually alert to new opportunities. The North American free trade negotiations represented one of those opportunities. To have missed this prospect would have meant turning our back on the recovering economies of Latin America. On the other hand, by participating, Canada was able to preserve, promote and expand the trade and economic gains made in the Canada-U.S. Free Trade Agreement.

The Road to Agreement

Preparations for Canadian involvement in trilateral negotiations began in early 1990 when informal discussions with U.S. and Mexican officials suggested a strong interest in considering the prospect of either a bilateral U.S.-Mexico free trade agreement or extending the Canada-U.S. Free Trade Agreement to Mexico. Soon after U.S. President Bush and Mexican President Salinas committed their governments to the negotiation of freer trade in June 1990, the Government consulted widely with parliamentary, provincial, private-sector, academic and other interested parties in Canada. It concluded that there was broad support for Canadian participation in the negotiations.

By the beginning of February 1991, preliminary discussions among United States, Mexican and Canadian officials had cleared the way for a formal decision that the negotiations would be pursued on a trilateral basis with a view to crafting the broadest possible North American Free Trade Agreement. By this time, the Government had already consulted widely with the provinces, industry, labour and other interested Canadians on the objectives Canada should pursue in the negotiations. These consultations, centered around the International Trade Advisory Committee and the 15 Sectoral Advisory Groups as well as the Federal-Provincial Committee on NAFTA, continued on a regular basis throughout the negotiations and provided the negotiators with a steady stream of pertinent and helpful advice.

Negotiations formally commenced on June 12, 1991 at a ministerial meeting in Toronto. Building on the progress already made in the preliminary discussions, ministers were able to set an ambitious agenda and request that the negotiators set themselves a demanding pace. Close supervision by the ministerial team, which met seven times over the course of the past fourteen months, ensured that the negotiators had the requisite support and will to maintain their exacting pace. With the help of large numbers of issue specialists and legal advisers, it proved possible to make the necessary compromises and fashion a comprehensive and extensive agreement satisfactory to all parties.

The Objective: Open and Secure Access throughout North America

Canada had three basic goals in the negotiations:

- to gain access for Canadian goods, services and capital to Mexico — one of the fastest growing and most promising economies in the world — on an equal footing with the United States;
- to resolve a number of specific irritants with the United States that occurred within the context of the more intense trade and investment relationship of the past few years while ensuring no reduction in the benefits and obligations of the FTA; and
- to ensure that Canada remained an attractive location for investors wishing to serve the whole North American market.

Fundamentally, Canada's participation in the negotiations was predicated on the desire to extend and strengthen the trade regime introduced by the FTA. That agreement sought to provide Canada with a more secure framework within which to pursue the program of economic renewal introduced by the Government in 1984. Together with the Uruguay Round of GATT negotiations (launched in 1986) and trade development programs such as Going Global, Europe 1992 and Pacific 2000, the FTA is successfully providing Canadian firms and workers with both the incentive and the reward to become more internationally competitive.

Results of the Negotiations

Canada's objectives were largely met in a NAFTA that marks a further refinement and enlargement of the trading regime introduced by the FTA. The architecture of the new agreement is similar to the FTA, but moves beyond it. In effect, Canada was able to gain a better insurance policy for its trade with the United States while gaining better access to the Mexican market.

The Agreement will eliminate Mexican tariffs and trade restrictive import licensing requirements: some immediately and the rest over the remainder of the transition period. Canadian firms will be able to participate in virtually the whole Mexican economy and significantly expand business opportunities in previously closed sectors such as autos and parts, financial services, trucking, energy and fisheries. At the same time, Canada was able to obtain *clearer and more predictable rules of origin*, an extension of *duty drawback provisions*, an improved mechanism for *consultation* and *dispute settlement* on *customs administration*, a strengthened *sideswipe exemption* from U.S. safeguards and a *reduced U.S. capacity to retaliate* in dispute settlement cases. These gains were achieved in an agreement that allows Canada to maintain the *Auto Pact safeguards*, *continue* quotas to support *supply management* for poultry and dairy products, *exempt the cultural industries* from the NAFTA as they were from the FTA and *maintain* the Government's freedom to act in the area of *social services*.

The principles of *transparency* and *due process* permeate the Agreement. Building on a GATT provision (Article X, which establishes that fair rules, openly administered, should be the basis of modern trade relations), the NAFTA strengthens the security and predictability of Canadian access, particularly to the Mexican market but also to the U.S. market. It provides business with sound rules as well as access to procedures to redress grievances. It thus further constrains the U.S. capacity to take arbitrary and capricious retaliation against our trade, strengthening the confidence and stability for traders and investors throughout the free trade area.

From the beginning, it was clear that all three countries wanted to conclude a trade agreement that would lead to a *more integrated North American market* for all goods as well as most services and capital, and provide for greater mobility for professional and business travellers. Differences existed over how best to reach that goal, but not about the goal itself. All three parties wanted to build on their GATT obligations, including the anticipated results of the Uruguay Round, and all three countries agreed that the starting point for negotiations was the Canada-U.S. Free Trade Agreement.

The NAFTA takes full account of progress in the multilateral trade negotiations. Several provisions draw inspiration from the increased disciplines emerging from the Uruguay Round. Consistent with the GATT and the FTA, the NAFTA *preserves* the *flexibility to address sensitive issues such as cultural industries, national security and constitutional exemptions*. The three countries remain committed to working toward an expeditious conclusion to the multilateral trade negotiations.

NAFTA is *sensitive to environmental concerns*. All three countries confirmed their commitment to sustainable development and have incorporated into the Agreement the GATT exemption that allows governments to protect the environment even when the necessary measures conflict with other provisions of the Agreement. This will allow both federal and provincial governments to determine an appropriate level of environmental protection. The NAFTA exempts measures necessary to meet obligations arising under certain international environmental agreements from most of its disciplines, while recognizing that governments should not establish 'pollution havens' by lowering standards to attract investment. Any conflicts that raise environmental issues will be adjudicated by panels with access to scientific expertise in environmental matters.

The *inclusion of the environmental dimension in the NAFTA represents a significant achievement*. It is a constructive response to legitimate concerns. Yet the closer relationships and economic growth created by the NAFTA are likely in themselves to promote improvements in environmental quality. The income generated in Mexico by freer trade will *assist the Mexican government in enforcement* of its standards, which are good on paper but have been difficult to police. Moreover, modern industrial planning places great emphasis on building plants that, through the most efficient use of resources, not only save money but are also more compatible with sustainable development. Companies know that adding the most up-to-date pollution abatement technology and energy-efficient equipment to their plants will add only two to three per cent to their total capital costs. In many cases, such investments will reap long-term financial rewards that offset the initial cost.

The Agreement is also *sensitive to the need for firms and workers to adjust to the new competitive opportunities.* The transition period, as well as the provisions allowing each country to introduce emergency safeguard and temporary snapback measures and to continue to regulate as necessary, gives each government the room to put in place measures that will allow orderly adjustment. For Canada, these adjustments should not be onerous, since Mexico now benefits from relatively low tariffs or tariff-free access to Canada for many products, and Canada's tariffs will be phased out over the NAFTA transition period. *In essence, the NAFTA does not greatly change the access for the United States or Mexico to the Canadian market, but it does fundamentally change Canadian and U.S. access to the Mexican market.* For example, most automotive products, by far the largest Mexican export to the Canadian market, entered Canada duty-free under the terms of the Canada-U.S. Auto Pact. At the same time, the Mexican Auto Decree virtually excluded Canadian companies from participating in the Mexican market. The NAFTA provides a set of balanced rights and obligations to create a level playing field.

The degree of adjustment required by Canadians to the NAFTA will be relatively modest. Indeed, *the biggest challenge for Canadians arising from the NAFTA will be to identify the means to seize opportunities* offered by the larger North American market. The fears raised in some quarters about the competitive advantage of Mexican wage levels are significantly overplayed. Canada's competitiveness is based on much more than labour costs. The strength of our private- and public-sector services — ranging from telecommunications and insurance to health care and roads, our level of technological development, the access to — and relatively low cost of — debt and investment capital and the skills and knowledge of Canadian workers all give Canada powerful advantages in the North American market.

NAFTA provides a solid foundation for the future. It includes provisions to broaden its coverage, both in terms of issues and in terms of membership. *An accession clause similar to the provisions for accession to the GATT* is included in the Agreement. It allows countries to negotiate their way in by accepting the same obligations as the other members. In future, expansion will no longer require that negotiations start again from scratch. Canada will not have to renegotiate its terms of access to the U.S. or Mexican markets every time a new country accedes to the NAFTA, and will have a full say in the admission of new members.

NAFTA thus provides a basis for rectifying an anomaly in Canadian policy and practice that had gradually developed over the years. As a result of various unilateral measures aimed at helping developing countries, including the General Preferential Tariff (GPT), producers in developing countries like Mexico enjoyed much better access to the Canadian market than Canadian producers enjoyed to their markets. In some sectors, they enjoyed virtually one-way free trade. The NAFTA provides a model for rectifying that situation within a framework of mutually beneficial rules. The inclusion of an accession clause will ensure that other countries, if prepared to accept its obligations, can negotiate the terms and conditions, if acceptable to Canada and its NAFTA partners, under which they will enjoy its benefits. For Canada, the United States and Mexico, such a clause will avoid the possibility of future erosion of the rights and obligations contained in the Agreement as a result of efforts to accommodate the interests of new participants. The *expansion* of the Agreement *to new members will be based on accession negotiation rather than renegotiation.*

NAFTA is thus *not only good trade and economic policy, but also good foreign and development policy.* By helping developing countries in the hemisphere to adopt the necessary tools to restructure and modernize, we will promote the development of new market opportunities for Canadian firms and workers. We will also create conditions for positive human, environmental and community development in a country less prosperous than our own.

NAFTA and the FTA

From the beginning, Canada insisted that it would not allow the NAFTA negotiations to erode what it had gained in the FTA nor provide a vehicle for undoing the delicate compromises achieved between Canada and the United States in that agreement. At the same time, the Government recognized that the combination of three years' experience, the addition of a new partner at the table and the progress made on some issues in the Uruguay Round of GATT negotiations provided a good basis for considering areas where improvements could be made. As a result, it was possible to make a significant number of improvements, ranging from adjustments in the drafting of complex rights and obligations to the introduction of new provisions and procedures that should contribute to making Canadian trade with the United States, as well as with Mexico, more open and more secure.

The drafting of a trilateral agreement capable of being extended to other potential partners, as well as the successful implementation of some of the specific obligations in the FTA over the past three years, necessitated some changes in the architecture of the FTA to transform it into a NAFTA. *All the rights and obligations of the FTA are reflected in one form or another in the new Agreement,* but not always in the same way or in the same place. Many of the changes in the text clarify and improve concepts and language in the FTA. *Specific improvements* of particular significance *include:*

- The *rules of origin* have been revamped to make their application both more transparent and more certain, narrowing the scope for disputes resulting from differences in interpretation and application.
- The market-access provisions include new *rules on duty drawback,* allowing Canadian manufacturers greater flexibility in using input from non-NAFTA sources and getting credit for duties paid when these are incorporated into exports of manufactured products to other NAFTA countries.
- Provisions also include greatly *improved disciplines on customs administration.* They set out clear rules on how the Agreement will be interpreted and administered by the customs authorities, with clear procedures for the redress of grievances.
- More stringent *obligations regarding energy regulation* will help to reduce the capacity of U.S. federal and state

regulators to interfere in Canadian sales of natural gas to the United States.

- *Standards provisions* build on the extensive progress made in the Uruguay Round of GATT negotiations. They provide clear rules aimed at reducing the scope for using standards as a disguised barrier to trade while at the same time preserving the sovereign right of governments to regulate, including standards that are more stringent than international standards. The three countries agreed that standards must not create unnecessary obstacles to trade. The aim is to ensure that governments can take the steps necessary to promote such important goals as protecting the environment within a framework of rules and procedures that allows abuses and disputes to be resolved on the basis of agreed principles.
- *Chapter 19* of the FTA, providing for bilateral review of *antidumping and countervailing duties*, has been made a *permanent feature of the NAFTA*. Both Canada and the United States were satisfied that these procedures have worked to their mutual benefit and have now extended them to Mexico, at the same time ensuring that Mexico will introduce a transparent regime based on Canadian and U.S. principles of due process.
- *The inclusion of land transport* in the Agreement will allow Canadian truckers to organize their international traffic more efficiently. The Agreement provides that truckers can carry cargo from one country to the other, but reserves local cargoes to truckers based in that country: e.g., Canadian truckers can pick up a load in Mexico and carry it to the U.S., then pick up another load in the U.S. and carry it to Canada or vice-versa, but cannot carry cargo from one part of the U.S. to another. Given the expected increase in trade, this should prove an important provision to help make the Agreement work.
- The extension of the cross-border services chapter to *specialty air services* should open interesting new opportunities in the U.S. and Mexico for high-tech companies specializing in aerial surveying and mapping, and similar export-oriented sectors.
- The cross-border services and investment chapters clearly spell out that *Canada maintains its ability to provide government services*, including social and health services.
- The *investment* chapter has been recast into more generic terms than in the FTA and now includes important provisions for resolving certain types of conflicts between governments and investors from other NAFTA countries along lines similar to Canada's foreign investment protection agreements.
- The *financial services* chapter — banking, securities and insurance — not only opens up the growing Mexican market, but does so on the basis of tighter rules of general application and subject to the dispute settlement provisions of the Agreement applicable to all three countries, including the U.S.
- The *addition of an intellectual property* chapter provides an agreed basis for addressing conflicts arising in this increasingly important area of international trade and provides greater protection for Canadian creators, inventors and researchers.
- The *dispute settlement* chapter includes strengthened mediation and conciliation provisions and builds upon the FTA in assuring a professional roster of panelists capable of providing non-partisan advice and rulings.
- The *institutional provisions* of the Agreement set out improved dispute settlement procedures and include the addition of a permanent secretariat to give more focused institutional support to the Commission of trade ministers and to ensure that it will be able to exercise more cohesive oversight of ongoing work.

