



Department of Foreign Affairs
and International Trade

Ministère des Affaires étrangères
et du Commerce international



T H E

N A F T A

A T F I V E Y E A R S

a partnership at work

April 1999

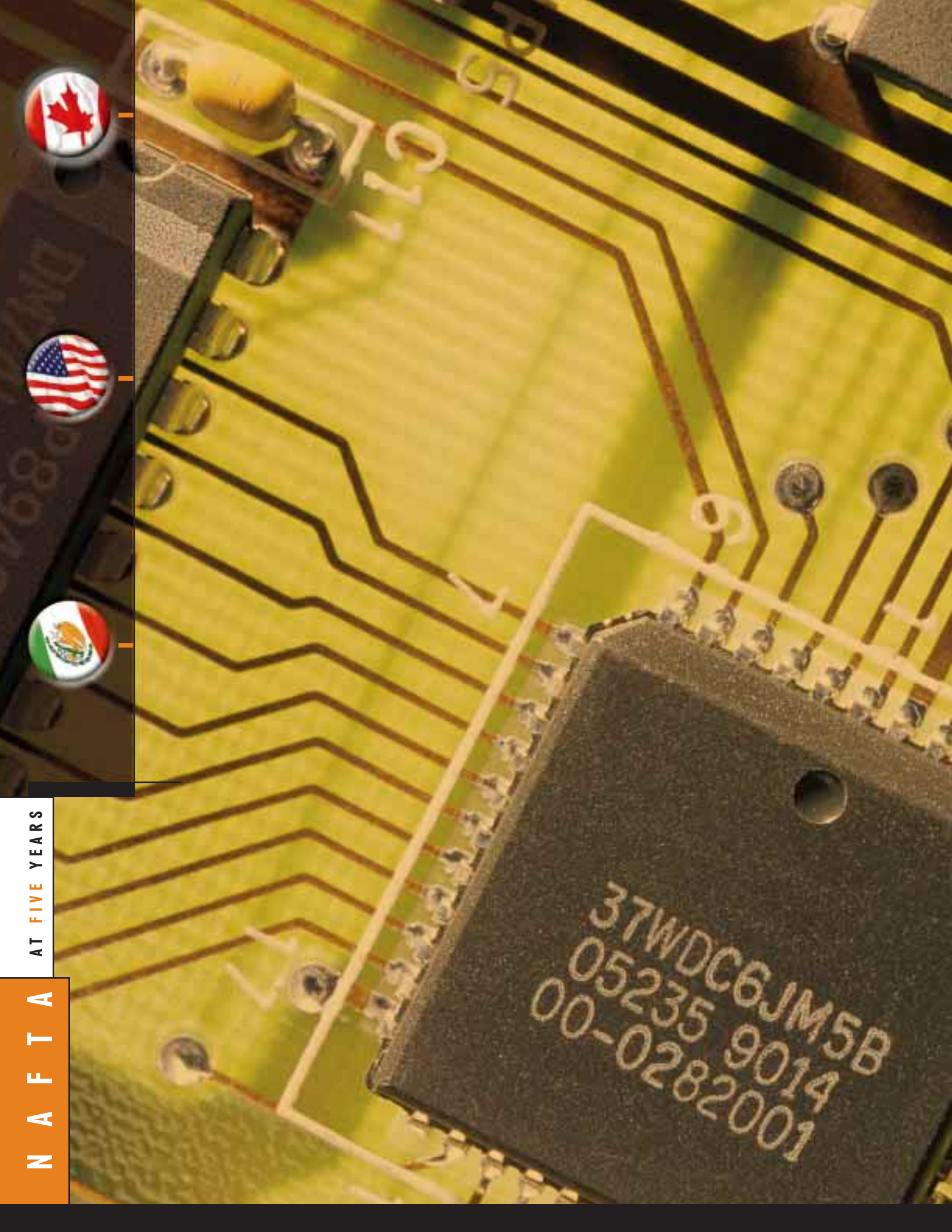
N A F T A

Canada 



AT FIVE YEARS

N A F T A



T H E

NAFTA

AT FIVE YEARS

a partnership at work

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Telephone: 1-800-267-8376 (www.dfait-maeci.gc.ca).*

