
NAFTA

**What's it
all about?**



Government
of Canada

Gouvernement
du Canada

Canada

NAFTA

What's it all about?

NAFTA — What's it all about?

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Suggestions for Further Reading

The NAFTA is a complex document that builds on and complements a range of domestic and international laws, agreements and practices. This guide provides an introduction to what it contains and what it means, but a thorough explanation of some of the subtleties and complexities of modern international trade practice and the agreements that guide it would require a much more extensive volume. Those who want to explore some of the issues raised in this guide, may wish to consult the following:

Globerman, Steven, ed., *Continental Accord: North American Economic Integration* (Vancouver, Fraser Institute, 1991).

Globerman, Steven, ed., *Assessing NAFTA: A Trilateral Analysis* (Vancouver, Fraser Institute, 1993).

Hart, Michael M., *A North American Free Trade Agreement: The Strategic Implications for Canada* (Ottawa, Centre for Trade Policy and Law, 1990).

Hart, Michael M., *Trade — Why Bother?* (Ottawa, Centre for Trade Policy and Law, 1992).

Hufbauer, Gary Clyde and Jeffrey J. Schott, *North American Free Trade: Issues and Recommendations* (Washington, Institute for International Economics, 1992).

Lipsey, Richard G. and Robert C. York, *Evaluating the Free Trade Deal: A Guided Tour through the Canada-U.S. Agreement* (Toronto, C.D. Howe Institute, 1988).

Morici, Peter, *Trade Talks with Mexico: A Time for Realism* (Washington, National Planning Association, 1991).

Winham, Gilbert R., *The Evolution of International Trade Agreements* (Toronto, University of Toronto Press, 1992).

Related government publications of interest include:

Department of Finance, *The North American Free Trade Agreement: An Economic Assessment from a Canadian Perspective* (Ottawa, November, 1992).

Government of Canada, *North American Free Trade Agreement: Canadian Environmental Review* (Ottawa, October, 1992).

Steering Group on Prosperity, *Inventing Our Future: An Action Plan for Canada's Prosperity* (Ottawa, October, 1992).

Investment Canada, *Investing in Canada's Future* (Ottawa, June, 1992).

List of Abbreviations and Acronyms

AD	Antidumping
BOPs	Balance of payments
CAMI	The joint GM-Suzuki automotive project in Ingersoll, Ontario
CEIC	Employment and Immigration Canada
CFE	Commission Federal de Electricidad — Mexico's state-owned electricity company
CITT	Canadian International Trade Tribunal
CMA	Canadian Manufacturers' Association
CRTC	Canadian Radio-Television and Telecommunications Commission
CVD	Countervailing duty
CWB	Canadian Wheat Board
EC	European Community
ECC	Extraordinary Challenge Committee
EIPA	Export and Import Permits Act
FAO	Food and Agriculture Organization
FIPA	Canadian Foreign Investment Protection Agreement
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross domestic product
GNP	Gross national product
GPT	General preferential tariff
GSP	Generalized system of preferences (U.S.)
IC	Investment Canada
ICSID	International Centre for the Settlement of Investment Disputes
IEC	International Electrochemical Commission
ILO	International Labour Organization
IMF	International Monetary Fund
ISO	International Organization for Standardization
ITA	International Trade Administration (U.S. Department of Commerce)
ITAC	International Trade Advisory Committee
ITU	International Telecommunications Union
MFN	Most-favoured nation
NAFTA	North American Free Trade Agreement
NEWMEX	New Exporters to Mexico Program

NGO	Non-governmental organization
NTB	Non-Tariff Barrier
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
PEMEX	Petroleos Mexicanos
QRs	Quantitative restrictions
R&D	Research and development
SAGITs	Sectoral Advisory Groups on International Trade
SME	Square-metre equivalents
SPS	Sanitary and phytosanitary
TIP	Technology Inflow Program
TPLs	Tariff-preference levels
TRIMs	Trade-related investment measures
TRIPs	Trade-related intellectual property
TRQ	Tariff rate quota
UHT	Ultra-high temperature
UN	United Nations
UNCITRAL	United Nations International Commission on Trade Law
UPOV	International Convention for the Protection of New Varieties of Plants
USDA	United States Department of Agriculture
USITC	United States International Trade Commission
USTR	Office of the U.S. Trade Representative
WHO	World Health Organization
WIPO	World Intellectual Property Organization

Competition is your best friend. If there's no competition, then you become fat and lazy.

Len Vanderlugt, President, Aldershot Greenhouses Ltd.

If you run your business well and do your pricing properly, free trade won't hurt you.

Greg Parker, Food Roll Sales (Niagara) Ltd.

Foreword

Five years ago, we were in the midst of vigorous debate about the economic future of this country. We debated whether we should open our economy to greater competition and secure a new set of rules to govern our trade relations with the United States. Canadians put forward their views with great passion and conviction. In the end, Canadians wisely chose free trade.

Five years later, the debate has flared up again. There is, however, a fundamental difference in its substance. Five years ago, we staked our faith on what might be; today we can talk about what is. Despite the problems generated by a tough global recession and a spate of difficult disputes with the United States, there is now clear evidence that the Canada-U.S. Free Trade Agreement (FTA) is working. It is laying the foundation for a stronger, more prosperous, more resilient and more confident Canada, a Canada that is a vibrant part of the global economy.

As Canadian companies become more competitive and more confident exporters as a result of their U.S. experience, they are turning to opportunities beyond our borders. In fact, our trade commissioners around the world are reporting an upsurge in inquiries from Canadian companies that want to compete in new markets. At the same time, overseas exporters and investors are increasingly finding Canada a good place to do business.

We live by trade and are critically dependent on rules that ensure a fair basis for all our partners. Because our future depends on it, we have been at the forefront in every major trade negotiation. We know that we remain burdened by the protectionists — at home and abroad — and we know that the only effective weapon against them is a good rule book, premised on open markets; a rule book that is constantly updated and improved. We are a nation with many advantages — an educated workforce, abundant resources and an efficient infrastructure. We need to reward private initiative and encourage entrepreneurs to approach the future with the confidence necessary to exploit new opportunities. The FTA, and now the North American Free Trade Agreement (NAFTA), can provide the foundation for economic vigour.

One of the most telling votes of confidence in the FTA came from the people of Mexico. They looked at the Canada-U.S. FTA and, in large measure, asked to be part of it. The NAFTA looks to the rules of the FTA and extends them to Mexico. That is why much of the onus in these negotiations was on Mexico. Canada and the United States had already adjusted to the rules of the FTA. Now it is Mexico's turn.