The ability of the three governments to transform the bilateral Canada-U.S. Free Trade Agreement into *a more comprehensive trilateral trade agreement*, open to signature by other countries so inclined, and accepted by current NAFTA members, has obvious implications for the continuing application of the FTA. In 1987, when negotiating the FTA, Canada and the United States concluded that the combination of overlapping and duplicating rights and obligations in the FTA and the GATT could best be addressed by means of a precedence clause, which indicated that, in cases of conflict between the FTA and the GATT, the FTA would prevail unless specifically provided otherwise.

The degree of overlap between the FTA and the NAFTA is even more extensive and more complicated because much of the language has been adjusted to make it more suitable for accession by other countries. To address this matter, Canada and the United States have agreed to use a procedure similar to that used in 1947, when the multilateral GATT replaced the 1938 bilateral Canada-U.S. Reciprocal Trade Agreement. At the same time as they brought the GATT into force, the two governments exchanged letters agreeing to suspend the 1938 Agreement as long as the GATT was in force between them.

In effect, Canada and the United States have agreed that the NAFTA, with all of its improvements, takes priority over the FTA. Certain specific provisions of the FTA will be suspended where the NAFTA repeats or builds upon FTA obligations, as long as the NAFTA is in force between them. FTA provisions that Canada and the United States decided not to bring fully into the NAFTA will remain operational. The NAFTA preserves the gains that Canada made in the FTA, then expands and strengthens them. The aim of the NAFTA was to extend the provisions of the FTA to include Mexico. This has been done. And Canada's important achievement in negotiating better access to its largest trading partner has been secured and strengthened.

Implementing the NAFTA

The conclusion of negotiations on August 12, 1992 does not mark the end of the road. Over the next few weeks, the three legal teams will work around the clock to ensure that the legal text of the Agreement says what the negotiators mean it to say in clear, contractual language. The next stage will involve further work to translate the Agreement's rules into domestic legislative language for presentation to Parliament.

In Canada, the Government will give all interested Canadians an opportunity to express their views before the

Government signs the Agreement later this year or early next year and tables the legislation necessary to make the Agreement law. Once that legislation has been approved, Canada will be in a position to exchange instruments of ratification with Mexico and the United States. The aim of all three governments is to complete all domestic procedures in time for the Agreement to come into force on January 1, 1994.

Preliminary analysis suggests that few legislative changes will be required for Canada to meet its obligations under the Agreement. Most of the obligations in the Agreement parallel those of the FTA and are thus consistent with existing legislation. Some of the provisions of the 1988 Canada-U.S. Free Trade Implementation Act may need to be amended in order to add Mexico to the countries benefiting from its provisions. Many of the improvements in the Agreement are either consistent with Canadian law and practice or involve administrative practice rather than matters of law and regulation. In effect, since *the main purpose of the negotiations was to extend the FTA regime to Mexico, it is Mexico that will have to undertake the most extensive changes in its laws and practice.*

In the United States, the President is required to give Congress 90 calendar days notice before he signs the Agreement on behalf of the United States, in order to ensure that legislation implementing the Agreement will be eligible for congressional consideration under the so-called 'fast-track' procedures. In addition, the Administration will work closely with Congress to prepare implementing legislation. That legislation will be studied by various congressional committees and then debated by both Houses of Congress on the basis of the strict timetable laid out in the 'fast-track' procedures. Under these procedures, Congress cannot amend the implementing bill and thereby indirectly change the Agreement. A simple majority is required in both the House of Representatives and the Senate to enact the implementing bill, which, after it is signed into law by the President, will enable the United States to bring the Agreement into force. Canada will monitor developments in the United States closely to ensure that the U.S. government proceeds on a basis that faithfully translates the intentions of the three parties into law.

In Mexico, the Salinas administration will work with the Mexican Congress and its private-sector advisory committees to prepare the necessary legislation for Mexican ratification of the Agreement. Again, Canada will monitor developments in Mexico closely.

Benefits for all Canadians

In the next few years, as Canadian entrepreneurs begin to take advantage of the new trade and investment opportunities created by this Agreement, Canadians from coast to coast will benefit.

Improved Access to Mexico

The most important benefits will flow from increased access to the growing Mexican market. Mexico is Canada's largest trading partner in Latin America. Two-way trade totalled over $3 billion in 1991 (Canada imported $2.6 billion and exported $543 million). Total Mexican imports grew by 214 per cent from 1987 to 1991, making Mexico one of the fastest growing markets in the world with a huge appetite for capital goods, technology and investment, including sectors where Canadian firms are world class. During the first five months of 1992, Canadian exports to Mexico were 100 per cent higher than in the corresponding period in 1991. Canada is expected to export $850 million in goods to Mexico this year, up from $543 million in 1991. The NAFTA will further underline the need to modernize Mexico's industrial base and infrastructure. Growing per capita income, an increasing demand for imported consumer goods, and a need for services, capital and technology should fuel steady growth in demand. Canada's proximity to Mexico, the complementarity of our two economies, the excellent relations between the two peoples and the improved access to the Mexican market flowing from the NAFTA will provide Canadian exporters and investors with a unique comparative advantage in meeting this growing demand.

Trading with Mexico should also help Canadian firms meet the exigencies of international business, particularly price competition. As Eastern Europe and the European Community team up, and as Japan does the same with the burgeoning Asian economies, Canada will want to establish links with the developing economies of Latin America in order to maintain and increase its competitiveness in world markets.

Opportunities in Mexico

While there will be new business opportunities across the full range of Canadian expertise, the following sectors may offer the most immediate prospects for Canadian business in Mexico.

- **Agri-food products** – Mexico annually imports more than $5 billion in agricultural and food products. Given our complementary climatic conditions, Mexico will remain an important market for Canadian grains and oilseeds. Livestock inventory levels in Mexico reflect conditions of limited arable land, water supplies and an especially acute supply-demand imbalance in the grains and oilseeds sectors. Mexico is not likely to become self-sufficient in livestock or in meat in the near future and offers a growing demand for breeding livestock, pork and other meat products. Changes in the eating patterns of Mexicans, due to urbanization and higher incomes, have given Canadian specialty food products (such as cookies and biscuits, frozen potato products and other frozen and microwavable products, bottled water, and convenience and snack foods) a market niche in Mexico in competition with many American food products. Mexico's consumption of seafood products exceeds one million tons and is increasing at an average annual rate of 3.5 per cent. While the import market is small, improved access should allow Canadian seafood producers to do well. As well, good market prospects exist in fish harvesting and processing technology and equipment.
- **Transport Equipment** – During the last four years, Canada has steadily increased its share of Mexico's protected transportation equipment sector. Canadian

firms should do much better as a result of the preferential terms of access under the NAFTA. While automotive parts exports have grown from $52 million in 1988 to $83 million in 1991, vehicle exports have remained low and exports of parts below their potential because the Mexican market has been largely closed. Under the NAFTA, restraints on imports will be removed, providing opportunities for the export of parts and vehicles. The Mexican market is the fastest growing market for auto parts in North America and conservative estimates are that the annual growth will be over 7 per cent. With rapid urban growth in all major centres, demand for reliable and environmentally clean urban transit equipment and services should also increase. The Government has undertaken a major program of infrastructure modernization (airports, railways, roads and public transit) through the involvement of the private sector. This offers significant opportunities for steel rail, locomotives, rolling stock, track machinery, and the repair and overhaul of rolling stock, buses and trucks — all areas where Canada has internationally recognized expertise.

- **Petroleum Equipment and Services** – Mexico's petroleum production ranks third in the world, with reserves estimated at 45 to 60 billion barrels. Canada, with its leading technology and co-operative business style, is well-placed to seize new opportunities as the industry modernizes and looks outside Mexico for modern equipment, technology and services. The industry is fundamental to the Mexican economy. Petroleos Mexicanos (PEMEX), the state monopoly controlling the exploration, exploitation and distribution of these resources, is one of the largest companies in the world. During the 1980s, much of PEMEX's earning power went to servicing Mexico's crushing debt payments. PEMEX is now catching up after a decade of absolutely minimal purchasing, updating and maintenance, and plans to spend as much as $23 billion over the next four or five years on equipment and services. The NAFTA will open up much of this vast new market to North American competition and give Canadian energy specialists an opportunity to expand their markets significantly.

- **Mining Equipment and Services** – Canada's mining technology is second to none in the world. Mexico is, with some notable exceptions, years behind recent advances and badly needs to revitalize this sector. It is restructuring its mining regulations to allow foreign investment and to encourage the adoption of more effective, safe and environmentally sound practices. Foreign investment was more than $580 million in 1991 to match more than $650 million in Mexican investment. As a result of the improved business climate, Mexican companies have been spending an estimated 30 per cent more on parts and projects each year, totalling some $700 million in 1990. A study prepared by KPGM-Peat Marwick estimates that a NAFTA would stimulate a 13.2 per cent increase in mining production over its first ten years, simply from increased economic growth and demand for basic minerals.

- **Telecommunications** – Mexico relies on imported technology in its efforts to modernize and upgrade its infrastructure and develop a more sophisticated manufacturing capability. Canadian suppliers of electronic components, telecommunications equipment and systems, and computer software should thus find a ready market for their products. The Mexican telecommunications sector is being deregulated and privatized, opening private investment and service opportunities in areas such as cellular telephones, construction and administration of microwave earth stations, fax, electronic mail and data transmission services. Between 1990 and 1994, the telecommunications market is expected to increase at an average annual rate of 12 per cent per year to $1.5 billion, while the market for computers and computer software should grow at an even faster pace.

- **Environment Equipment and Services** – The Mexican government is demonstrating its strong commitment to a major reduction in pollution by implementing concrete measures to enforce its laws, including increased inspections and plant closures. The new focus on enforcing stricter environmental regulations, combined with increasing pressure from both domestic and foreign public opinion, has created a growing demand from the private sector for different sources of anti-pollution equipment and related services. Imports will supply most of the required equipment and services, particularly for industrial and municipal wastewater treatment, potable water treatment and air pollution control. Interest in Canadian expertise was amply demonstrated during the Canada Expo '92 trade show in Monterrey (where more than 200 Canadian exhibitors participated) and a recent Environment Mission that visited three cities in the north of Mexico.

- **Industrial Machinery and Technology** – This market is expected to grow steadily during the next five years as Mexican manufacturers strive to improve productivity in order to compete successfully in the domestic and international markets. Demand for machine tools, metalworking equipment, plastics production machinery and equipment, materials-handling equipment and similar production equipment and technology is expected to exceed $6 billion by 1994, with imports supplying the preponderance of total demand. Canadian products in this sector are well accepted in Mexico and the tremendous success of the Canadian industrial trade fair organized in January 1992 in Monterrey has given a foretaste of what NAFTA may offer to Canadian exporters in this sector.

- **Consumer Products** – Imports of consumer products are growing, concentrated in fashion, novelty, high-technology, promotional, specialty and/or low-volume items, leisure and sporting goods. Some 70 per cent of Mexico's 85 million inhabitants are under thirty years of age. This growing young urban population, enjoying higher incomes generated by

enhanced economic conditions, has a marked preference for imported products, as a result of import restrictions and the favourable image of such products. Total imports of consumer products reached $7.5 billion in 1991, representing some 20 per cent of total consumption. Good prospects for Canadian business in this sector include soaps and toiletries, jewellery, furs, medicinal and pharmaceutical products, toys and games, sporting goods, books, stationery and related products, tableware, giftware and furniture.

- **Financial Services** – The modernization of the Mexican economy will require sophisticated banking, insurance and securities services. Both by privatizing much of the banking sector and by opening the market to foreign participation, Mexico recognizes the need for more modern and flexible financial services. The Canadian financial services industry, with its extensive experience in the region, is well placed to participate in the opportunities created by the NAFTA.

Other opportunities should exist in wood and paper products; tourism, hotel and restaurant equipment; medical instruments and equipment; safety and security-related products; apparel; laboratory and scientific instruments; management and financial consulting services; educational and manpower-training services; construction equipment and building products; and printing and graphic-arts equipment.

New Opportunities in Latin America

The NAFTA also provides *a solid platform upon which to pursue opportunities throughout Latin America* and build increased trade ties with the countries of the rest of the hemisphere. Exciting things are happening in Latin America as country after country jettisons the protectionist burden of the past. The determination to pursue economic renewal on both continents provides a basis for forging new business links with our southern neighbours. As Canadian business builds ties with the region, it will need new rules of the road to support modern trade and investment ties. The NAFTA provides a solid foundation upon which to build vibrant new trade and economic links throughout the region, bringing benefits and challenges to Canadians from coast to coast.