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**This year marks the fifth anniversary
of the North American Free Trade
Agreement (NAFTA) between Canada,
Mexico and the United States. By any
measure, it has been an unqualified
success for Canada and for our
NAFTA partners**

AT FIVE YEARS

N A F T A

M e s s a g e

f r o m t h e M i n i s t e r



This year marks the fifth anniversary of the North American Free Trade Agreement (NAFTA) between Canada, Mexico and the United States. By any measure, it has been an unqualified success for Canada and for our NAFTA partners. This Agreement has helped us build a true NAFTA family where our peoples can collectively enjoy the benefits of a unique political, economic and cultural partnership.

The numbers speak for themselves. Canada's exports to the United States and Mexico have grown by 80% and 65% respectively since the NAFTA was implemented on January 1, 1994. Indeed, trade and investment flows

between all three NAFTA partners have increased substantially as a result of the Agreement. The Canadian economy continues to expand, and more than one million new jobs have been created in Canada since the NAFTA came into force.

Last year, my U.S. and Mexican colleagues and I launched a comprehensive review of the NAFTA to examine achievements to date and to set priorities for the road ahead. This review highlighted a number of important achievements. Tariff elimination is proceeding ahead of schedule, non-tariff barriers to trade are being removed, and the NAFTA parties' standards regimes are being made more compatible in areas like telecommunications and transportation. All of these improvements have made it easier than ever for Canadians to succeed and do business across North America.

Yet there is still more work to be done. Important discussions are underway to clarify the expropriation and compensation provisions of the NAFTA's investment chapter to provide greater certainty as to the parties' intent in this area. We are also looking to achieve greater transparency in the NAFTA institutions as a whole, including the investor-state dispute settlement procedures. The more Canadians understand about the Agreement, the more their already high level of support for the NAFTA will be strengthened.

While the vast majority of trade between the NAFTA members flows unimpeded, the NAFTA's rules have created a strong framework where we can resolve disputes when they do arise. This has provided stability and predictability to entrepreneurs in all three countries. Clearly, this has helped multiply the number of business opportunities for Canadian firms and made North America one of the most dynamic and prosperous trade areas in the world.

The NAFTA provides preferential and secure access to the rich North American markets, which is particularly reassuring at a time of global economic uncertainty and turmoil in many other international markets. As we look ahead to the next five years, I am confident that the NAFTA will continue to serve as a powerful locomotive for increased trade, investment and jobs for all Canadians.

A handwritten signature in dark ink, appearing to read "Sergio Marchi".

Sergio Marchi
Minister for International Trade



AT FIVE YEARS

NAFTA

Canadian exports to the United States and Mexico increased 80% and 65% respectively in the first five years of the NAFTA

Five Years of the NAFTA

A S c o r e c a r d

What the Numbers Show

- Canada's merchandise trade with the United States increased 80% in the first five years of the NAFTA, reaching \$475 billion in 1998
- Canada's merchandise trade with Mexico doubled over the same period, reaching \$9 billion in 1998
- Canadian exports to the United States and Mexico increased 80% and 65% respectively in the first five years of the NAFTA, reaching \$271.5 billion and \$1.4 billion in 1998
- Investment to Canada from the United States reached \$147.3 billion in 1998, up 63% from 1993
- Investment to Canada from Mexico reached \$464 million in 1998, tripling from 1993
- 68% of foreign direct investment (FDI) into Canada accounted for by our NAFTA partners in 1998
- More than one million new jobs created in Canada since January 1, 1994
- The NAFTA's temporary entry procedures facilitated travel to NAFTA markets by countless business visitors, including well over 100,000 Canadian professionals, intra-company transferees and traders/investors since 1996

Moving on Tariff Elimination

- Tariff elimination under the FTA/NAFTA between the United States and Canada completed on January 1, 1998
- Sixth scheduled decrease in tariffs between Canada and Mexico implemented on January 1, 1999 with most remaining tariffs to be eliminated by January 1, 2003
- Second round of accelerated tariff reductions implemented on August 1, 1998 covering approximately \$1 billion in NAFTA trade