In taking this approach, Mexico has shown tremendous courage. There are no precedents for a country like Mexico negotiating on an equal footing with developed, fully industrialized

countries. Mexico's success has created hope for other developing countries in the world. It has told them that trade rather than aid is the constructive way forward.

The successful conclusion of the NAFTA means that Canadians have gained vastly improved access for goods, services and investment to a growing market of more than 85 million people on the same basis as our American competitors. In this case, the past is not a good indicator of the future. Unlike Canada, Mexico was a closed economy. Our exports to Mexico have been modest; until now, they could sell to us, but we could not sell to them. The NAFTA will open the Mexican economy to Canadian and U.S. firms and provide significant scope for new business.

The NAFTA negotiations encouraged Canada and the United States to take advantage of their experience over the past four years to strengthen the FTA. Improvements have been made to the rules of origin, customs administration, financial services, and much more. These changes provide Canadian-based firms with an even more stable and predictable framework within which to pursue new opportunities, now extended to an integrated market of 360 million consumers.

Finally, by establishing that expansion of the FTA regime to other countries is a matter of joint decision, we have laid the basis for an orderly expansion of the rules of fair and open trade to other countries of the hemisphere and beyond.

This handbook provides Canadians with a comprehensive guide to the NAFTA. In the months to come, as we debate the legislation that will implement the Agreement into Canadian law, Canadians will want to study and understand the NAFTA and make up their own minds. It is my hope that this handbook will provide a good place to start.



Michael Wilson
Minister of Industry, Science and Technology,
and
Minister for International Trade

Introduction

History also shows that regional integration can help advance multilateral economic co-operation.

Having made the fundamental choice to open up the world, to accept the challenge of competition, it can make very good sense for governments to pursue both regional and multilateral objectives in trade policy. Regional trade liberalization can offer economies of scale, opportunities for specialization, a magnet for foreign investment, a stronger collective voice in the world's economic councils, and often important political gains as well. In a regional context, among like-minded neighbouring countries, it can sometimes be easier to solve problems than in a larger, global context.

Arthur Dunkel, Director General, GATT

NAFTA what it's all about?

ISBN-0-662-20600-2

Catalog no. E74-56/1993E

Introduction

Shortly before noon on Thursday, December 17, 1992, Prime Minister Brian Mulroney sat down in the Parliamentary Reading Room and signed the North American Free Trade Agreement. The same day, President George Bush in Washington and President Carlos Salinas de Gortari in Mexico City put their pens to an agreement that creates free trade among the three nations of North America. While legislative approval must follow, the ceremonies ended a process begun on February 5, 1991, with the decision by the three leaders to create a free trade area. Negotiations formally began in Toronto, on June 12, 1991.

The 14 months of negotiations involved the most comprehensive set of private-sector and federal-provincial consultations undertaken by any Canadian government on a trade agreement. This resulted in an agreement that is significant on several counts:

- For the first time ever, a developing country sat down with two industrialized countries and created an agreement that opens its economy to the challenges and opportunities of the North American marketplace. It sets an important precedent for trade and economic co-operation between the industrialized countries of the North and the developing countries of the South.
- This agreement provides a new set of rules to cover what is fast approaching a \$500 billion annual flow in three-way trade and investment. It opens the door to a vast new potential in trade and investment relations among the three countries.
- This agreement extends the benefits of the Canada-U.S. FTA to Mexico. It strengthens and expands that accord to provide an even firmer foundation for trade and investment. It provides a framework of rules within which private-sector entrepreneurs can expand their market and investment activities. It is tailored for the demanding conditions of a large, open economy and will make the three economies more capable of taking on broader competition on a global basis.

Why Canada Participated in the NAFTA

The North American Free Trade Agreement (NAFTA) represents both a response and a challenge to changing international business. Some \$3 trillion in goods are now exchanged annually around the globe. The most impressive increases have been in intra-industry trade, while consumers have benefited from increased specialization and choice. Spurred on by improvements in communications and transportation technology, and the resulting advances in business organization and finance, the natural barriers to international trade have diminished significantly.

A Broadly Based Agreement: The Consultative Process

Private-Sector Collaboration

Throughout the negotiations, Ministers and senior officials consulted closely with the Canadian private sector both through formal consultative arrangements established for this purpose and in discussions with a wide range of private-sector groups, labour representatives, environmentalists and academics.

This model for consultations was successfully established during the negotiation of the Canada-U.S. Free Trade Agreement with the creation of the International Trade Advisory Committee (ITAC) and 15 Sectoral Advisory Groups on International Trade (SAGITs). In the months before the Government decided to join the NAFTA negotiations, Ministers established the third generation of the ITAC and the SAGITs and, throughout the negotiations, Ministers and senior officials met regularly with them both to report on progress and to ensure that Canadian participation reflected the interests, needs and concerns of a wide and representative group of Canadians.

More than 75 formal meetings and many more informal discussions were held across Canada. The advice provided was vital both in preparing the objectives for the Canadian negotiating team and in pursuing them. Both the ITAC and the 15 SAGITs provided the negotiators with pertinent, detailed information on every aspect of the negotiations, ranging from rules of origin to dispute settlement.

Federal-Provincial Consultation

Mirroring the private-sector collaboration were intensive federal-provincial consultations. Again, the model had been established by the FTA process. Meetings of Canadian Ministers responsible for trade have become a valued part of federal-provincial co-operation. During the NAFTA negotiations, six meetings of Ministers were supplemented by discussions by telephone and in person, as well as many meetings and discussions between officials to consider every aspect of the negotiations. As a result, Canadian negotiators could deal confidently with their U.S. and Mexican counterparts not only on the traditional trade policy agenda that falls largely within the federal government's jurisdiction, but also with the increasing number of issues of shared jurisdiction and provincial competence.

These consultations reflect the dynamics of co-operative federalism. Trade agreements are critical to both the country and to each province. Trade accounts for between 8 and 27 cents of every dollar in provincial Gross Domestic Product and is an increasingly important source of jobs for Canadians in every part of the country.

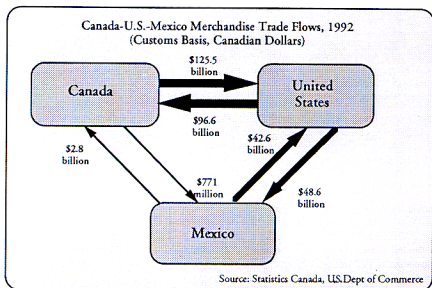
Parliamentary Consultation

As was the case with the FTA, the NAFTA has been thoroughly debated within the federal Parliament, in provincial legislatures, during Question Period and in special debates dealing with all aspects of the Agreement and the negotiations. Committees in both the House of Commons and the Senate have studied it. It has also been debated in provincial legislatures and several provinces have had their own committees examine the Agreement.