More Secure Access to the United States

Finally, improvements in the rules of the FTA will *strengthen the capacity of Canadian traders and investors to pursue opportunities in the United States*. The combination of clearer and more predictable rules of origin, an extension of duty drawback provisions, an improved mechanism for consultation and dispute settlement on customs administration, strengthened sideswipe exemption from U.S. safeguard measures and a reduced U.S. capacity to retaliate in dispute settlement cases will all help to strengthen the ability of Canadian entrepreneurs to expand their presence in the U.S. market and become more competitive on a global basis. Oil and gas producers in Alberta, for example, will benefit from the improved discipline on U.S. energy regulators. Automotive producers and workers in Ontario can be confident that sales to the U.S. market will not be undermined by differing interpretation of complex content rules by customs officials. Computer manufacturers throughout Canada will be able to develop more coherent production and marketing plans as a result of the adoption of a matching external tariff by the three countries.

Key Issues

While most of the provisions of the NAFTA reflect those of the FTA — or improve them — and thus will require few major changes in Canadian law and practice, public debate in Canada has raised a number of issues relating to the negotiations and to the Agreement, that are key to understanding both the extent and the limits of what was agreed.

- **Agriculture** – Constrained by the lack of substantive agreement on trade in agricultural products in the Uruguay Round, the three parties agreed to construct a series of bilateral arrangements. The provisions of Chapter 7 of the FTA will continue to be operative between Canada and the United States, while each has negotiated separate arrangements regarding market access between itself and Mexico. In Canada's case, we were able to expand market opportunities for red meat and grains, while fully retaining our existing system of national supply management for the dairy, poultry and egg sectors.
- **Autos** – The NAFTA safeguards Canada's largest manufacturing industry and adds new opportunities for Canadian firms and workers to expand production by adding a previously closed market of 85 million consumers. By removing, over time, existing Mexican restrictions, the NAFTA will ensure the development not only of a truly integrated North American auto industry, but also of a fully integrated market for autos and auto parts. All Mexican restrictions, including all tariffs on originating automotive goods, will be eliminated during a ten-year transition period. Improvements in the calculation of the rules of origin are designed to ensure the avoidance in the future of such disputes such as those involving Honda production in Alliston, Ontario, and the GM-CAMI plant in Ingersoll, Ontario. In addition, agreement to establish a North American content rule of 62.5 per cent for autos and major components will encourage manufacturers to increase their sourcing of original equipment parts from within the NAFTA region.
- **Cultural Industries** – The Agreement retains the exemptions for the cultural industries established in the FTA.
- **Dispute Settlement** – The unique panel review process established in the FTA to address the application of domestic antidumping and countervailing duties is retained and strengthened in the NAFTA and extended to Mexico.
- **Energy** – The energy provisions of the FTA are fully carried into the NAFTA. Some improvements were made, particularly with regard to regulatory measures.

- **Environment** – The NAFTA recognizes the increasing importance of ensuring that trade rules are consonant with domestic and international environmental objectives. The Agreement allows governments to take steps to protect the environment, even when these steps conflict with their trade obligations, as long as such steps do not involve unnecessary discrimination or introduce disguised restrictions on trade. It establishes that the obligations in certain international environmental agreements can override obligations in the NAFTA. It preserves the rights of governments to set high environmental standards. Any panel established to address an environmental issue will have access to environmental experts. Parallel to the trade negotiations, meetings between ministers responsible for the environment and their officials will set up a number of co-operative programs aimed at strengthening the enforcement of environmental standards.
- **Intellectual Property** – The inclusion of intellectual property provisions similar to those proposed in the GATT Uruguay Round and consistent with Canadian interests should boost innovation in Canada and increase the attractiveness of Canada as a site for world-class investments.
- **Investment** – Canadian investors gain greatly improved access to Mexico, while Canada retains its existing foreign-investment policy. The addition of investor-state arbitration similar to that in Canadian bilateral investment agreements will give Canadian investors in the United States and Mexico added confidence and security.
- **Labour Standards** – The Agreement confirms the rights of the three governments to set high labour standards and affirms their resolve to rigorously enforce workers' rights. Concurrent to the trade negotiations, Canada and Mexico as well as the United States and Mexico, signed bilateral accords aimed at achieving greater co-operation on labour matters.
- **Relationship to GATT** – Like the FTA, the NAFTA forms an integral part of the GATT-based multilateral trade relations system and is fully consistent with GATT requirements.
- **Social Charter** – The NAFTA does not contain a social charter similar to one adopted by the European Community. Unlike the EC, which is a more comprehensive association that seeks to achieve a high degree of political and social integration, the NAFTA is limited to trade issues. The three countries, therefore, have affirmed their commitment to work together to advance workers' rights and promote high labour and other standards through co-operation developed parallel to the NAFTA.
- **Social Issues** – Canada succeeded in ensuring that it is absolutely clear in the Agreement that social and health services provided by the federal and provincial governments remain unaffected by the Agreement. Canadians are free to design and implement whatever social services they want.
- **Tariff Removal** – Most Mexican tariffs will be removed in less than ten years. In many cases, the tariffs are eliminated more quickly. The faster phase-outs include such key Canadian export interests as fertilizers; sulphur; some aluminum; fish; agricultural, construction and resource machinery; rail and industrial equipment; selected wood pulp and paper items; telecommunications equipment; pre-fabricated housing; printed circuit boards; medical equipment; and most auto parts.
- **Textiles** – While the textile and apparel rules of origin are tougher in the NAFTA than the FTA, requiring yarn, fabric and garment to be made in North America to qualify for NAFTA preferential duties, quotas providing preferential access to the U.S. market for goods that were made in Canada but did not meet the rules have been substantially improved. The NAFTA, therefore, offers greater export opportunities for Canadians to both the U.S. and Mexican markets.
- **Trade Remedies** – The NAFTA preserves the right of each party to apply its antidumping law and countervailing duty law to goods imported from the other parties. However, Mexico has agreed to institute certain amendments to its legislation and procedures to ensure a generally consistent application of such legislation in all three countries. The NAFTA carries forward the provisions of FTA Chapter 19, which replaced the judicial review of final antidumping and countervailing duty determinations with a procedure allowing for a binding binational panel review. A new safeguard provision will help to ensure that Mexico and the United States do not frustrate the binational dispute settlement process. The integrity of the binational dispute settlement process is already enshrined in Canadian law. There is provision for further consultations on the possibility of developing a system of rules for dealing with transborder pricing practices and government subsidization ("competition policy").
- **Subsidies** – Governments in all three countries remain free to assist economic activity throughout the free trade area to promote important objectives such as regional development, but any goods that benefit from such assistance and cause material injury to producers in other markets may be subjected to countervailing duty proceedings. The special dispute settlement provisions for countervailing duty proceedings of the FTA have been incorporated into the NAFTA. A draft agreement on subsidies and countervailing duties was negotiated in the Uruguay Round of GATT negotiations and would achieve Canadian objectives. This draft agreement on subsidies and countervailing duties will not go into effect until the GATT negotiations are successfully concluded.
- **Water** – Inter-basin transfers or diversions of water are not covered by this or any other trade agreement. As in the FTA, the only water that is covered by the Agreement is drinking water available in commercial containers such as bottles or tanks. In 1987, the federal government established a policy prohibiting any inter-basin transfer or diversions of water. This policy remains in force and is not affected by the NAFTA.

Description of the Proposed North American Free Trade Agreement

Prepared by

The Governments of

Canada,

The United Mexican States

And

The United States of America

August 12, 1992

Introduction

This document provides a synopsis of the proposed North American Free Trade Agreement.

On August 12, 1992, Canadian Minister of Industry, Science and Technology and Minister for International Trade Michael Wilson, Mexican Secretary of Trade and Industrial Development Jaime Serra and United States Trade Representative Carla Hills completed negotiations on a proposed North American Free Trade Agreement (NAFTA). Officials of the three governments have been directed to complete work on the final text of the Agreement as soon as possible. The final text will be made public when completed. The following description does not itself constitute an agreement between the three countries and is not intended as an interpretation of the final text.

For ease of reference a summary of significant environmental provisions of the NAFTA is included at the end of this document.

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Preamble

The preamble to the NAFTA sets out the principles and aspirations on which the Agreement is based. It affirms the three countries' commitment to promoting employment and economic growth in each country through the expansion of trade and investment opportunities in the free trade area and by enhancing the competitiveness of Canadian, Mexican and U.S. firms in global markets, in a manner that protects the environment. The Preamble confirms the resolve of the NAFTA partners to promote sustainable development, to protect, enhance and enforce workers' rights and to improve working conditions in each country.

Objectives and Other Opening Provisions

The opening provisions of the NAFTA formally establish a free trade area between Canada, Mexico and the United States, consistent with the General Agreement on Tariffs and Trade (GATT). They set out the basic rules and principles that will govern the Agreement and the objectives that will serve as the basis for interpreting its provisions.

The objectives of the Agreement are to eliminate barriers to trade, promote conditions of fair competition, increase investment opportunities, provide adequate protection for intellectual property rights, establish effective procedures for the implementation and application of the Agreement and for the resolution of disputes and to further trilateral, regional and multilateral cooperation. The NAFTA countries will meet these objectives by observing the principles and rules of the Agreement, such as national treatment, most-favored-nation treatment and procedural "transparency".

Each country affirms its respective rights and obligations under the GATT and other international agreements. For purposes of interpretation, the Agreement establishes that the NAFTA takes priority over other agreements to the extent there is any conflict, but provides for exceptions to this general rule. For example, the trade provisions of certain environmental agreements take precedence over NAFTA, subject to a requirement to minimize inconsistencies with the Agreement.

The opening provisions also set out a general rule regarding the application of the Agreement to sub-federal levels of government in the three countries. In addition, this section defines terms that apply to the whole Agreement, to ensure uniform and consistent usage.

Rules of Origin

NAFTA eliminates all tariffs on goods originating in Canada, Mexico and the United States over a "transition period". Rules of origin are necessary to define which goods are eligible for this preferential tariff treatment.

This section of the Agreement is designed to:

- ensure that NAFTA benefits are accorded only to goods produced in the North American region — not goods made wholly or in large part in other countries;
- provide clear rules and predictable results; and
- minimize administrative burdens for exporters, importers and producers trading under NAFTA.

The rules of origin specify that goods originate in North America if they are wholly North American. Goods containing non-regional materials are also considered to be North American if the non-regional materials are sufficiently transformed in the NAFTA region so as to undergo a specified change in tariff classification. In some cases, goods must include a specified percentage of North American content in addition to meeting the tariff classification requirement. The rules of origin section also contains a provision similar to one in the Canada-United States Free Trade Agreement (FTA) that allows goods to be treated as originating when the finished good is specifically named in the same tariff subheading as its parts and it meets the required value content test.

Regional value content may be calculated using either the "transaction-value" or the "net-cost" method. The transaction-value method is based on the price paid or payable for a good; this avoids the need for complex cost accounting systems. The net-cost method is based on the total cost of the good less the costs of royalties, sales promotion, and packing and shipping. Additionally, the net-cost method sets a limitation on allowable interest. Although producers generally have the option to use either method, the net-cost method must be used where the transaction value is not acceptable under the GATT Customs Valuation Code, and must also be used for certain products, such as automotive goods.

In order to qualify for preferential tariff treatment, automotive goods must contain a specified percentage of North American content (rising to 62.5 percent for passenger automobiles and light trucks as well as engines and transmissions for such vehicles, and to 60 percent for other vehicles and automotive parts) based on the net-cost formula. In calculating the content level of automotive goods, the value of imports of automotive parts from outside the NAFTA region will be traced through the production chain to improve the accuracy of the content calculation. Regional content averaging provisions afford administrative flexibility for automotive parts producers and assemblers.

A *de minimis* rule prevents goods from losing eligibility for preference solely because they contain minimal amounts of "non-originating" material. Under this rule, a good that would otherwise fail to meet a specific rule of origin will nonetheless be considered to be North American if the value of non-NAFTA materials comprises no more than seven percent of the price or total cost of the good.

Customs Administration

In order to ensure that only goods satisfying the rules of origin are accorded preferential tariff treatment under the Agreement, and to provide certainty to and streamlined procedures for importers, exporters and producers of the three countries, the NAFTA includes a number of provisions on customs administration. Specifically, this section provides for:

- uniform regulations to ensure consistent interpretation, application and administration of the rules of origin;
- a uniform Certificate of Origin as well as certification requirements and procedures for importers and exporters that claim preferential tariff treatment;
- common record-keeping requirements in the three countries for such goods;
- rules for both traders and customs authorities with respect to verifying the origin of such goods;
- importers, exporters and producers to obtain advance rulings on the origin of goods from the customs authority of the country into which the goods are to be imported;
- the importing country to give exporters and producers in other NAFTA countries substantially the same rights of review and appeal of its origin determinations and advance rulings as it provides to importers in its territory;
- a trilateral working group to address future modifications of the rules of origin and the uniform regulations; and
- specific time periods to ensure the expeditious resolution of disputes regarding the rules of origin between NAFTA partners.

Trade in Goods

National Treatment

The NAFTA incorporates the fundamental national treatment obligation of the GATT. Once goods have been imported into one NAFTA country from another NAFTA country, they must not be the object of discrimination. This commitment extends to provincial and state measures.