Making Standards More Compatible

- Procedures for accrediting each other's conformity assessment bodies implemented
- Telecommunications terminal attachment requirements effectively harmonized and a process for the mutual acceptance of test data established
- Compatible North American standards developed for age, language capability and medical requirements for drivers for bus and truck operations

Promoting Transparency and Further Improvements

- Agreement in principle reached to add actuaries and plant pathologists to the list of covered

professionals for the temporary entry provisions of the NAFTA

- Amendments completed to simplify, update and/or liberalize the NAFTA rules of origin
- Greater transparency achieved in the administration of tariff rate quota (TRQ) regimes for agricultural products and on each country's grade and quality standards
- Many Annex 1 phase-out commitments implemented; for example, those relating to investment thresholds, specialty air services, videotex and enhanced packet switching services, and various professional services

Resolving Disputes

- More than 50 disputes effectively and promptly resolved under the rules-based procedures established in the NAFTA
- Agreement reached to establish a private commercial dispute settlement mechanism for perishable fruits and vegetables
- Information on alternative dispute resolution for resolving private commercial disputes compiled and disseminated in the three NAFTA countries

Setting Priorities

- A comprehensive "Operational Review" of the NAFTA work program covering all of the NAFTA's Committees, Working Groups and other subgroups launched and completed in 1998
- Agreement reached to make the fulfillment of overdue commitments a top priority
- Agreement reached to encourage greater interaction with the private sector and to make results and activities of the NAFTA work program more transparent
- Agreement reached for further work on key Canadian priorities including:
 - procedural and substantive issues regarding the investment chapter (interpretation of key provisions and greater transparency in investor-state dispute settlement procedures)
 - trade and competition policy
 - sanitary and phytosanitary (SPS) barriers to trade
 - linkages between trade, labour and environmental issues
 - spousal employment (waiver of labour certification tests for spouses of certain business persons entering under the NAFTA's temporary entry procedures)



AT FIVE YEARS

N A F T A

**Canadian producers are better able
under the NAFTA to realize their
full potential by operating in a
larger, more integrated and
efficient North American economy**

The NAFTA at Five

Overview

The North American Free Trade Agreement (NAFTA) entered into force in Canada, the United States and Mexico on January 1, 1994. Designed to foster increased trade and investment among the partners, the NAFTA contains an ambitious schedule for tariff elimination and reduction of non-tariff barriers, as well as comprehensive provisions on the conduct of business in the free trade area. These include disciplines on the regulation of investment, services, intellectual property, competition and the temporary entry of business persons.

The NAFTA did not affect the phase-out of tariffs between Canada and the U.S. under the Canada-U.S. Free Trade Agreement (FTA), which was completed on schedule on January 1, 1998. As of that date, virtually all tariffs on Canada-U.S. trade in originating goods were eliminated. Some tariffs remain in place for certain products in Canada's supply-managed sectors (e.g. dairy and poultry), as well as sugar, dairy, peanuts and cotton in the United States. The NAFTA provides for nearly all tariffs to be eliminated on trade in originating goods between Canada and Mexico by January 1, 2003. A second round of "accelerated" tariff reductions, covering some \$1 billion in NAFTA trade, was implemented in August 1998. In short, most tariffs have been removed for NAFTA-eligible trade.

At the most recent NAFTA Commission meeting in April 1998, Ministers launched a comprehensive "Operational Review" of the NAFTA work program to examine the structure, achievements, mandates and future priorities of the NAFTA work program. Results of this review, which can be found on the Operational Review chart on the Department of Foreign Affairs and International Trade website, indicate that NAFTA implementation is on track with some exceptions such as certain land transportation services (i.e. bus and trucking services) where commitments have yet to be implemented. Fulfilling these overdue commitments is a top priority for all three countries. (Details of the principal achievements since the implementation of the NAFTA are provided in the preceding "Scorecard.")