Flows of capital and knowledge are now at least as important as the flow of goods in international exchange. In the past, tariffs and other border measures were the issue. Today, domestic policies are critical in influencing domestic and international investments. The flow of money increasingly transcends all borders. The competition for investment is tough to the point where many countries are opening their economies unilaterally, adopting more open, market-oriented fiscal and regulatory policies.

The Canadian Context:

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



Ours is a medium-sized, open and trade-dependent economy. We have always been at the forefront of those advocating that the new international economy be based on clear rules, mutually agreed and fairly administered. The world of the 1990s has led to a more contractual and detailed approach to rule making. In addition to the multilateral framework of rules provided by the General Agreement on Tariffs and Trade (GATT), Canada must also be alert to opportunities that arise on a regional or bilateral basis.

Regional responses to the internationalization of economic activities in Europe and Asia, as well as in the Americas, have presented Canada with a direct challenge. The FTA was the first response to that challenge. The Canada-U.S.-Mexico negotiations built on that achievement.

Meeting the Challenge

After the Government took office in 1984, it concluded that Canada's past prosperity had made it complacent about the precarious position that it faced as a trading nation. Determined to take the steps necessary to renew and strengthen the Canadian economy rather than resist the forces of global change, Canada has sought to harness them to its advantage.

The Government's approach was to make the private sector the driving force of this economic renewal. Government policies created an environment that would encourage and reward entrepreneurship and facilitate adaptation to the changing international economic demands. By opening Canada's economy to greater international competition and by encouraging Canadian-based firms to adopt global business strategies, Canada could remain one of the most prosperous nations on earth. The Government's economic strategy was based on three interrelated and mutually reinforcing goals aimed at:

- removing obstacles to growth;
- encouraging entrepreneurship and risk taking; and
- supporting those in genuine need who could not adapt quickly enough to changing circumstances.

This strategy was based on establishing domestic policies designed to encourage Canadian-based firms to make products that the world will buy at prices that 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 international markets and production were becoming more 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 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 the rules to give firms and workers both the incentive and the reward for taking on the competition.

Trade agreements provide opportunities; results come when firms and workers take advantage of those opportunities. Over the past few years, the Government has taken steps to strengthen Canada's capacity to adjust to changes in the economy. 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 changing circumstances.

The perception in some quarters that the FTA has had a negative impact on the economy is not supported by the evidence. Canada's access to the U.S. market has improved since the Agreement, with 15 of 22 Canadian industry sectors gaining market share; Canada's exports to the United States have reached record highs; and net foreign direct investment inflows turned positive in 1990 and 1991 after nearly two decades of net outflows. Canada has already benefited from the FTA in a number of ways....

The Royal Bank of Canada, *Econoscope*, November 1992

The FTA – Key to Our Strategy

To make Canada a good place in which to do business, we needed stable prices, sufficient venture capital, a hospitable regulatory climate and a fair tax system. As a trading nation, the key to this strategy was getting our trade relationship with the United States right. The Canada-U.S. FTA proved a practical way to address that goal.

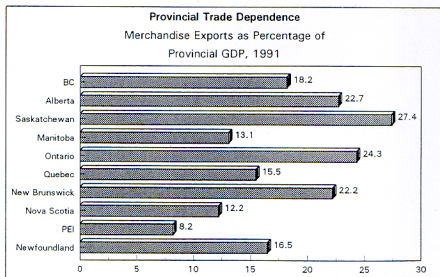
The FTA placed our economic relationship with the United States on a solid, more open, rule-based footing. It allowed us to reinforce our position as a strong and sovereign nation by reaping the benefits of a closer trade and economic relationship with the largest economy in the world and the country that is our most important trading partner.

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 established rules to govern bilateral investment flows and made business-related cross-border travel easier. It resolved a number of long-standing problems and set up procedures to make it easier to address the inevitable disputes that arise in a \$250-billion-a-year trading partnership.

A Broadly Based Strategy

The FTA was only one element in Canada's trade strategy. Concurrently, Canada was at the forefront in launching a new round of global trade talks at the GATT. Our objectives in each forum were the same:

- to gain as much access to world markets as possible for competitive Canadian producers, workers and investors;
- to secure that access with balanced, mutually advantageous rules; and
- to enshrine that access in agreements that include equitable and expeditious procedures for resolving any problems.



At home, a series of trade-promotion initiatives were introduced to complement trade-policy developments. These include Going Global, Pacific 2000, Europe 1992 and, most recently, Access North America.

At the same time, Canada has opened its own market to the benefit of Canadian firms and consumers who thus gain access to capital, goods and services in greater variety and at competitive prices.

The Strategy is Working

With price stability comes new confidence among both investors and consumers. Canadian inflation is now one of the lowest among industrial countries, lower than it has been for 30 years, and interest rates have also fallen significantly.

Canada is beginning to see evidence of a strong recovery led by the exports of manufactured products to the United States. Real manufacturing output per person in Canadian industry rose by 0.4 per cent in 1991 and continued to rise in 1992 and into 1993. The employment picture is also turning around. The Canadian economy generated more than a million new jobs over the past eight years, many of them related directly to exports.

In the past three years, 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.

The fundamentals of our economy and trade are coming together. As the economy is successfully restructuring, our trade performance is leading the way. Canadian merchandise trade with the United States has increased steadfastly during the first four years of FTA implementation. 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.

Naturally, more remains to be done, in particular the dismantling of interprovincial trade barriers, including discriminatory standards, employment requirements and provincial procurement preferences. These constitute an unnecessary drain on productivity. The Canadian Manufacturers' Association (CMA) has estimated that these barriers cost the country about \$6 billion per year.

It is also critical that we bring the Uruguay Round of GATT negotiations to a successful conclusion. The Uruguay Round offers greater benefits in a wider range of markets. The interdependence of the various trade agreements further underlines the need to complete the Round. In some respects, the NAFTA anticipates the results of the Round, such as in the chapters on financial services and intellectual property; in others, a successful Round will complement and strengthen the rights and obligations of the NAFTA, such as for agriculture and the draft subsidies code.