Market Access

These provisions establish rules governing trade in goods with respect to customs duties and other charges, quantitative restrictions, such as quotas, licenses and permits, and import and export price requirements. They improve and make more secure the access for goods produced and traded within North America.

Elimination of Tariffs: The NAFTA provides for the progressive elimination of all tariffs on goods qualifying as North American under its rules of origin. For most goods, existing customs duties will either be eliminated immediately or phased out in five or 10 equal annual stages. For certain sensitive items, tariffs will be phased out over a period of up to 15 years. Tariffs will be phased out from the applied rates in effect on July 1, 1991, including the U.S. Generalized System of Preferences (GSP) and the Canadian General Preferential Tariff (GPT) rates. Tariff phase-outs under the Canada-U.S. FTA will continue as scheduled under that Agreement. The NAFTA provides that the three countries may consult and agree on a more rapid phase-out of tariffs.

Import and Export Restrictions: All three countries will eliminate prohibitions and quantitative restrictions applied at the border, such as quotas and import licenses. However, each NAFTA country maintains the right to impose border restrictions in limited circumstances, for example, to protect human, animal or plant life or health, or the environment. Special rules apply to trade in agriculture, autos, energy and textiles.

Drawback: NAFTA establishes rules on the use of "drawback" or similar programs that provide for the refund or waiver of customs duties on materials used in the production of goods subsequently exported to another NAFTA country.

Existing drawback programs will terminate by January 1, 2001, for Mexico-U.S. and Canada-Mexico trade; the Agreement will extend for two years the deadline established in the Canada-U.S. FTA for the elimination of drawback programs. At the time these programs are eliminated, each NAFTA country will adopt a procedure for goods still subject to duties in the free trade area to avoid the "double taxation" effects of the payment of duties in two countries.

Under these procedures, the amount of customs duties that a country may waive or refund under such programs will not exceed the lesser of:

- duties owed or paid on imported, non-North American materials used in the production of a good subsequently exported to another NAFTA country; or
- duties paid to that NAFTA country on the importation of such good.

Customs User Fees: The three countries have agreed not to impose new customs user fees similar to the U.S. merchandise processing fee or the Mexican customs processing fee ("derechos de trámite aduanero"). Mexico will eliminate by June 30, 1999, its existing customs processing fee on North American goods. The United States will eliminate its current merchandise processing fee on goods originating in Mexico by the same date. For goods originating in Canada, the United States currently is phasing down and will eliminate this fee by January 1, 1994, as provided in the Canada-U.S. FTA.

Waiver of Customs Duties: The NAFTA prohibits any new performance-based customs duty waiver or duty remission programs. Existing programs in Mexico will be eliminated by January 1, 2001. Consistent with the obligations of the Canada-U.S. FTA, Canada will end its existing duty remission programs by January 1, 1998.

Export Taxes: The NAFTA prohibits all three countries from applying export taxes unless such taxes are also applied on goods to be consumed domestically. Limited exceptions allow Mexico to impose export taxes in order to relieve critical shortages of foodstuffs and basic goods.

Other Export Measures: When a NAFTA country imposes an export restriction on a product, it must not reduce the proportion of total supply of that product made available to the other NAFTA countries below the level of the preceding three years or other agreed period, impose a higher price on exports to another NAFTA country than the domestic price or require the disruption of normal supply channels. Based on

a reservation that Mexico has taken, these obligations do not apply as between Mexico and the other NAFTA countries.

Duty-Free Temporary Admission of Goods: The Agreement allows business persons covered by NAFTA's "temporary entry" provisions to bring into a NAFTA country professional equipment and "tools of the trade" on a duty-free, temporary basis. These rules also cover the importation of commercial samples, certain types of advertising films, and goods imported for sports purposes or for display and demonstration. Other rules provide that by 1998 all goods that are returned after repair or alteration in another NAFTA country will re-enter duty-free. The United States undertakes to clarify what ship repairs done in other NAFTA countries on U.S.-flagged vessels qualify for preferential duty treatment.

Country-of-Origin Marking: This section also provides principles and rules governing country-of-origin marking. These provisions are designed to minimize unnecessary costs and facilitate the flow of trade within the region, while ensuring that accurate information about the country of origin remains available to purchasers.

Alcoholic Beverages — Distinctive Products: The three countries have agreed to recognize Canadian Whiskey, Tequila, Mezcal, Bourbon Whiskey and Tennessee Whiskey as "distinctive products" and to prohibit the sale of products under these names unless they meet the requirements of their country of origin.

Textiles and Apparel

This section provides special rules for trade in fibers, yarns, textiles and clothing in the North American market. The NAFTA textiles and apparel provisions take precedence over those of the Multifiber Arrangement and other agreements between NAFTA countries applicable to textile products.

Elimination of Tariff and Non-Tariff Barriers

The three countries will eliminate immediately or phase out over a maximum period of 10 years their customs duties on textile and apparel goods manufactured in North America that meet the NAFTA rules of origin. In addition, the United States will immediately remove import quotas on such goods produced in Mexico, and will gradually phase out import quotas on Mexican textile and apparel goods that do not meet such rules. No NAFTA country may impose any new quota, except in accordance with specified "safeguards" provisions.

Safeguards

If textile or apparel producers face serious damage as a result of increased imports from another NAFTA country, the importing country may, during the "transition period", either increase tariffs or, with the exception of Canada-U.S. trade, impose quotas on the imports to provide temporary relief to that industry, subject to specific disciplines. In the case of goods that meet NAFTA's rules of origin, the importing country may take safeguard actions only in the form of tariff increases.

Rules of Origin

Specific rules of origin in the NAFTA define when imported textile or apparel goods qualify for preferential treatment. For most products, the rule of origin is "yarn forward", which means that textile and apparel goods must be produced from yarn made in a NAFTA country in order to benefit from such treatment. A "fiber forward" rule is provided for certain products such as cotton and man-made fiber yarns. Fiber forward means that goods must be produced from fiber made in a NAFTA country. In other cases, apparel cut and sewn from certain imported fabrics that the NAFTA countries agree are in short supply, such as silk, linen and certain shirting fabrics, can qualify for preferential treatment.

Additional provisions, responsive to the needs of North American industry, include "tariff rate quotas" (TRQ's), under which yarns, fabrics and apparel that are made in North America, but that do not meet the rules of origin, can still qualify for preferential duty treatment up to specified import levels. The TRQ's for Canada that were included in the Canada-U.S. FTA have been increased and provided an annual growth rate for at least the first five years.

The NAFTA countries will undertake a general review of the textile and apparel rules of origin prior to January 1, 1998. In the interim, they will consult on request on whether specific goods should be made subject to different rules of origin, taking into account availability of supply within the free trade area. In addition, the three countries have established a process to permit annual adjustments to TRQ levels.

Labelling Requirements

A joint government and private sector Committee on Labelling for Textile Products will recommend ways to eliminate unnecessary obstacles to textile trade resulting from different labelling requirements in the three countries through a work program to develop uniform labelling requirements, for example regarding pictograms and symbols, care instructions, fiber content information and methods for attachment of labels.

Automotive Goods

The NAFTA will eliminate barriers to trade in North American automobiles, trucks, buses and parts ("automotive goods") within the free trade area, and eliminate investment restrictions in this sector, over a 10-year transition period.

Tariff Elimination

Each NAFTA country will phase out all duties on its imports of North American automotive goods during the transition period. Most trade in automotive goods between Canada and the United States is conducted on a duty-free basis under the terms of either the Canada-U.S. FTA or the Canada-U.S. "Autopact".

Vehicles: Canada and the United States eliminated tariffs on their trade in vehicles under the Canada-U.S. FTA. Under the NAFTA, for its imports from Mexico, the United States will:

- eliminate immediately its tariffs on passenger automobiles;
- reduce immediately to 10 percent its tariffs on light trucks and phase out the remaining tariffs over five years; and
- phase out its tariffs on other vehicles over 10 years.

For imports from Canada and the United States, Mexico will:

- reduce immediately by 50 percent its tariffs on passenger automobiles and phase out the remaining tariffs over 10 years;
- reduce immediately by 50 percent its tariffs on light trucks and phase out the remaining tariffs over five years; and
- phase out its tariffs on all other vehicles over 10 years.

Canada will eliminate its tariffs on vehicles imported from Mexico on the same schedule as Mexico will follow for imports from Canada and the United States.

Parts: Each country will eliminate its remaining tariffs on certain automotive parts immediately and phase out duties on other parts over five years and a small portion over 10 years.

Rules of Origin

The NAFTA rules of origin section provides that in order to qualify for preferential tariff treatment, automotive goods must contain a specified percentage of North American content (rising to 62.5 percent for passenger automobiles and light trucks as well as engines and transmissions for such vehicles, and to 60 percent for other vehicles and automotive parts) based on the net-cost formula. In calculating the content level of automotive goods, the value of imports of automotive parts from outside the NAFTA region will be traced through the production chain to improve the accuracy of the content calculation.

Mexican Auto Decree

The Mexican Auto Decree will terminate at the end of the transition period. Over this period, the restrictions under the Auto Decree will be modified by:

- eliminating immediately the limitation on imports of vehicles based on sales in the Mexican market;
- amending its "trade balancing" requirements immediately to permit assemblers to reduce gradually the level of exports of vehicles and parts required to import such goods, and eliminating, at the end of the transition period, the requirement that only assemblers in Mexico may import vehicles;
- changing its "national value-added" rules by reducing gradually the percentage of parts required to be purchased from Mexican parts producers; by counting purchases from certain in-bond production facilities ("maquiladoras") toward this percentage; by ensuring that Canadian, Mexican and U.S. parts manufacturers may participate in the growing Mexican market on a competitive basis, while requiring assemblers in Mexico during the transition period to continue to purchase parts from Mexican parts producers; and by eliminating at the end of the transition period the national value added requirement.

Mexican Auto-Transportation Decree

The Mexican Auto-Transportation Decree covering trucks (other than light trucks) and buses will be eliminated immediately, and replaced with a transitional system of quotas in effect for five years.

Imports of Used Vehicles

Canada's remaining restrictions on the import of used motor vehicles from the United States will be eliminated on January 1, 1994, in accordance with the Canada-U.S. FTA. Beginning 15 years after the NAFTA goes into effect, Canada will phase out over 10 years its prohibition on imports of Mexican used motor vehicles. Mexico will phase out its prohibition on imports of North American used vehicles over the same period.

Investment Restrictions

In accordance with the NAFTA's investment provisions, Mexico will immediately permit "NAFTA investors" to make investments of up to 100 percent in Mexican "national suppliers" of parts, and up to 49 percent in other automotive parts enterprises, increasing to 100 percent after five years. Mexico's thresholds for the screening of takeovers in the automotive sector will be governed by NAFTA's investment provisions.

Corporate Average Fuel Economy Fleet Content

Under the NAFTA, the United States will modify the fleet content definition found in its Corporate Average Fuel Economy ("CAFE") rules, so that vehicle manufacturers may choose to have those Mexican-produced parts and vehicles they export to the United States classified as domestic. After 10 years, Mexican production exported to the United States will receive the same treatment as U.S. or Canadian production for purposes of CAFE. Canadian-produced automobiles currently may be classified as domestic for CAFE purposes. The NAFTA does not change the minimum fuel economy standards for vehicles sold in the United States.

Automotive Standards

The NAFTA creates a special intergovernmental group to review and make recommendations on federal automotive standards in the three countries, including recommendations to achieve greater compatibility in such standards.

Energy and Basic Petrochemicals

This section sets out the rights and obligations of the three countries regarding crude oil, gas, refined products, basic petrochemicals, coal, electricity and nuclear energy.

In the NAFTA, the three countries confirm their full respect for their constitutions. They also recognize the desirability of strengthening the important role that trade in energy and basic petrochemical goods plays in the North American region and of enhancing this role through sustained and gradual liberalization.

The NAFTA's energy provisions incorporate and build on GATT disciplines regarding quantitative restrictions on imports and exports as they apply to energy and basic petrochemical trade. The NAFTA provides that under these disciplines a country may not impose minimum or maximum import or export price requirements, subject to the same exceptions that apply to quantitative restrictions. The NAFTA also makes clear that each country may administer export and import licensing systems, provided that they are operated in a manner consistent with the provisions of the Agreement. In addition, no country may impose a tax, duty or charge on the export of energy or basic petrochemical goods unless the same tax, duty or charge is applied to such goods when consumed domestically.

This section also provides that import and export restrictions on energy trade will be limited to certain specific circumstances, such as to conserve exhaustible natural resources, deal with a short supply situation or implement a price stabilization plan.

Further, when a NAFTA country imposes any such restriction, it must not reduce the proportion of total supply made available to the other NAFTA countries below the level of the preceding three years or other agreed period, impose a higher price on exports to another NAFTA country than the domestic price or require the disruption of normal supply channels. Based on a reservation that Mexico has taken, these obligations do not apply as between Mexico and the other NAFTA countries.

This section also limits the grounds on which a NAFTA country may restrict exports or imports of energy or basic petrochemical goods for reasons of national security. However, based on a reservation that Mexico has taken, energy trade between Mexico and the other NAFTA countries will not be subject to this discipline, but will instead be governed by the Agreement's general national security provision, described in the "Exceptions" section below.