Turning to the economic picture, Canadian producers are better able under the NAFTA to realize their full potential by operating in a larger, more integrated and efficient North American economy. Consumers benefit from this heightened competition with better products, services and prices. While it is difficult to isolate the precise effects of any trade agreement on jobs and growth, it is clear that the NAFTA has had a significant positive impact on the Canadian economy. Trade and investment between



Canada, Mexico and the United States have increased substantially since the NAFTA was implemented in 1994, with total merchandise trade across North America surpassing \$752 billion in 1998 (Sources: Statistics Canada, U.S. Department of Commerce and SECOFI). Canada's merchandise trade with its NAFTA partners has also risen sharply. Two-way merchandise trade between Canada and Mexico grew 8% in 1998 over the year before, reaching \$9 billion. Our merchandise trade with the United States was up 11% over the same period, reaching \$475 billion in 1998. Approximately \$1.5 billion in goods and services now crosses the Canada-U.S. border each day.



Enhanced access to NAFTA markets and the existence of clear rules on trade and investment have increased Canada's attractiveness to foreign and domestic investors. Total foreign direct investment (FDI) into Canada reached \$218 billion in 1998, with the majority of this investment coming from the United States. FDI into Canada from the United States increased for a fifth straight year to \$147.3 billion in 1998 (up 63% since 1993), while investment from Mexico reached \$464 million in 1998 (up some 200% over 1993). Canadian direct investment in the NAFTA countries also increased, reaching \$126 billion into the United States in 1998 (an increase of 86% over 1993) and more than \$2.2 billion into Mexico (an increase of 324% over 1993). Further details on the economic and trade performance of the Canadian economy since the NAFTA was implemented in 1994 are provided in the section of this report on "The NAFTA's Impact."



While the vast majority of trade and investment among the three NAFTA countries flows freely across borders, some disagreements are bound to arise in such a large and diverse trading relationship. The NAFTA created an impartial, rules-based system to resolve disputes between the partners. On the whole, these procedures have worked remarkably well, lending stability, predictability and clarity to the conduct of business across North America. Canada is making full use of these provisions, and took action or was a respondent in a number of cases involving NAFTA procedures in 1998. Details are provided in the "Dispute Settlement" section of this report.





AT FIVE YEARS

N A F T A

Canada's NAFTA exports have grown substantially, and have been particularly successful in high value-added sectors such as automotive equipment (trucks, cars and parts), machinery and parts and industrial goods

The NAFTA's

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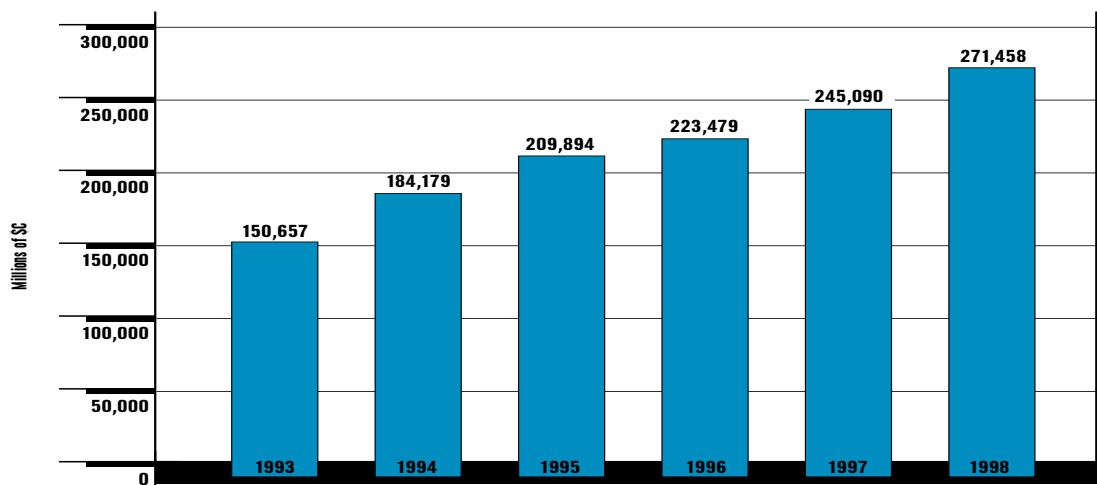
Trade Results

In 1998, total three-way trade among Canada, Mexico and the United States rose to about \$752 billion, with Canada-U.S. and Canada-Mexico trade accounting for \$484 billion (Sources: Statistics Canada, U.S. Department of Commerce and SECOFI). Since the implementation of the NAFTA, Canada's trade with the United States has risen 80%, while trade with Mexico has doubled.