The Road to Agreement

Informal discussions between U.S. and Mexican officials in 1989-90 considered the prospect of a bilateral United States-Mexico free trade agreement. In June 1990, U.S. President Bush and Mexican President Salinas committed their governments to negotiating a free trade agreement between their countries. In Canada, the Government consulted with parliamentary, provincial, private-sector, academic and other interested parties and concluded that there was broad support for Canadian participation in the negotiations. On June 12, 1991, the three trade

The GATT in Brief

- The GATT is a multilateral trade agreement to which more than 100 countries now adhere. Headquartered in Geneva, Switzerland, it is Canada's main trade agreement with most of the world except for the United States.
- The GATT constitutes a contractual framework of rules stipulating the kinds of trade policies and practices that its members may pursue in regulating trade in goods. It is the main global forum for the progressive liberalization of trade.
- These rules, which cover a wide range of practices, are grounded in the principle of non-discrimination among members. The two most important rules provide for most-favoured-nation treatment (article I) and national treatment (article III).
- The GATT allows members to negotiate free trade areas and customs unions among themselves as long as such agreements provide for more liberal trade among member countries and do not raise barriers to non-members (article XXIV).
- Through its dispute-settlement provisions (articles XXII and XXIII), the GATT provides a forum for the settlement of conflicts among members based on the principles of law and conciliation rather than power and retaliation. Decisions by panels have gradually strengthened the legal foundations of the GATT.
- Through successive "rounds" of trade negotiations, GATT members have succeeded in eliminating some 80 per cent of the tariff protection in effect in industrialized countries at the GATT's founding in 1947, as well as most of the quantitative protection then in effect.
- The Uruguay Round, initiated at a Ministerial meeting of the GATT at Punta del Este, Uruguay, in September 1986, is the eighth and most ambitious round yet in the GATT's periodic negotiations. In keeping with the changing nature of international trade, it proposes to extend its disciplines to trade in services, trade-related investment measures and trade-related intellectual property matters.

Michael Hart, *Trade – Why Bother?*

ministers from the United States, Mexico and Canada met in Toronto to formally begin the negotiations.

The Objective: Open and Secure Access throughout North America

Canada had three basic goals in the negotiations, each of which was achieved in the NAFTA.

1. **Gain access to the Mexican market:** Canada sought 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.

This was achieved. The Agreement eliminates all Mexican tariffs and import-licensing requirements (except on some agricultural products), some immediately and the rest over the course 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 mining.

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.

- 2. Improve and protect the FTA:** Canada sought to resolve the trade problems that had occurred during the past few years with the United States, while ensuring that there was no reduction in the benefits and obligations of the FTA.

Canadian negotiators successfully pursued this goal by obtaining clearer and more predictable rules of origin, an extension of duty drawback provisions, an improved mechanism for consultation and dispute settlement, a strengthened sideswipe exemption from U.S. safeguards and a reduced U.S. capacity to retaliate in dispute-settlement cases.

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 further constrains the U.S. capacity to take arbitrary and capricious retaliation against our trade, providing added confidence and stability for traders and investors throughout the free trade area.

Canada also successfully ensured that the NAFTA protects vital Canadian interests, including the Auto Pact, cultural industries and supply management. The Agreement 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.

- 3. Ensure that Canada remained an attractive location for investors:** Canada wanted to ensure that the NAFTA would not undermine Canada's capacity to keep and attract investment. This was achieved. We have ensured that, to both foreign and domestic investors, Canada will continue to be an inviting base of operations for the North American market.

New economic policies, such as those adopted in the NAFTA, have made Mexico one of Latin America's most promising export markets.... Mexico is soon slated to become an industrial power.

David Burton, President, Cynergy Group International

The NAFTA and the FTA

From the beginning, Canada insisted that the NAFTA enhance the FTA and in no way erode the benefits that Canada had already realized as a result of either the GATT or the FTA. In the end, all of Canada's FTA benefits were either protected or improved during the NAFTA negotiations.

The ability of the three governments to transform the Canada-U.S. FTA into a more comprehensive trilateral trade agreement, open to signature by other countries, has obvious implications for the continuing application of the FTA. When negotiating the FTA in 1987, Canada and the United States decided 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. This clause provided that, in the event 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 more extensive and more complicated because much of the language has been adjusted to make it more suitable for accession by other parties. Canada and the United States have agreed to address this overlap by using the same procedure used in 1947, when the multilateral GATT replaced the 1938 Canada-U.S. Reciprocal Trade Agreement.

Canada and the United States have agreed that the NAFTA, with all of its improvements, will supersede the FTA. The NAFTA either incorporates by reference, replaces with trilaterally agreed improvements or makes generic all the FTA obligations between Canada and the United States. As a result, Canada and the United States were able to agree to suspend the FTA as long as they are both parties to the NAFTA. Essentially, the rights and obligations set out in the FTA remain in effect, but in an updated and improved agreement.

Definitions

Gross Domestic Product (GDP) vs. Gross National Product (GNP) — GDP is the measure of the flow of goods and services produced by the economy over a specific time period, normally a year or a quarter. When income from investments and possessions owned abroad minus income earned in the domestic market accruing to foreigners is included, it becomes GNP.

Generalized Preferential Tariff (GPT) (Generalized System of Preferences (GSP) in the United States) — This is a system of non-reciprocal tariff preferences for the benefit of developing countries. It grants the duty-free or preferential entry to imports from eligible developing countries up to a certain dollar value or import percentage limit. It is intended to encourage diversity in developing countries' production and exports.

Most-Favoured-Nation (MFN) Treatment — This is one country's commitment to extend to another country the lowest tariff rates that it applies to any third country. This fundamental principle of non-discriminatory treatment of imports was incorporated into article 1 of the GATT and is one of the foundation stones of the world trading system.

The Road to Agreement: Chronology of Events

1990

- June 10 Mexican President Carlos Salinas de Gortari and U.S. President George Bush decide to pursue a comprehensive free trade agreement.
- September 24 Prime Minister Brian Mulroney formally advises presidents Salinas and Bush of Canada's interest in participating in discussions to assess the feasibility of trilateral free trade.

1991

- February 5 Prime Minister Mulroney, President Salinas and President Bush announce their decision to negotiate the NAFTA.
- April 7-10 During a state visit to Canada by President Salinas, four joint co-operation agreements are signed:
- Canada-Mexico Double Taxation Agreement — the first such agreement that Mexico has signed with another country;
 - Film and Television Co-production Agreement — to broaden financing and production opportunities for the film and television industries of both countries;
 - Export Development Corporation/Petroleos Mexicanos Memorandum of Understanding — for a US\$500 million line of credit to promote the sale of Canadian goods and services to PEMEX; and
 - Export Development Corporation/Secretariat of Finance Memorandum of Understanding.
- June 12 Toronto, Ontario — Ministerial meeting to launch the NAFTA negotiations: Industry and International Trade Minister Michael Wilson (Canada); Trade Representative Carla Hills (United States); and Secretary of Commerce Jaime Serra Puche (Mexico).
- July 8-9 Washington, D.C. — First meeting of Chief Negotiators: John Weekes (Canada); Julius Katz (United States); and Herminio Blanco (Mexico).
- November 25 Mexico City — At the eighth Canada-Mexico Joint Ministerial Committee, two documents are signed:
- Memorandum of Understanding on Cultural Relations and
 - Agreement on Museums and Archaeological Co-operation.