The NAFTA confirms that energy regulatory measures are subject to the Agreement's general rules regarding national treatment, import and export restrictions and export taxes. The three countries also agree that the implementation of regulatory measures should be undertaken in a manner that recognizes the importance of a stable regulatory environment.

In the NAFTA, Mexico reserves to the Mexican State goods, activities and investments in Mexico in the oil, gas, refining, basic petrochemicals, nuclear and electricity sectors.

The NAFTA energy provisions recognize new private investment opportunities in Mexico in non-basic petrochemical goods and in electricity generating facilities for "own use", co-generation and independent power production by allowing NAFTA investors to acquire, establish and operate facilities in these activities. Investment in non-basic petrochemical goods is governed by the general provisions of the Agreement.

To promote cross-border trade in natural gas and basic petrochemicals, NAFTA provides that state enterprises, end users and suppliers have the right to negotiate supply contracts. In addition, independent power producers, CFE (Mexico's state-owned electricity firm) and electric utilities in other NAFTA countries also have the right to negotiate power purchase and sale contracts.

Each country will also allow its state enterprises to negotiate performance clauses in their service contracts.

Certain specific commitments relating to special aspects of Canada-U.S. energy trade, set out in the Energy Chapter of the Canada-U.S. FTA, will continue to apply between the two countries.

Agriculture

The NAFTA sets out separate bilateral undertakings on cross-border trade in agricultural products, one between Canada and Mexico, and the other between Mexico and the United States. Both include a special transitional safeguard mechanism. As a general matter, the rules of the Canada-U.S. FTA on tariff and non-tariff barriers will continue to apply to agricultural trade between Canada and the United States. Trilateral provisions in the NAFTA address domestic support for agricultural goods and agricultural export subsidies.

Tariffs and Non-Tariff Barriers

Trade between Mexico and the United States: When the Agreement goes into effect, Mexico and the United States will eliminate immediately all non-tariff barriers to their agricultural trade, generally through their conversion to either "tariff-rate quotas" (TRQ's) or ordinary tariffs.

The TRQ's will facilitate the transition for producers of import-sensitive products in each country. No tariffs will be imposed on imports within the quota amount. The quantity eligible to enter duty-free under the TRQ will be based on recent average trade levels and will grow generally at three percent per year. The over-quota duty — initially established at a level designed to equal the existing tariff value of each non-tariff barrier — will progressively decline to zero during either a 10- or 15-year transition period, depending on the product.

Under the NAFTA, Mexico and the United States will eliminate immediately tariffs on a broad range of agricultural products. This means that roughly one-half of U.S.-Mexico bilateral agricultural trade will be duty-free when the Agreement goes into effect. All tariff barriers between Mexico and the United States will be eliminated no later than 10 years after the Agreement takes effect, with the exception of

duties on certain highly sensitive products — including corn and dry beans for Mexico, and orange juice and sugar for the United States. Tariff phase-outs on these few remaining products will be completed after five more years.

Mexico and the United States will gradually liberalize bilateral trade in sugar. Both countries will apply TRQ's of equivalent effect on third country sugar by the sixth year after the Agreement goes into effect. All restrictions on trade in sugar between the two countries will be eliminated by the end of the 15-year transition period, except that sugar exported under the U.S. Sugar Re-Export Programs will remain subject to most-favored-nation (MFN) tariff rates.

Trade between Canada and Mexico: Canada and Mexico will eliminate all tariff and non-tariff barriers on their agricultural trade, with the exception of those in the dairy, poultry, egg and sugar sectors.

Canada will immediately exempt Mexico from import restrictions covering wheat, barley and their products, beef and veal, and margarine. Canada and Mexico will eliminate immediately or phase out within five years tariffs on many fruit and vegetable products, while tariffs on remaining fruit and vegetable products will be phased out over 10 years. A small number of these products will be subject to the special transitional safeguard described below.

Other than in the dairy, poultry and egg sectors, Mexico will replace its import licenses with tariffs, for example on wheat, or TRQ's, for example respecting corn and barley. These tariffs will generally be phased out over a 10-year period.

Special Safeguard Provision

During the first 10 years the Agreement is in effect, the NAFTA provides a special safeguard provision that applies to certain products within the scope of the bilateral undertakings described above. A NAFTA country may invoke the mechanism where imports of such products from the other country reach "trigger" levels set out in the Agreement. In such circumstances, the importing country may apply the tariff rate in effect at the time the Agreement went into effect or the then-current MFN rate, whichever is lower. This tariff rate may be applied for the remainder of the season or the calendar year, depending on the product. The trigger levels will increase over this 10-year period.

Domestic Support

Recognizing both the importance of domestic support measures to their respective agricultural sectors and the potential effect of such measures on trade, each of the NAFTA countries will endeavor to move toward domestic support policies that are not trade- distorting. In addition, the three countries recognize that a country may change its domestic support mechanisms so long as such change is in compliance with applicable GATT obligations.

Export Subsidies

Recognizing that the use of export subsidies within the free trade area is inappropriate except to counter subsidized imports from a non-NAFTA country, the Agreement provides that:

- a NAFTA exporting country must give three-days' notice of its intent to introduce a subsidy on agricultural exports to another NAFTA country;
- when an exporting NAFTA country believes that another NAFTA country is importing non-NAFTA agricultural goods that benefit from export subsidies, it may request consultations on measures the importing country could take against such subsidized imports; and
- if the importing country adopts mutually agreed measures to counter that subsidy, the NAFTA exporting country will not introduce its own export subsidy.

Building on the bilateral discipline on export subsidies in the Canada-U.S. FTA, the three countries will work toward the elimination of export subsidies in North American agricultural trade in pursuit of their objective of eliminating such subsidies worldwide.

Agricultural Marketing Standards

The NAFTA provides that when either Mexico or the United States applies a measure regarding the classification, grading or marketing of a domestic agricultural product, it will provide no less favorable treatment to like products imported from the other country for processing.

Resolution of Commercial Disputes

The three countries will work toward development of a mechanism for resolving private cross-border commercial disputes involving agricultural products.

Committee on Agricultural Trade

A trilateral committee on agricultural trade will monitor the implementation and administration of this section. In addition, a Mexico-U.S. working group and a Canada-Mexico working group will be established under the committee to review the operation of grade and quality standards.

Sanitary and Phytosanitary Measures

This section imposes disciplines on the development, adoption and enforcement of sanitary and phytosanitary (SPS) measures, namely those taken for the protection of human, animal or plant life or health from risks arising from animal or plant pests or diseases, food additives or contaminants. These disciplines are designed to prevent use of SPS measures as disguised restrictions on trade, while safeguarding each country's right to take SPS measures to protect human, animal or plant life or health.

Basic Rights and Obligations

The NAFTA confirms the right of each country to establish the level of SPS protection that it considers appropriate and provides that a NAFTA country may achieve that level of protection through SPS measures that:

- are based on scientific principles and a risk assessment;
- are applied only to the extent necessary to provide a country's chosen level of protection; and
- do not result in unfair discrimination or disguised restrictions on trade.

International Standards

To avoid creating unnecessary barriers to trade, the NAFTA encourages the three countries to use relevant international standards in the development of their SPS measures. However, it permits each country to adopt more stringent, science-based measures when necessary to achieve its chosen level of protection.

The NAFTA partners will promote the development and review of international SPS standards in such international and North American standardizing organizations as the Codex Alimentarius Commission, the International Office of Epizootics, the Tripartite Animal Health Commission, the International Plant Protection Convention and the North American Plant Protection Organization.

Harmonization and Equivalence

The three countries have agreed to work toward equivalent SPS measures without reducing any country's chosen level of protection of human, animal or plant life or health. Each NAFTA country will accept SPS measures of another NAFTA country as equivalent to its own, provided that the exporting country demonstrates that its measures achieve the importing country's chosen level of protection.

Risk Assessment

The NAFTA establishes disciplines on risk assessment, including for evaluating the likelihood of entry, establishment or spread of pests and diseases. SPS measures must be based on an assessment of risk to human, animal or plant life or health, taking into account risk assessment techniques developed by international or North American standardizing organizations. A NAFTA country may grant a phase-in period for compliance by goods from another NAFTA country where the phase-in would be consistent with ensuring the importing country's chosen level of SPS protection.

Adaptation to Regional Conditions

This section also establishes rules for the adaptation of SPS measures to regional conditions, in particular regarding pest- or disease-free areas and areas of low pest or disease prevalence. An exporting country must provide objective evidence whenever it claims that goods from its territory originate in a pest- or disease-free area or area of low pest or disease prevalence.

Procedural "Transparency"

The NAFTA requires public notice in most cases prior to the adoption or modification of any SPS measure that may affect trade in North America. The notice must identify the goods to be covered, and the objectives of and reasons for the measure. All SPS measures must be published promptly. Each NAFTA country will ensure that a designated inquiry point provides information regarding such measures.

Control, Inspection and Approval Procedures

The NAFTA also establishes rules governing procedures for ensuring the fulfillment of SPS measures. These rules allow for the continued operation of domestic control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, subject to such disciplines as national treatment, timeliness and procedural "transparency".

Technical Assistance

The three countries will facilitate the provision of technical assistance concerning SPS measures either directly or through appropriate international or North American standardizing organizations.

Committee on Sanitary and Phytosanitary Measures

A Committee on Sanitary and Phytosanitary Measures will facilitate the enhancement of food safety and sanitary conditions in the free trade area, promote the harmonization and equivalence of SPS measures and facilitate technical cooperation and consultations, including consultations regarding disputes involving SPS measures.

Technical Standards

This section applies to standards-related measures, namely standards, governmental technical regulations and the procedures used to determine that these standards and regulations are met. It recognizes the crucial role of these measures in promoting safety and protecting human, animal and plant life and health, the environment and consumers. The three countries have agreed not to use standards-related measures as unnecessary obstacles to trade, and will cooperate and work towards the enhancement and compatibility of these measures in the free trade area.

Basic Rights and Obligations

The NAFTA affirms that each country maintains the right to adopt, apply and enforce standards-related measures, to choose the level of protection it wishes to achieve through such measures and to conduct assessments of risk to ensure

that those levels are achieved. In addition, the NAFTA affirms each country's rights and obligations under the GATT Agreement on Technical Barriers to Trade and other international agreements, including environmental and conservation agreements.

The NAFTA also sets out certain disciplines on the use of standards-related measures, with a view to facilitating trade between the NAFTA partners. For example, each country must ensure that its standards-related measures provide both national treatment and most-favored-nation treatment. That is, they must ensure that goods or specified services from the other two countries are treated no less favorably than like goods or services of national origin, and like goods or services from non-NAFTA countries.

International Standards

Each NAFTA country will use international standards as a basis for its standards-related measures if those standards are an effective and appropriate means to fulfill the country's objectives. However, each country retains the right to adopt, apply and enforce standards-related measures that result in a higher level of protection than would be achieved by measures based on international standards.

Compatibility

The NAFTA countries will work jointly to enhance safety, health and environmental and consumer protection. They will also seek to make their standards-related measures more compatible, taking into account international standard-setting activities, so as to facilitate trade and to reduce the additional costs that arise from having to meet different requirements in each country.

Conformity Assessment

Conformity assessment procedures are used to determine that the requirements set out in technical regulations or standards are fulfilled. The Agreement sets out a detailed list of rules governing these procedures to ensure that they do not create unnecessary obstacles to trade between the NAFTA countries.

Procedural "Transparency"

The NAFTA requires public notice in most cases prior to the adoption or modification of standards-related measures that may affect trade in North America. The notice must identify the goods or services to be covered and the objectives of and the reasons for the measure. Other NAFTA countries and anyone interested in a particular standards-related measure will be allowed to comment on it. Each NAFTA country will ensure that designated inquiry points are able to respond to questions and provide information regarding standards-related measures to other NAFTA countries and any interested person.

Technical Cooperation

Each country will, on request, provide to another NAFTA country technical advice, information and assistance on mutually agreed terms and conditions to enhance their standards-related measures. The Agreement encourages cooperation between the standardizing bodies of the NAFTA countries.

Committee on Standards-Related Measures

A Committee on Standards-Related Measures will monitor the implementation and administration of this section of the Agreement, facilitate the attainment of compatibility, enhance cooperation on developing, applying and enforcing standards-related measures and facilitate consultations regarding disputes in this area. Subcommittees and working groups will be created to deal with specific topics of interest. The Agreement provides that these subcommittees and working groups may invite the participation of scientists and representatives of interested non-governmental organizations from the three countries.

Emergency Action

This section of the Agreement establishes rules and procedures under which a NAFTA country may take "safeguard" actions to provide temporary relief to industries adversely affected by surges in imports. A transitional bilateral safeguard mechanism applies to emergency actions taken against import surges that result from tariff reductions under the NAFTA. A global safeguard applies to import surges from all countries.

The Agreement's procedures governing safeguard actions provide that relief may be imposed for only a limited period of time and require that the NAFTA country taking the action must compensate the NAFTA country against whose good the action is taken. If the countries are not able to agree on the appropriate compensation, the exporting country may take trade measures of equivalent effect to compensate for the trade effect of the safeguard.