1992

- January 6-10 Washington, D.C. — First version of consolidated draft text prepared (meeting of most negotiating groups at Georgetown University).

January 27-31	Monterrey, Mexico — "Canada Expo '92" trade fair, the largest Canadian trade promotion event ever organized in Latin America. Expo '92 was designed to expand Canadian sales and investment opportunities in Mexico; 200 Canadian companies participated.
February 11	Canadian Senate Foreign Affairs Committee begins hearings.
March 18	Canada gives Mexico \$1 million in environmental assistance.
April 4	Mexico City, Mexico — Canada and Mexico sign Memorandum of Understanding on Co-operation in Telecommunications.
May 4	Mexico City, Mexico — Canada and Mexico sign Memorandum of Understanding on Co-operative Labour Activities.
July 29-August 1	Washington, D.C. — Sixteenth meeting of chief negotiators.
August 2-12	Washington, D.C. — Seventh trilateral Ministerial Meeting.
August 12	An agreement in principle is reached on the NAFTA.
September 8	Canada, the United States and Mexico release a provisional legal text of the NAFTA.
September 17	Washington, D.C. — Environment Ministers agree to establish a Trilateral Environmental Commission to improve co-operation on environmental issues.
October 7	San Antonio, Texas — Prime Minister Mulroney, President Bush and President Salinas witness initialling of the NAFTA by Minister Wilson, Ambassador Hills and Secretary Serra.
November 3	The <i>Canadian Environmental Review</i> of the NAFTA is released.
November 13	The Department of Finance releases the report, "The NAFTA, An Economic Assessment from a Canadian Perspective."
November 17	A subcommittee of the House of Commons Standing Committee on External Affairs and International Trade begins public hearings into the NAFTA, in Ottawa and nine other Canadian cities.
December 17	The heads of the three governments sign the Agreement.
1993	
February 25	Bill C-115, an act to implement the NAFTA, is introduced in Parliament.
March 17-18	Negotiations on additional accords on the environment and labour begin in Washington.
1994	
January 1	The NAFTA is scheduled to enter into force.

The NAFTA: An Overview

The Agreement and its accompanying tariff schedule is over 2 000 pages. It is divided into eight parts:

- The Preamble records the political commitment of the three governments in entering into the Agreement.
- Part One establishes the objectives and scope of the Agreement and other general provisions applicable to the Agreement as a whole, including general definitions.
- Part Two sets out the rules for trade in goods, including rules of origin, national treatment, general market access conditions and safeguards and special provisions addressed in the four sectoral chapters relating to trade in agricultural goods, energy goods, textiles and clothing and automotive products.
- Part Three deals with technical barriers to trade.
- Part Four sets out the disciplines on government procurement.
- Part Five addresses the conduct of business and contains chapters dealing with cross-border trade in services, investment, financial services, rules of competition and temporary entry.
- Part Six deals with intellectual property protection.
- Part Seven contains the institutional, dispute-settlement and transparency provisions of the Agreement.
- Part Eight consists of the final provisions dealing with annexes, entry into force, accession and duration.

Each Part is divided into chapters. Chapters are further divided into articles, which are subdivided into paragraphs and subparagraphs. For ease of reference, the articles are numbered according to the chapter in which they are found. Article 401, for example, is the first article in Chapter Four dealing with rules of origin.

A number of articles call up annexes located at the end of each chapter. Following a generic approach, the article establishes the basic obligation, whereas the annex develops how it will be implemented by each country, where such implementation in any way deviates from the basic principles or is an integral part of the Agreement. Again, for ease of reference, the annex numbers correspond to the paragraph and article establishing the annex. For example, paragraph 1 of article 401 establishes the basic rule of origin for the Agreement; annex 401 provides the detailed provisions specifying how that rule is to be applied.

Throughout the text, words that have a meaning that is critical to interpreting the text or that vary from their plain, generic meaning, are defined. The definitions are found in the final article of each chapter for words used in that chapter (for example, article 415 for rules of origin). Words that have a special or critical meaning and that are used the same way throughout the text are defined in article 201.

Highlights of the NAFTA: What's In, What's Changed, What's Not

- Like the FTA, the NAFTA forms an integral part of the GATT-based multilateral trade relations system and is fully consistent with the GATT requirements.
- Most tariffs between Canada and Mexico will be phased out in 10 years. In many cases, the tariffs will be eliminated more quickly. The faster phase-outs include such key Canadian export interests as fertilizers; sulfur; aluminum ingots; 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 auto parts.
- Market-access provisions include new rules on duty drawback, allowing Canadian manufacturers greater flexibility in using input from non-NAFTA sources when these are incorporated into exports of manufactured products to other NAFTA countries.

Definitions

Duty Drawback — Import duties or taxes repaid by a government in whole or in part, when the imported goods are re-exported or used in the manufacture of exported goods.

Duty Waiver — The forgiveness, in whole or in part, of import duties when certain conditions are met.

Escape Clause or Snapback — A provision in a bilateral or multilateral agreement permitting a signatory nation temporarily to suspend tariff or other concessions when imports threaten serious harm to the producers of competitive domestic goods.

Emergency Safeguard — Actions in the form of additional duties or import quotas applied to fairly traded imports, which nevertheless cause or threaten serious injury to domestic producers

Exemption — Provisions in trade agreements, which exempt particular products or situations from a general rule.

- Disciplines on customs administration are greatly improved. There are clear rules on how the Agreement will be interpreted and administered by the customs authorities, with clear procedures for the redress of grievances.
- The rules of origin have been revamped to make their application more transparent and more certain, narrowing the scope for disputes resulting from differences in interpretation and application.
- The NAFTA strengthens Canada's vehicle and parts 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 not only create a truly integrated North American auto industry but also a fully integrated market for autos and auto parts. All Mexican

restrictions, including all tariffs on originating automotive goods, will be eliminated during the 10-year transition period.

Improvements in the calculation of the rules of origin are designed to avoid future disputes, such as those involving Honda production in Alliston, Ontario, and the GM-CAMI plant in Ingersoll, Ontario. North American content rules are raised to 62.5 per cent for cars, light trucks and major components and 60 per cent for other automotive products.

- While the textile and apparel rules of origin are tougher in the NAFTA than the FTA, requiring the 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 are made in Canada but do not meet the rules have been substantially increased.
- Constrained by slow progress on trade in agricultural products in the Uruguay Round, the three countries have put together a series of bilateral arrangements. The FTA agriculture provisions have been carried forward into the NAFTA. Canada and the United States have each negotiated separate arrangements regarding market access with Mexico. Canada was able to expand market opportunities for red meat and grains, while fully retaining our existing system of national supply management for dairy and poultry activities.
- Standards provisions build on the extensive progress made in the Uruguay Round. They provide clear rules aimed at reducing the scope for using standards as a disguised barrier to trade, while preserving the right of governments to regulate within their own borders and to promote such important goals as protecting the environment.
- The inclusion of land transport will allow Canadian truckers to organize their North American 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; for example, Canadian truckers can pick up a load in Mexico and carry it to the United States, then pick up another load in the United States and carry it to Canada or vice-versa, but they cannot carry cargo from one part of the United States to another. American and Mexican truckers can pick up and deliver international traffic in Canada, but they cannot pick up and carry goods between Canadian cities.
- The extension of cross-border services to specialty air services should open new opportunities for Canadian high-tech companies specializing in aerial surveys, mapping, remote sensing and similar export-oriented activities.
- The Agreement clearly establishes that social and health services provided by the federal and provincial governments remain unaffected by the NAFTA. Canadians are free to design and implement whatever social services they want and may reserve these activities to Canadians. The cross-border services and investment chapters, for example, spell out that Canada maintains its ability to provide social and health services, including day-care and public education.
- The investment chapter covers a broader range of operations and business activities than the FTA. It includes important provisions for resolving certain types of disputes between governments and investors from other NAFTA countries. Canadian investors

gain greatly improved access to Mexico, while Canada retains its existing foreign-investment policy. The addition of investor-state arbitration, building on provisions in Canada's bilateral investment agreements, will give Canadian investors in the United States and Mexico added confidence and security.

- The inclusion of intellectual property provisions similar to those proposed in the GATT Uruguay Round provides an agreed basis for addressing this increasingly important area of international trade. This should boost innovation in Canada and increase the attractiveness of Canada as a site for world-class investments.
- The financial services chapter — banking, securities and insurance — opens up the growing Mexican market with tighter rules of general application and subject to the dispute-settlement provisions of the Agreement.
- Chapter Nineteen of the FTA, providing for binding 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. The NAFTA extends them to Mexico, at the same time ensuring that Mexico will introduce a transparent regime based on due process.
- The NAFTA preserves the right of each party to apply its antidumping law and countervailing duty law to goods imported from the other parties. To ensure a generally consistent application of such legislation in the three countries, Mexico has agreed to institute certain amendments to its legislation and procedures.
- The NAFTA does not introduce any new rights or obligations regarding subsidies. The rules remain as they are set out in the GATT and affirmed in the FTA. Governments in all three countries remain free to assist economic activity to promote important objectives, such as regional development. 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.
- The institutional provisions include greater emphasis on mediation and conciliation, improvements to the panel-selection process and specialized provisions for certain issues (for example, financial services) as well as the addition of a permanent Secretariat (with offices in each country) to support the Free Trade Commission.
- The inclusion of an accession clause ensures that, in the future, the NAFTA will not need to be renegotiated should other countries seek membership. By requiring that countries negotiate their accession, Canada will have a full opportunity to assess the application and ensure that Canadian business is granted opportunities in the applicant's market equivalent to those extended by the NAFTA.
- The Agreement retains the Canadian exemption for cultural industries established in the FTA, article 2005, and applies it vis-à-vis Mexico and any future NAFTA member.
- The NAFTA recognizes the importance of domestic and international environmental objectives. It preserves the rights of governments to set high environmental standards. It affirms the right of governments to protect the environment, even when these steps conflict with their trade obligations, provided such steps do not involve unnecessary discrimination or introduce disguised restrictions on trade. It establishes that the

trade-related obligations in certain international environmental agreements can override obligations in the NAFTA. Any panel established to address an environmental issue may call on the help of a board of scientific experts. Discussions are now under way to lay the ground for co-operative programs aimed at strengthening the enforcement of environmental standards.

- The Agreement confirms the rights of the three governments to set high labour standards and affirms their commitment to the rigorous enforcement of workers' rights. Further discussions have begun on tripartite (labour, business and government) co-operation on improving and enforcing labour standards throughout the free-trade area. The NAFTA does not contain a social charter similar to that of the European Community (EC). The EC is a more comprehensive association that seeks to achieve a high degree of political and social integration, while the NAFTA is limited to trade and related economic issues.
- Water in its natural state, including any interbasin diversion, is not covered by the NAFTA. Only when water is considered a commercial good, such as in bottles or tanks, will water exports be affected. Other natural resources, such as oil, gas, copper and trees, remain under Canadian sovereignty. There is no obligation to exploit them or put them up for sale.

Canadian Water Policy

The Canadian government's federal water policy, announced in 1987, prohibits any interbasin transfer or diversions of water. It states that the federal government will "take all possible measures within the limit of its constitutional authority to prohibit the export of Canadian water by interbasin diversions and strengthen federal legislation to the extent necessary to implement this policy."

Pathbreaking into New Areas

The NAFTA makes important strides into new areas of trade policy, in particular, the environment and labour adjustment.

The Environment:

The environmental provisions in the NAFTA represent a significant achievement. All three countries confirmed their commitment to sustainable development. The trade obligations under specified international agreements (for example, endangered species, ozone depletion, hazardous wastes) will take precedence over the NAFTA. The Agreement urges governments not to establish "pollution havens" by lowering standards to attract investment. Panels dealing with contentious issues that involve environmental issues will have access to scientific expertise. The NAFTA incorporates the GATT exemption that allows governments to protect their environment even when the necessary measures conflict with the Agreement.

One of the outcomes of the NAFTA negotiations has been a much heightened awareness of the continental dimension of environmental concerns. As a result of the NAFTA, future economic development will be implemented with greater environmental awareness. It will be subjected to increased environmental monitoring and enforcement. In turn, additional resources that flow from increased economic activity should enhance efforts to address environmental concerns in North America.

The process associated with the review has provided clear evidence of the benefit of taking environmental concerns into consideration at every stage of the negotiating process. Frequent and substantive contact between the Environmental Review Committee, environmentalists and the negotiators played an important role, not only in optimizing the environmental provisions of the NAFTA, but also in shaping other provisions that do not specifically address the environment. This process, used for the first time in the negotiation of a trade agreement, has established a precedent for the future.