Bilateral Safeguard

During the transition period, if increases in imports from another NAFTA country cause or threaten to cause serious injury to a domestic industry, a NAFTA country may take a safeguard action that temporarily suspends the agreed duty elimination or re-establishes the pre-NAFTA rate of duty. The injury must result from the elimination of duties under the NAFTA. Such a safeguard action may be taken only once, and for a maximum period of three years. In the case of certain extremely sensitive goods, a country may extend the safeguard action for a fourth year. Bilateral safeguard actions may be taken after the transition period only with the consent of the country whose good would be affected by such action.

Global Safeguard

The Agreement provides that where a NAFTA partner undertakes a safeguard action on a global or multilateral basis (in accordance with Article XIX of the GATT, which permits both tariff and quota-based safeguard measures), each NAFTA partner must be excluded from the action unless its exports:

- account for a substantial share of total imports of the good in question; and
- contribute importantly to the serious injury or the threat of injury.

The Agreement stipulates that a NAFTA country normally will not be considered to account for a substantial share of imports if it does not fall among the top five suppliers of the good. For a NAFTA country's goods to be deemed not to contribute importantly to injury, the rate of growth of imports of the goods entering from that country must be appreciably lower than that of total imports of those goods. Even if a NAFTA country is initially excluded from a safeguard action, the country taking the action has the right subsequently to include it in the action if a surge in imports from that country undermines the effectiveness of the action.

Procedural Requirements

This section also provides detailed procedures to guide the administration of safeguard measures, including:

- entrusting injury determinations to a specified administrative authority; and
- requirements for the form and content of petitions, the conduct of investigations, including public hearings to allow all interested parties an opportunity to present views, and notification and publication of investigations and decisions.

Review of Antidumping and Countervailing Duty Matters

The NAFTA establishes a mechanism for independent binational panels to review final antidumping (AD) and countervailing duty (CVD) determinations by administrative authorities in each country. Each country will make those changes to its law necessary to ensure effective panel review. This section also sets out procedures for panel review of future amendments to each country's antidumping and countervailing duty laws. In addition, it establishes an "extraordinary challenge" procedure to deal with allegations that certain actions may have affected a panel's decision and the panel review process. Finally, the NAFTA creates a safeguard mechanism designed to remedy instances in which application of a country's domestic law undermines the functioning of the panel process.

Panel Process

Binational panels will substitute for domestic judicial review in cases in which either the importing or exporting country seeks panel review of a determination based on.a request by a person entitled to judicial review of that determination under the domestic law of the importing country.

Each panel will comprise five qualified individuals from the countries involved, drawn from a roster maintained by the three countries. Each country involved will select two panelists, with the fifth selected by agreement of those countries or, in the absence of agreement, by the agreement of the four designated panelists or by lot.

A panel must apply the domestic law of the importing country in reviewing a determination. The three countries will develop rules of procedure for panels. The panel will either uphold the determination or remand it to the administrative authority for action not inconsistent with the panel's decision. Panel decisions will be binding.

Retention of AD and CVD Laws

The NAFTA explicitly preserves the right of each country to retain its AD and CVD laws. Each country may amend its AD and CVD laws after the NAFTA takes effect. Any such amendment, to the extent it applies to imports from another NAFTA country, may be subject to panel review for inconsistency with the object and purpose of the Agreement, the GATT or the relevant GATT codes. If a panel finds such an inconsistency, and consultations fail to resolve the matter, the country that requested the review may take comparable legislative or administrative action or terminate the Agreement.

Extraordinary Challenge Procedure

The NAFTA also provides for an extraordinary challenge procedure and establishes certain grounds for invoking this procedure. Following a panel decision, either of the countries involved may request the establishment of a three-person extraordinary challenge committee, comprising judges or former judges from those countries. If it determines that one of the grounds for the extraordinary challenge has been met, it will vacate the original panel decision. In such event, a new panel will be established.

Special Committee to Safeguard the Panel Process

This section provides a safeguard mechanism to ensure that the panel process functions as intended. A NAFTA country may request a "special committee" to determine if the application of another country's domestic law has:

- prevented the establishment of a panel;
- prevented a panel from rendering a final decision;
- prevented the implementation of a panel's decision or denied it binding force and effect; or
- failed to provide opportunity for judicial review of the basis for the disputed administrative determination by an independent court applying the standards set out in the country's domestic law.

If a special committee makes an affirmative finding on any of these grounds, the countries involved will attempt to resolve the matter in the light of the special committee's finding. If they are unable to do so, the complaining country may suspend the binational panel system with respect to the other country or may suspend other benefits under the Agreement. If the complaining country suspends the panel system, the country complained against may take reciprocal action. Unless the countries involved resolve the matter, or unless the country complained against demonstrates to the special committee that it has taken the necessary corrective action, any suspension of benefits may remain in effect.

Government Procurement

The Agreement opens a significant portion of the government procurement market in each NAFTA country on a non-discriminatory basis to suppliers from the other NAFTA countries for goods, services and construction services.

Coverage

The NAFTA covers procurements by specified federal government departments and agencies and federal government enterprises in each NAFTA country.

The NAFTA applies to procurements by federal government departments and agencies of:

- over US$50,000 for goods and services; and
- over US$6.5 million for construction services.

For federal government enterprises, the NAFTA applies to procurements of:

- over US$250,000 for goods and services; and
- over US$8 million for construction services.

For procurements covered by the Canada-U.S. FTA, the dollar thresholds of that Agreement will continue to apply.

Mexico will phase in its coverage over a transition period.

This section does not apply to the procurement of arms, ammunition, weapons and other national security procurements. Each country reserves the right to favor national suppliers for procurements specified in the Agreement.

Procedural Obligations

In addition to requiring national and most-favored NAFTA country treatment, the Agreement imposes procedural disciplines on covered procurements that:

- promote transparency and predictability by providing rules for technical specifications, qualifications of suppliers, setting of time limits and other aspects of the procurement process;
- prohibit offset practices and other discriminatory buy-national requirements; and
- require each country to establish a bid protest system that allows suppliers to challenge procedures or awards.

Technical Cooperation

The three countries will exchange information regarding their procurement systems to assist suppliers in each country to take advantage of the opportunities created by this section.

A Committee on Small Business will assist NAFTA small businesses to identify procurement opportunities in NAFTA countries.

Future Negotiations

Recognizing that improvements to NAFTA's procurement section are desirable, the three countries will endeavor to extend the coverage of this section to state and provincial governments that, after consultations, voluntarily accept its commitments.

Cross-Border Trade In Services

The NAFTA expands on initiatives in the Canada-U.S. FTA and the Uruguay Round of multilateral trade negotiations to create internationally-agreed disciplines on government regulation of trade in services. The cross-border trade in services provisions establish a set of basic rules and obligations to facilitate trade in services between the three countries.

National Treatment

The Agreement extends to services the basic obligation of national treatment, which has long been applied to goods through the GATT and other trade agreements. Under NAFTA's national treatment rule, each NAFTA country must treat service providers of the other NAFTA countries no less favorably than it treats its own service providers in like circumstances.

With respect to measures of a state or province, national treatment means treatment no less favorable than the most favorable treatment that the state or province accords to the service providers of the country of which it forms a part.

Most-Favored-Nation Treatment

The Agreement also applies another basic GATT obligation to services: that of most-favored-nation treatment. This rule requires each NAFTA country to treat service providers of the other NAFTA countries no less favorably than it treats service providers of any other country in like circumstances.

Local Presence

Under the Agreement, a NAFTA country may not require a service provider of another NAFTA country to establish or maintain a residence, representative office, branch or any other form of enterprise in its territory as a condition for the provision of a service.

Reservations

Each NAFTA country will be able to keep certain current laws and other measures that do not comply with the rules and obligations described above. Such federal, state and provincial measures will be listed in the Agreement. Each NAFTA country will have up to two years to complete the list of state and provincial measures of this kind. All such measures currently in force at the municipal and other local government level may be retained.

Each NAFTA country may renew or amend its non-conforming measures provided that the renewal or amendment does not make a measure more inconsistent with the rules and obligations described above.

Non-Discriminatory Quantitative Restrictions

Each country will also list its existing non-discriminatory measures that limit the number of service providers or the operations of service providers in a particular sector. Any other NAFTA country will be able to request consultations on such measures with a view to negotiating their liberalization or removal.

Licensing and Certification

The NAFTA provisions related to professional licensing and certification are designed to avoid unnecessary barriers to trade. Specifically, each country must seek to ensure that its licensing and certification requirements and procedures are based on objective and transparent criteria such as professional competence, are no more burdensome than is necessary to ensure the quality of the service and are not in themselves a restriction on the provision of the service. This section also provides a mechanism for the mutual recognition of licenses and certifications, but does not require a NAFTA country automatically to recognize the credentials of service providers of another country. In particular, the three countries will undertake a work program with a view to liberalizing the licensing of foreign legal consultants and the temporary licensing of engineers.

Commencing two years after implementation of the Agreement, a NAFTA country will remove any citizenship or permanent residency requirement for the licensing and certification of professional service providers in its territory. Any failure to comply with this obligation will entitle the other NAFTA countries to maintain or reinstate equivalent requirements in the same service sector.

Denial of Benefits

A NAFTA country may deny the benefits of this section to a specific firm if the services involved are provided through an enterprise of another NAFTA country that is owned or controlled by persons of a non-NAFTA country and the enterprise has no substantive business activities in the free trade area. In addition, for transportation services, a NAFTA country may deny benefits to a firm if these services are provided with equipment that is not registered by any of the NAFTA countries.

Exclusions

The services section does not apply to a number of matters dealt with in other parts of the Agreement, including government procurement, subsidies, financial services and energy-related services. The rules described above also will not affect most air services, basic telecommunications, social services provided by the government of any NAFTA country, the maritime industry except for certain services between Canada and Mexico and sectors currently reserved by the Mexican Constitution to the Mexican State and Mexican nationals. Each NAFTA country maintains the right to take action necessary to enforce measures of general application that are consistent with the Agreement, such as regarding deceptive practices.

Land Transportation

The NAFTA provides a timetable for the removal of barriers to the provision of land transportation services between the NAFTA countries and for the establishment of compatible land transport technical and safety standards. It provides for the phase out of restrictions on cross-border land transportation services among the three countries in order to create equal opportunities in the North American international land transportation market. The provisions are designed to ensure that the land transportation services industries of the three countries will have a full opportunity to enhance their competitiveness without being placed at a disadvantage during the transition to liberalized trade.

Liberalization of Restrictions

Bus and Trucking Services: When the NAFTA goes into effect, the United States will amend its moratorium on grants of truck and bus operating authority by allowing full access for Mexican charter and tour bus operators to its cross-border market. Mexico will grant equivalent rights to U.S. and Canadian charter and tour bus operators. Canadian truck and bus companies are not subject to the U.S. moratorium. Canada will continue to permit U.S. and Mexican truck and bus operators to obtain operating authority in Canada on a national treatment basis.

Three years after signature of the Agreement, Mexico will allow U.S. and Canadian truck operators to make cross-border deliveries to, and pick up cargo in, Mexican border states, and the United States will allow Mexican truck operators to perform the same services in U.S. border states. At the same time, Mexico will allow 49 percent Canadian and U.S. investment in bus companies and in truck companies providing international cargo services (including point-to-point distribution of such cargo within Mexico). The United States and Canada will permit Mexican truck companies to distribute international cargo as well. The United States will maintain its moratorium on grants of operating authority for truck carriage of domestic cargo and for domestic passenger service, continuing to allow Mexicans to hold a non-controlling interest in U.S. companies.

Three years after the Agreement goes into effect, the United States will allow bus firms from Mexico to begin

scheduled cross-border bus service to and from any part of the United States. At the same time, Mexico will provide the same treatment to bus firms from Canada and the United States.

Six years after the Agreement goes into effect, the United States will provide cross-border access to its entire territory to trucking firms from Mexico. Mexico will provide the same treatment to trucking firms from Canada and the United States.

Seven years after the Agreement goes into effect, Mexico will allow 51 percent Canadian and U.S. investment in Mexican bus companies and in Mexican truck companies providing international cargo services. At the same time, the United States will lift its moratorium on domestic operating authority for Mexican bus companies.

Ten years after the Agreement goes into effect, Mexico will permit 100 percent investment in truck and bus companies in Mexico. No NAFTA country will be required to remove restrictions on truck carriage of domestic cargo.

Rail Services: Under the Agreement and consistent with a Mexican reservation taken pursuant to its Constitution, Canadian and U.S. railroads will continue to be free to market their services in Mexico, operate unit trains with their own locomotives, construct and own terminals and finance rail infrastructure. Mexico will continue to enjoy full access to the Canadian and U.S. railroad systems. The Agreement does not affect each NAFTA country's immigration law requirements for crews to change at or near their borders.

Port Services: The Agreement also liberalizes land-side aspects of marine transport. Mexico will immediately allow 100 percent Canadian and U.S. investment in, and operation of, port facilities such as cranes, piers, terminals and stevedoring companies for enterprises that handle their own cargo. For enterprises handling other companies' cargo, 100 percent Canadian and U.S. ownership will be allowed after screening by the Mexican Foreign Investment Commission. Canada and the United States will continue to permit full Mexican participation in these activities.