Canadian Environmental Review of the NAFTA

The income generated in Mexico by freer trade will assist the Mexican government in the enforcement of its standards, which are good on paper but have been difficult to police. Modern industrial planning emphasizes environmental responsibility through the most efficient use of resources. Companies recognize that adding the most up-to-date pollution-abatement technology and energy-efficient equipment to their plants will reap, in many cases, long-term financial rewards that offset the initial costs.

Labour Adjustment:

The Agreement is sensitive to the need for firms and workers to adjust to the new competitive opportunities. The transition period and the provisions allowing each country to introduce emergency safeguard and temporary snapback measures are designed to allow orderly adjustment.

These adjustments should not be onerous, since Mexico already benefits from relatively low tariffs or tariff-free access to Canada for many products. Indeed, the biggest challenge for Canadians arising from the NAFTA will be to identify the best 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 in NAFTA are overplayed. Canada has already been competing with nations where labour costs are lower, but our competitiveness is based on much more than labour costs. Our competitive advantages flow from the skills and knowledge of Canadian workers; from the strength of our private and public sector services, such as telecommunications, insurance, health care and roads; from our level of technological development; and from our access to — and relatively low cost of — debt and investment capital.

Implementing the NAFTA

Canada

On February 25, the Government introduced legislation (Bill C-115) into the House of Commons implementing the NAFTA. Second reading allows for substantive debate on the principle of the Bill. After a vote, it is referred to a committee for clause-by-clause study, following which it is reported back to the House. On third reading, the House considers any amendments and then votes on the legislation. The Bill is then considered by the Senate where the process is similar. If the Bill is amended, it is returned to the House for reconsideration. If there is no amendment, it is put forward for Royal Assent. After the Bill is proclaimed into force, Canada will be in a position to exchange letters of ratification with the United States and Mexico.

Ratification of the NAFTA, which is part of the treaty-making process, is an executive act accomplished by Order-in-Council.

United States

President Bush signed the Agreement on December 17, 1992, thereby ensuring that legislation implementing the Agreement will be eligible for congressional consideration under the so-called "fast-track" procedures. The Clinton administration has already begun working closely with Congress to prepare the implementing legislation. That legislation can then be tabled, 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.

Mexico

President Salinas sent the NAFTA to the Mexican Senate on December 18, 1992. After study by a committee, the Agreement must receive the approval of two-thirds of the Senate. Even before signing the NAFTA, the Mexican administration had begun consultations with both the Senate and the Chamber of Deputies.

After ratification, the NAFTA will have the force of domestic law. The Mexican Administration has already begun to amend more than 30 domestic laws to bring them into conformity with NAFTA obligations.

An Outward Looking Trade Agreement:

The NAFTA provides a solid foundation for the future. It includes provisions to broaden its coverage, both in terms of issues and of membership. A similar accession clause to that of 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.

The NAFTA as a Development Instrument:

The NAFTA is not only good trade and economic policy, it is also good foreign and development policy. By helping countries to adopt the necessary tools to restructure and modernize, the development of new market opportunities for Canadian firms and workers will be promoted. In addition, the conditions for positive human, environmental and community development in countries less prosperous than our own will be created.

Canada can compete with Mexico better inside the NAFTA than outside. Our analysis shows that, although Mexican labour costs are 7.5 times smaller than Canadian costs, Canada's workers have productivity levels 6.5 times higher than Mexico's. The cost of capital is lower in Canada, and capital productivity is higher. Canada thus has a competitive edge in the production of high-productivity and capital-intensive goods, while Mexico has a competitive advantage in the production of goods intensive in low-skilled labour. The NAFTA will put all member countries on an equal footing, which will be to Canada's advantage.

Department of Finance, *The NAFTA: An Economic Assessment
from a Canadian Perspective*

A Broadly Based Agreement: The Consultative Process

Private-Sector Collaboration

Throughout the negotiations, Ministers and senior officials consulted closely with the Canadian private sector both through formal consultative arrangements established for this purpose and in discussions with a wide range of private-sector groups, labour representatives, environmentalists and academics.

This model for consultations was successfully established during the negotiation of the Canada-U.S. Free Trade Agreement with the creation of the International Trade Advisory Committee (ITAC) and 15 Sectoral Advisory Groups on International Trade (SAGITs). In the months before the Government decided to join the NAFTA negotiations, Ministers established the third generation of the ITAC and the SAGITs and, throughout the negotiations, Ministers and senior officials met regularly with them both to report on progress and to ensure that Canadian participation reflected the interests, needs and concerns of a wide and representative group of Canadians.

More than 75 formal meetings and many more informal discussions were held across Canada. The advice provided was vital both in preparing the objectives for the Canadian negotiating team and in pursuing them. Both the ITAC and the 15 SAGITs provided the negotiators with pertinent, detailed information on every aspect of the negotiations, ranging from rules of origin to dispute settlement.

Federal-Provincial Consultation

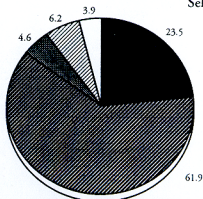
Mirroring the private-sector collaboration were intensive federal-provincial consultations. Again, the model had been established by the FTA process. Meetings of Canadian Ministers responsible for trade have become a valued part of federal-provincial co-operation. During the NAFTA negotiations, six meetings of Ministers were supplemented by discussions by telephone and in person, as well as many meetings and discussions between officials to consider every aspect of the negotiations. As a result, Canadian negotiators could deal confidently with their U.S. and Mexican counterparts not only on the traditional trade policy agenda that falls largely within the federal government's jurisdiction, but also with the increasing number of issues of shared jurisdiction and provincial competence.

These consultations reflect the dynamics of co-operative federalism. Trade agreements are critical to both the country and to each province. Trade accounts for between 8 and 27 cents of every dollar in provincial Gross Domestic Product and is an increasingly important source of jobs for Canadians in every part of the country.

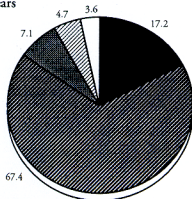
Parliamentary Consultation

As was the case with the FTA, the NAFTA has been thoroughly debated within the federal Parliament, in provincial legislatures, during Question Period and in special debates dealing with all aspects of the Agreement and the negotiations. Committees in both the House of Commons and the Senate have studied it. It has also been debated in provincial legislatures and several provinces have had their own committees examine the Agreement.

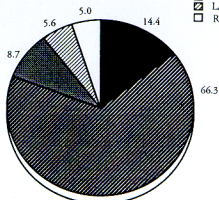
Distribution of Canadian Two-Way Trade
Selected Years



1960

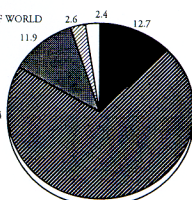


1970



1980

■ EUROPE
 ▨ US
 ▩ ASIA
 ▧ LATAM
 □ REST OF WORLD



1990

Source: CANSIM

Explanatory Notes

Three years ago, we exported nothing to the United States. Today, we export between 15 per cent and 20 per cent. In fact, without access to the U.S. market, we would wither and die because the Canadian market just isn't big enough.

Paul Helliwell, Gamma Foundries

Preamble

The Preamble represents the hopes and aspirations of the three countries and provides the political context within which the governments negotiated the NAFTA. The political commitments made in these paragraphs provide an agreed basis for the future interpretation of the intent of the three governments in entering into this Agreement.

The Preamble states the political desire of Canada, the United States and Mexico that the Agreement provide a framework for future expansion to other countries prepared to accept its obligations. It sets out their commitment to promote sustainable development and ensure that the Agreement will not frustrate their capacity to pursue environmental objectives. It similarly states their commitment to protect, enhance and enforce workers' rights. It indicates that it is their view that the effective functioning of the Agreement should lead both to a steady improvement in working conditions as well as a more competitive economy.

Mexican Market Opportunities: General

Mexico is a fast-growing economy that will require telecommunications products, processed foods, transportation expertise, environmental services and new technologies. These are areas where Canada is an acknowledged leader. In 1991 alone, Mexican imports grew by 22 per cent.

Mexico is already Canada's largest trading partner in Latin America. Canadian business has begun to increase its presence in Mexico with over 200 Canadian companies participating in the successful Canada Expo '92 held in Monterrey in January 1992. In 1992, 5 100 Canadian business visitors sought assistance from the Embassy; in 1991, the comparable figure was 2 100. Over the next four years, the Canadian government will spend \$27 million through the Access North America program to increase our exports to Mexico. A Canadian Business Centre, operating on a cost-recovery basis and in partnership with Canadian industry, will soon be opened in Mexico City. The New Exporters to Mexico Program (NEWMEX) will introduce Canadians to Mexican customs procedures, shipping and labelling rules as well as financial and legal requirements. The Fairs and Missions Program for Mexico will expand, adding more than 40 events annually. An extensive program of workshops and sectoral market studies will be prepared and updated regularly.

Canada's Trade Laws in Brief

- The Customs Tariff** — One of Canada's oldest pieces of legislation, the Customs Tariff sets out the rates of duty for thousands of individual products and the manner in which duties are to be calculated. As well, it lists products that may not be imported.
- The Customs Act** — This Act provides the legal basis for the activities of Canada's customs agents. It involves a wide range of detailed rules prescribing requirements related to the entry of goods and the payment of duties.
- The Export and Import Permits Act** — This Act provides the authority for the Government to control the export and import of certain goods.
- The Special Import Measures Act** — This Act allows Canadian producers, harmed by dumped or subsidized imports, to seek temporary relief or protection from such imports by means of a special antidumping or countervailing duty.
- The Canadian International Trade Tribunal Act** — This Act establishes the Canadian International Trade Tribunal (CITT), which has four main functions: to determine whether or not Canadian producers are injured by imports of dumped or subsidized goods; to hear appeals in customs matters; to determine whether goods are being imported in large quantities and at low prices so as to cause serious injury; and to review certain procurement practices. The CITT also carries out other economic enquiries on behalf of the Government, most related to import-policy questions.

Part One — General Part

Chapter One — Objectives

This chapter sets out the framework, object and purpose of the Agreement. In effect, it provides the guiding principles for the interpretation of the Agreement as a whole. These principles — national treatment, most-favoured-nation treatment and transparency — are then worked out in detail in the chapters that follow.

Article 101 establishes the free trade area — Canada, the United States (with the exception of Guam, the Commonwealth of the Northern Marianas, American Samoa and the U.S. Virgin Islands; Puerto Rico is included in the NAFTA) and Mexico — and states the conviction of the three signatories that the Agreement is consistent with their obligations under the GATT article XXIV. It underlines their intent to establish an agreement that complements and is consistent with the global trade regime based on the GATT.

GATT Article XXIV

This article provides the basis in international trade law for free trade agreements and customs unions. Member countries of the GATT are generally obliged to treat all other contracting parties the same, i.e., extend most-favoured-nation treatment, unless they are parties to an agreement consistent with article XXIV. In the case of a free trade agreement, the members must remove tariff and non-tariff barriers on substantially all their trade within a reasonable period of time and not raise any new barriers to the trade of third countries. A free trade agreement must be notified to the GATT, and its members may examine it to determine its conformity with article XXIV and recommend changes if it does not. The GATT has examined more than 50 free trade agreements and customs unions; it has never rejected an agreement.

Article 102 sets out the object and purpose of the Agreement. Most of the provisions are similar to the political intentions contained in the Preamble, but there is an important difference: the provisions of article 102 are contractual and set out general obligations to guide the

interpretation and implementation of the rest of the Agreement. The specific obligations include:

- eliminating barriers to trade and facilitating the cross-border movement of goods and services throughout the free trade area;
- promoting conditions of fair competition in the free trade area;
- increasing investment opportunities in the free trade area;
- protecting intellectual property rights;
- establishing effective procedures for the implementation, application and joint administration of the Agreement and the resolution of disputes; and
- laying the foundation for further trilateral, regional and multilateral co-operation to expand and enhance the benefits of the Agreement.

The Agreement builds upon previous bilateral, regional and multilateral agreements. For purposes of interpretation, article 103 establishes that the NAFTA takes priority over other agreements if there is any conflict, unless some other article specifies otherwise. For example, article 2103 states that bilateral tax agreements generally take precedence over the provisions of the NAFTA, while article 104 states that the trade measures taken pursuant to certain environmental agreements take precedence over the NAFTA.

Article 105 outlines the extent of the obligations of the federal and subfederal levels of government. Like the FTA, the NAFTA is an Agreement between central governments. As all three countries are federate states and some of the issues covered by the Agreement fall within the competence of the state and provincial governments, the Agreement establishes that federal governments are responsible for the implementation of the Agreement within their territory, including by state and provincial governments.

Chapter Two — General Definitions

Chapter Two sets out definitions of specialized or important terms common to the Agreement as a whole; for example, "territory." More specialized definitions important to the interpretation of individual articles are contained in each chapter. For example, Chapter Two defines the term "enterprise" for the Agreement as a whole, while Chapter Eleven provides more specific definitions in the context of investment.