Technical and Safety Standards

Consistent with their commitment to enhance safety, health and environmental and consumer protection, the NAFTA partners will endeavor to make compatible, over a period of six years, their standards-related measures with respect to motor carrier and rail operations, including:

- vehicles, including equipment such as tires and brakes, weights and dimensions, maintenance and repair and certain aspects of emission levels;
- non-medical testing and licensing of truck drivers;
- medical standards for truck drivers;
- locomotives and other rail equipment and operating personnel standards relevant to cross-border operations;
- standards relating to the transportation of dangerous goods; and
- road signs and supervision of motor carrier safety compliance.

Access to Information

Each NAFTA country will designate contact points to provide information regarding land transportation matters such as those related to operating authorizations and safety requirements.

Review Process

Beginning five years after the Agreement goes into effect, a committee of government officials will consider the effectiveness of liberalization in the land transportation sector, including any specific problems or unanticipated effects liberalization might have on each country's motor carrier industry. No later than seven years after the Agreement goes into effect, consultations will also address possible further liberalization. The results of these consultations will be forwarded to the NAFTA Trade Commission for appropriate action.

Telecommunications

NAFTA provides that public telecommunications transport networks ("public networks") and services are to be available on reasonable and non-discriminatory terms and conditions for firms or individuals who use those networks for the conduct of their business. These uses include the provision of enhanced or value-added telecommunications services and intracorporate communications. However, the operation and provision of public networks and services have not been made subject to the NAFTA.

Access to and Use of Public Networks

The three countries will ensure that reasonable conditions of access and use include the ability to:

- lease private lines;
- attach terminal or other equipment to public networks;
- interconnect private circuits to public networks;
- perform switching, signalling and processing functions; and
- use operating protocols of the user's choice.

Moreover, conditions on access and use may be imposed only if necessary to safeguard the public service responsibilities of network operators or to protect the technical integrity of public networks. Provided that these criteria are met, such conditions on access and use may include restrictions on resale or shared use of public telecommunications transport services, requirements to use specified technical interfaces with public networks or services and restrictions on the interconnection of private circuits to provide public networks or services.

Rates for public telecommunications transport services must reflect economic costs, and private leased circuits must be available on a flat-rate pricing basis. However, NAFTA does

not prohibit cross-subsidization between public telecommunications transport services. In addition, firms or individuals may use public networks and services to move information within a country and across NAFTA borders.

The provisions in this section do not apply to measures affecting the distribution of radio or television programming by broadcast stations or cable systems, which will have continued access to and use of public networks and services.

Exclusions and Limitations

The three countries are not required to authorize a person of another NAFTA country to provide or operate telecommunications transport networks or services and may prohibit operators of private networks from providing public networks and services.

Enhanced Telecommunications

The NAFTA provides that each country will ensure that its licensing or other authorization procedures for the provision of enhanced or value-added telecommunications services are transparent, non-discriminatory and applied expeditiously. Enhanced providers of the three countries will not be subject to obligations that are normally imposed on providers of public networks and services, such as providing services to the public generally or cost-justifying their rates.

Standards-Related Measures

The NAFTA limits the types of standards-related measures that may be imposed on the attachment of telecommunications equipment to public networks. Such measures must be necessary to prevent technical damage to, and interference with, public networks and services, to prevent billing equipment malfunctions and to ensure user safety and access. In addition, any technically qualified entity will be permitted to test equipment to be attached to public networks. This section also establishes procedures in each country to permit the acceptance of equipment test results conducted in the other NAFTA countries.

Monopoly Provision of Services

The NAFTA recognizes that a country may maintain or designate a monopoly provider of public networks or services. Each country will ensure that any such monopoly does not abuse its monopoly position by engaging in anti-competitive conduct outside its monopoly that adversely affects a person of another NAFTA country.

Provision of Information

Information affecting access to and use of public networks and services must be made publicly available, including:

- tariffs and other terms and conditions of service;
- specification of network and service technical interfaces;
- information on standardizing organizations;
- conditions for the attachment of terminal or other equipment; and
- notification, permit, registration or licensing requirements.

Technical Cooperation

The NAFTA countries will cooperate in the exchange of technical information and in the development of government-to-government training programs. Recognizing the importance to global telecommunications of international standards, they will also promote such standards through the work of the International Telecommunications Union, the International Organization for Standardization and other relevant international organizations.

Investment

The NAFTA removes significant investment barriers, ensures basic protections for NAFTA investors and provides a mechanism for the settlement of disputes between such investors and a NAFTA country.

Coverage

This section covers investments in one country by NAFTA investors from another NAFTA country. NAFTA investors include all enterprises with substantial business activities in a NAFTA country. Investment covers all forms of ownership and interests in a business enterprise, tangible and intangible property and contractual investment interests.

Non-Discriminatory and Minimum Standards of Treatment

Each country will treat NAFTA investors and their investments no less favorably than its own investors — national treatment — and investors of other countries — most-favored-nation treatment. With respect to measures of a state, provincial or local government, national treatment is defined to mean treatment no less favorable than the most favorable treatment accorded to investors of the country of which it forms a part. In addition, each country must provide investments of NAFTA investors treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Performance Requirements

No NAFTA country may impose specified "performance requirements" in connection with any investments in its territory, namely specified export levels, minimum domestic content, preferences for domestic sourcing, trade balancing, technology transfer or product mandating. However, these disciplines do not apply to any NAFTA country's government procurement, export promotion or foreign aid activities.

Transfers

NAFTA investors will be able to convert local currency into foreign currency at the prevailing market rate of exchange for earnings, proceeds of a sale, loan repayments or other transactions associated with an investment. Each NAFTA country will ensure that such foreign currency may be freely transferred.

Expropriation

No NAFTA country may directly or indirectly expropriate investments of NAFTA investors except for a public purpose, on a non-discriminatory basis and in accordance with principles of due process of law. Compensation to the investor must be paid without delay at the fair market value of the expropriated investment, plus any applicable interest.

Dispute Settlement

This section sets out a detailed mechanism for the resolution of investment disputes involving a breach of the NAFTA investment rules by the host country. A NAFTA investor, at its option, may seek either monetary damages through binding investor-state arbitration or the remedies that are available in the host country's domestic courts.

Country-Specific Commitments and Exceptions

The NAFTA includes explicit country-specific liberalization commitments and exceptions to the national treatment, MFN and performance requirement rules. In the case of Mexico, these exceptions take into account constitutional requirements reserving certain activities to the Mexican State. Each country will specify exceptions for state and provincial measures within two years. Exceptions may not be made more restrictive and, if liberalized, may not subsequently be made more restrictive. However, a few sectors, such as basic telecommunications, social services and maritime services, are not subject to this constraint.

Canada may review acquisitions as provided in the Canada-U.S. FTA. Mexico may review acquisitions with an initial threshold of $25 million phased up to $150 million in the tenth year after the Agreement goes into effect. Threshold levels will be indexed.

Exceptions

The investment provisions do not apply to government procurement and subsidies. Other provisions of the Agreement address exceptions related to national security and to Canada's cultural industries.

Investment and the Environment

The NAFTA provides that no country should lower its environmental standards to attract an investment and that the countries will consult on the observance of this provision. The Agreement also specifies that a country may take action consistent with the NAFTA's investment provisions to protect its environment.

Competition Policy, Monopolies and State Enterprises

The NAFTA includes provisions on anticompetitive government and private business practices, in recognition that disciplines in this area will help fulfill the objectives of the Agreement.

Competition Policy

Each NAFTA country will adopt or maintain measures against anticompetitive business practices and will cooperate on issues of competition law enforcement and other competition issues.

Monopolies and State Enterprises

State Enterprises: The Agreement requires any enterprise owned or controlled by a federal, provincial or state government to act in a manner consistent with that country's NAFTA obligations when exercising regulatory, administrative or other governmental authority, such as the granting of licenses.

Monopolies: The NAFTA imposes certain additional disciplines on current and future federal government-owned monopolies and on any privately-owned monopoly that a NAFTA country may designate in the future. When buying or selling a monopoly good or service, the monopoly must follow commercial considerations, consistent with the terms of its government mandate, and must not discriminate against goods or businesses of the other NAFTA countries. NAFTA provides that each country must ensure that such monopolies do not use their monopoly positions to engage in anticompetitive practices in non-monopoly markets in that country's territory.

Trade and Competition Committee

A trilateral committee will consider issues concerning the relationship between competition laws and policies and trade in the free trade area.

Financial Services

The NAFTA establishes a comprehensive principles-based approach to disciplining government measures regulating financial services. This section covers measures affecting the provision of financial services by financial institutions in the banking, insurance and securities sectors as well as other financial services. The section also sets out certain country-specific liberalization commitments, transition periods for compliance with the agreed principles and certain reservations listed by each country.

Principles

Commercial Presence and Cross-Border Services: Under the Agreement, financial service providers of a NAFTA country may establish in any other NAFTA country banking, insurance and securities operations as well as other types of financial services. Each country must permit its residents to purchase financial services in the territory of another NAFTA country. In addition, a country may not impose new restrictions on the cross-border provision of financial services in a sector, unless the country has exempted that sector from this obligation.

Non-Discriminatory Treatment: Each country will provide both national treatment, including treatment respecting competitive opportunities, and most-favored-nation treatment to other NAFTA financial service providers operating in its territory. Under the Agreement, any measure that does not disadvantage financial service providers of another NAFTA country in their ability to provide financial services, by comparison to domestic providers, is deemed to provide equality of competitive opportunity.

Procedural "Transparency": In processing applications for entry into its financial services markets, each country will:

- inform interested persons of its requirements for completing applications;
- provide information on the status of an application on request;
- make an administrative determination on a completed application within 120 days, where possible;
- publish measures of general application no later than their effective date and, where practicable, allow interested persons the opportunity to comment on proposed measures; and
- establish one or more inquiry points to answer questions about its financial services measures.

Prudential and Balance of Payments Measures: The NAFTA ensures that each country retains the right to take reasonable prudential measures notwithstanding any other provision of the Agreement. It also provides that a country may take measures for balance-of-payment purposes under limited circumstances.

Consultations

The Agreement provides specific procedures for NAFTA countries to consult on financial services matters.

Country-Specific Commitments

Canada: Under the Canada-U.S. FTA, U.S. firms and individuals are exempt from the non-resident provisions of Canada's "10/25" rules. Under the NAFTA, Canada will extend this exemption to Mexican firms and individuals who will thus be exempt from Canada's prohibition against non-residents collectively acquiring more than 25 percent of the shares of a federally-regulated Canadian financial institution. Mexican banks will also not be subject to the combined 12 percent asset ceiling that applies to non-NAFTA banks, nor will they be required to seek the approval of the Minister of Finance as a condition of opening multiple branches in Canada.

Mexico: Mexico will permit financial firms organized under the laws of another NAFTA country to establish financial institutions in Mexico, subject to certain market share limits that will apply during a transition period ending by the year 2000. Thereafter, temporary safeguard provisions may be applicable in the banking and securities sectors.

Banking and Securities: During the transition period, Mexico will gradually increase the aggregate market share limit in banking from eight percent to 15 percent. For securities firms, the limit will increase from 10 percent to 20 percent over the same period. Mexico will apply individual market share caps of 1.5 percent for banks and four percent for securities dealers during the transition period. After the transition period, bank acquisitions will remain subject to reasonable prudential considerations and a four percent market share limit on the resulting institution.

Insurance: Under the NAFTA, Canadian and U.S. insurers may gain access to the Mexican market in two ways. First, firms that form joint ventures with Mexican insurers may increase their foreign equity participation in such ventures in steps from 30 percent in 1994 to 51 percent by 1998, and to 100 percent by the year 2000. These firms will not be subject to aggregate or individual market share limits. Second, foreign insurers may establish subsidiaries, subject to aggregate limits of six percent of market share, gradually increasing to 12 percent in 1999, and subject to individual market share caps of 1.5 percent. These limits will be eliminated on January 1, 2000. Canadian and U.S. firms that currently have an ownership interest in Mexican insurers may increase their equity participation to 100 percent by January 1, 1996. Intermediary and auxiliary insurance services companies will be permitted to establish subsidiaries with no ownership or market share limits when the Agreement goes into effect.

Finance Companies: Mexico will permit Canadian and U.S. finance companies, on terms no less favorable than those accorded to Mexican institutions, to establish separate subsidiaries in Mexico to provide consumer lending, commercial lending, mortgage lending or credit card services. However, during the transition period, the aggregate assets of such subsidiaries may not exceed three percent of the sum of the aggregate assets of all banks in Mexico plus the aggregate assets of all types of limited-scope financial institutions in Mexico. Lending by affiliates of automotive companies with respect to the vehicles such companies produce will not be subject to, or taken into account in, the three percent limit.

Other Firms: NAFTA factoring and leasing companies will be subject to transition limits on aggregate market share in Mexico of the same duration and magnitude as those applying to securities firms, except that they will not be subject to individual market share limits. NAFTA warehousing and bonding companies, foreign exchange houses and mutual fund management companies will be permitted to establish subsidiaries with no ownership or market share limits when the Agreement goes into effect.

United States: The United States will permit any Mexican financial group that has lawfully acquired a Mexican bank with operations in the United States to continue to operate a securities firm in the United States for five years after the acquisition. The acquisition must occur before the NAFTA goes into effect and the bank and securities firm involved must have been operating in the U.S. market on January 1, 1992 and June 30, 1992, respectively. The securities firm may not expand the scope of its activities or acquire other securities firms in the United States, and will be subject to nondiscriminatory restrictions on transactions between it and its affiliates. Other than these provisions, nothing in this commitment will affect the U.S. banking operations of a Mexican financial group.

Canada-United States: Financial services commitments of Canada and the United States to each other under the Canada-U.S. FTA will be incorporated into the NAFTA.

Intellectual Property

Building on the work done in the GATT and various international intellectual property treaties, NAFTA establishes a high level of obligations respecting intellectual property. Each country will provide adequate and effective protection of intellectual property rights on the basis of national treatment and will provide effective enforcement of these rights against infringement, both internally and at the border.

The Agreement sets out specific commitments regarding the protection of:

- copyrights, including sound recordings;
- patents;
- trademarks;
- plant breeders' rights;
- industrial designs;
- trade secrets;
- integrated circuits (semiconductor chips); and
- geographical indications.

Copyright

For copyright, the Agreement's obligations include requirements to:

- protect computer programs as literary works and databases as compilations;
- provide rental rights for computer programs and sound recordings; and
- provide a term of protection of at least 50 years for sound recordings.

Patents

The NAFTA provides protection for inventions by requiring each country to:

- provide product and process patents for virtually all types of inventions, including pharmaceuticals and agricultural chemicals;
- eliminate any special regimes for particular product categories, any special provisions for acquisition of patent rights and any discrimination in the availability and enjoyment of patent rights made available locally and abroad; and
- provide patent owners the opportunity to obtain product patent protection for pharmaceutical and agricultural chemical inventions for which product patents were previously unavailable.

Other Intellectual Property Rights

This section also provides rules for protecting:

- service marks to the same extent as trademarks;
- encrypted satellite signals against illegal use;
- trade secrets generally, as well as for protecting from disclosure by the government test data submitted by firms regarding the safety and efficacy of pharmaceutical and agri-chemical products;
- integrated circuits, both directly and in goods that incorporate them; and
- geographical indications so as to avoid misleading the public, while protecting trademark owners.

Enforcement Procedures

The NAFTA also includes detailed obligations regarding:

- procedures for the enforcement of intellectual property rights, including provisions on damages, injunctive relief and general due process issues; and
- enforcement of intellectual property rights at the border, including safeguards to prevent abuse.

Temporary Entry for Business Persons

Taking account of the preferential trading relationship between the NAFTA countries, this section sets out commitments by the three countries to facilitate on a reciprocal basis temporary entry into their respective territories of business persons who are citizens of Canada, Mexico or the United States.

The NAFTA does not create a common market for the movement of labor. Each NAFTA country maintains its rights to protect the permanent employment base of its domestic labor force, to implement its own immigration policies and to protect the security of its borders.

This section's rules governing entry of business persons, constructed along the lines of similar provisions of the Canada-U.S. FTA, are tailored to meet the needs of all NAFTA partners.

Each country will grant temporary entry to four categories of business persons:

- *business visitors* engaged in international business activities for the purpose of conducting activities related to research and design, growth, manufacture and production, marketing, sales, distribution, after-sales service and other general services;
- *traders* who carry on substantial trade in goods or services between their own country and the country they wish to enter, as well as *investors* seeking to commit a substantial amount of capital in that country, provided that such persons are employed or operate in a supervisory or executive capacity or one that involves essential skills;
- *intra-company transferees* employed by a company in a managerial or executive capacity or one that involves specialized knowledge and who are transferred within that company to another NAFTA country; and
- *certain categories of professionals* who meet minimum educational requirements or who possess alternative credentials and who seek to engage in business activities at a professional level in that country.

Mexico and the United States have agreed to an annual numerical limit of 5,500 Mexican professionals entering the United States. This number is in addition to those admitted under a similar category in U.S. law that is subject to a global limitation of 65,000 professionals, but which remains unaffected by the NAFTA. The numerical limit of 5,500 may be increased by agreement between the United States and Mexico, and will expire 10 years after the Agreement goes into effect unless the two countries decide to remove the limit earlier. Canada has not set a numerical limit with respect to Mexico.

Consultations

The three countries will consult through a specialized working group on temporary entry matters. As part of its work, the group will consider providing temporary entry to spouses of business persons granted entry under NAFTA for periods of one year or more as traders and investors, intra-company transferees and professionals.

Provision of Information

Each country will publish clear explanatory material on procedures that business persons must follow to take advantage of the NAFTA temporary entry provisions.

Non-Compliance

The dispute settlement provisions of the Agreement may be invoked only if a country claims, on the basis of repeated practices, that another country has not complied with the temporary entry provisions.

Institutional Arrangements and Dispute Settlement Procedures

Institutional Arrangements

This section establishes the institutions responsible for implementing the Agreement, ensuring its joint management and for avoiding and settling any disputes between the NAFTA countries regarding its interpretation and application.

Trade Commission: The central institution of the Agreement is the Trade Commission, comprising Ministers or cabinet-level officers designated by each country. Regular meetings are to be held annually, although the day-to-day work of the Commission will be carried out by officials of the three governments participating in the various committees and working groups mandated by the Agreement, operating on the basis of consensus.

Secretariat: The NAFTA establishes a Secretariat to serve the Commission as well as other subsidiary bodies and dispute settlement panels. The administrative and technical support that the Secretariat will provide is designed to assist the Commission to ensure effective and joint management of the free trade area.

Dispute Settlement Procedures

The dispute settlement procedures of the NAFTA provide expeditious and effective means for the resolution of disputes.

Consultations: Whenever any matter arises that could affect a country's rights under the Agreement, it may request consultations and the countries concerned will promptly consult on the matter. The NAFTA places priority on reaching an amicable settlement. The third country may participate, or may seek its own consultations.

The Role of the Commission: Should the consultations fail to resolve the matter within 30 to 45 days, any country may call a meeting of the Trade Commission with all three countries present. The NAFTA directs the Commission to seek to settle the dispute promptly. The Commission may use good offices, mediation, conciliation or other means of alternative dispute resolution to this end.

Initiation of Panel Proceedings: If the countries concerned are unable to reach a mutually satisfactory resolution through the Commission, any consulting country may initiate panel proceedings.

Forum Selection

If a dispute could be brought under both the GATT and the NAFTA, the complaining country may choose either forum. If the third NAFTA country wants to bring the same case in the other forum, the two complaining countries will consult, with a view to agreement on a single forum. If those countries cannot agree, the dispute settlement proceeding normally will be heard by a NAFTA panel. Once selected, the chosen forum must be used to the exclusion of the other.

If a dispute involves factual issues regarding certain standards-related environmental, safety, health or conservation measures or if the dispute arises under specific environmental agreements, the responding country may elect to have the dispute considered by a NAFTA panel. The rules also set out procedures for addressing disputes relating to matters covered by the Canada-U.S. FTA.

Panel Procedures

If the complaining country elects to have the matter heard through NAFTA procedures, it may request the establishment of an arbitral panel. The third country may either join as a complaining country or limit its participation to oral and written submissions. The panel will typically be charged with making findings of fact and determining whether the action taken by the defending country is inconsistent with its obligations under the NAFTA, and may make recommendations for resolution of the dispute.

Panels will be composed of five members, who will normally be chosen from a trilaterally agreed roster of eminent trade, legal and other experts, including from countries outside the NAFTA. The NAFTA provides for a special roster of experts for disputes involving financial services.

The panel will be chosen through a process of "reverse selection" to ensure impartiality: the chair of the panel will be selected first, either by agreement of the disputing countries or, failing agreement, by designation of one disputing side, chosen by lot. The chair may not be a citizen of the side making the selection, and may be a non-NAFTA national. Each side will then select two additional panelists who are citizens of the country or countries on the other side. Whenever an individual not on the roster of panelists is nominated, any other disputing NAFTA country may exercise a peremptory challenge against that individual.

Rules of procedure, to be more fully elaborated by the Commission, provide for written submissions, rebuttals and at least one oral hearing. There are strict time limits to ensure prompt resolution. A special procedure permits scientific boards to provide expert advice to panels on factual questions related to the environment and other scientific matters.

Unless the disputing countries decide otherwise, within 90 days of a panel's selection, it will present to them a confidential initial report. They will then have 14 days in which to provide comments to the panel. Within 30 days of the presentation of its initial report, the panel will present its final report to the countries concerned. The report will then be transmitted to the Commission, which will normally publish it.

Implementation and Non-Compliance

Upon receiving the panel's report, the disputing countries are to agree on the resolution of the dispute, which will normally conform to the recommendations of the panel. If a panel determines that the responding country has acted in a manner inconsistent with its NAFTA obligations, and the disputing countries do not reach agreement within 30 days or other mutually agreed period after receipt of the report, the complaining country may suspend the application of equivalent benefits until the issue is resolved. Any country that considers the retaliation to be excessive may obtain a panel ruling on this question.

Alternate Dispute Resolution of Private Commercial Disputes

Special provisions, described in the investment section, set out procedures for international arbitration of disputes between investors and NAFTA governments. The NAFTA countries will also encourage and facilitate the use of alternative dispute resolution as a means of settling international commercial disputes between private parties in the NAFTA region. The three countries will provide for the enforcement of arbitral agreements and arbitral awards. The Agreement establishes an advisory committee concerning the use of alternative dispute resolution for such disputes.

Administration of Laws

Procedural "Transparency"

This section provides rules designed to ensure that laws, regulations and other measures affecting traders and investors will be accessible and will be administered fairly and in accordance with notions of due process by officials in all three countries. Each country will also ensure, under its domestic laws, independent administrative or judicial review of government action relating to matters covered by the NAFTA.

The NAFTA's notification and exchange of information provisions will allow each government the opportunity to consult on any action taken by another country that could affect the operation of the Agreement. These provisions are designed to assist the three countries to avoid or minimize potential disputes.

Contact Points

Each country will designate a contact point to facilitate communications between NAFTA countries.

Exceptions

The NAFTA includes provisions that ensure that the Agreement does not constrain a country's ability to protect its national interests.

General Exceptions

This provision permits a country to take measures otherwise inconsistent with its obligations affecting trade in goods to protect such interests as public morals, human, animal or plant life or health or national treasures, to conserve exhaustible natural resources or to take enforcement measures regarding such matters as deceptive practices or anticompetitive behavior. However, such measures must not result in arbitrary discrimination or disguised restrictions on trade between NAFTA countries.

National Security

Nothing in the Agreement will affect a NAFTA country's ability to take measures it considers necessary for the protection of its essential security interests.

Taxation

The NAFTA provides that, as a general matter, taxation questions will be governed by applicable double taxation agreements between the NAFTA countries.

Balance of Payments

Under the Agreement, a NAFTA country may take trade-restrictive measures to protect its balance of payments only in limited circumstances and in accordance with the rules of the International Monetary Fund.

Cultural Industries

The rights of Canada and the United States with respect to cultural industries will be governed by the Canada-U.S. FTA. Each country reserves the right to take measures of equivalent commercial effect in response to any action regarding cultural industries that would have been a violation of the Canada-U.S. FTA but for the cultural industries provisions. Such compensatory measures will not be limited by the obligations imposed by the NAFTA.

The rights and obligations between Canada and Mexico regarding cultural industries will be identical to those applying between Canada and the United States.

Final Provisions

Entry into Force

This section provides that the Agreement will enter into force on January 1, 1994, upon completion of domestic approval procedures.

Accession

The NAFTA provides that other countries or groups of countries may be admitted into the Agreement if the NAFTA countries agree, and subject to terms and conditions that they require and to the completion of domestic approval procedures in each country.

Amendments and Withdrawal

This section also provides for amendments to the Agreement, subject to domestic approval procedures. Any country may withdraw from the Agreement on six-months' notice.

Summary of Environmental Provisions

The three NAFTA countries have committed in the NAFTA to implementing the Agreement in a manner consistent with environmental protection and to promoting sustainable development. Specific provisions throughout the Agreement build upon these commitments. For example:

- The trade obligations of the NAFTA countries under specified international environmental agreements regarding endangered species, ozone-depleting substances and hazardous wastes will take precedence over NAFTA provisions, subject to a requirement to minimize inconsistency with the NAFTA. This ensures that the NAFTA will not diminish a country's right to take action under these environmental agreements.
- The Agreement affirms the right of each country to choose the level of protection of human, animal or plant life or health or of environmental protection that it considers appropriate.
- NAFTA also makes clear that each country may maintain and adopt standards and sanitary and phytosanitary measures, including those more stringent than international standards, to secure its chosen level of protection.
- The NAFTA countries will work jointly to enhance the protection of human, animal and plant life and health and the environment.
- The Agreement provides that no NAFTA country should lower its health, safety or environmental standards for the purpose of attracting investment.
- When a dispute regarding a country's standards raises factual issues concerning the environment, that country may choose to have the dispute submitted to NAFTA dispute settlement procedures rather than under the procedures of other trade agreements. This same option is available for disputes concerning trade measures taken under specified international environmental agreements.
- NAFTA dispute settlement panels may call on scientific experts, including environmental experts, to provide advice on factual questions related to the environment and other scientific matters.
- In dispute settlement, the complaining country bears the burden of proving that another NAFTA country's environmental or health measure is inconsistent with the NAFTA.

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Government of Canada
Gouvernement du Canada