Canada's NAFTA exports have likewise grown substantially, and have been particularly successful in high value-added sectors such as automotive equipment (trucks, cars and parts), machinery and parts and industrial goods. In 1998, the growth alone in Canada's exports to our NAFTA markets was roughly equal to the total value of our exports to Japan and to the 15 nations of the European Union (EU) *combined*. The growth in our NAFTA exports last year also more than offset the drop in exports to other important international markets, attributable to the financial crisis and its aftermath. Reflecting this trend, the share of exports to NAFTA partners in Canada's total exports has increased from 80.8% in 1993 to 84.3% in 1998.

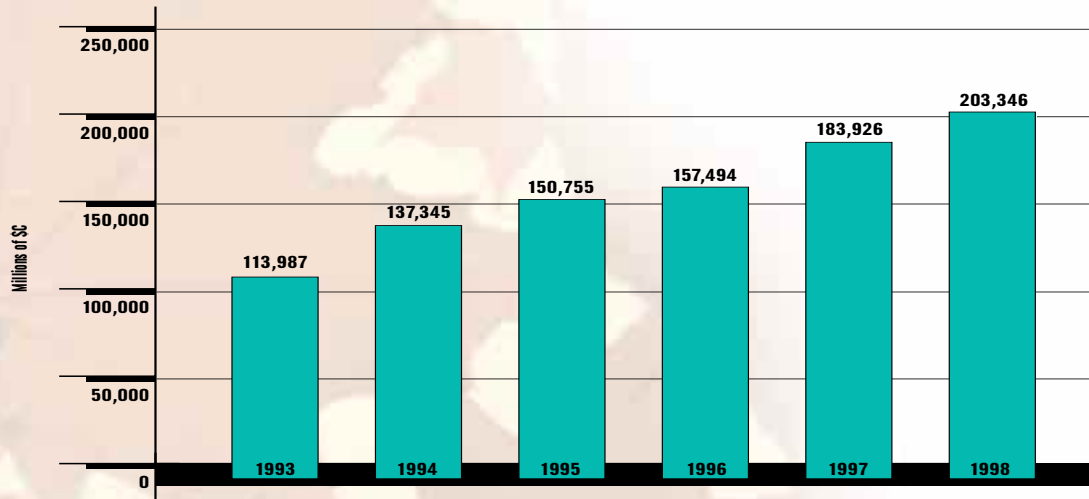
Imports to Canada from NAFTA members have also increased significantly over the past five years – particularly for machinery and equipment, communications equipment and automotive equipment. The share of imports from the NAFTA partners in Canada's total imports reached 69.4% in 1998.

Canadian Merchandise Exports to the United States



Customs Basis, Statistics Canada

Canadian Merchandise Imports from the United States

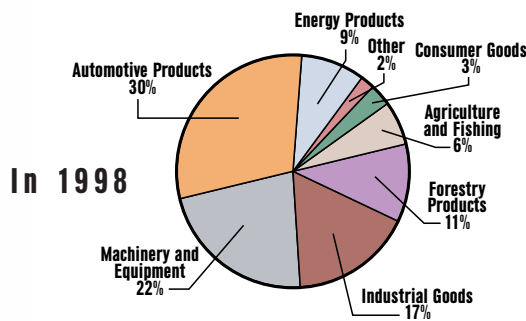
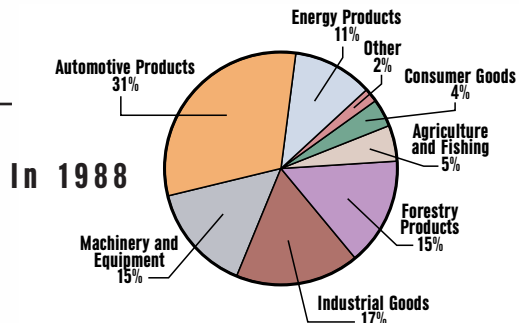


Customs Basis, Statistics Canada

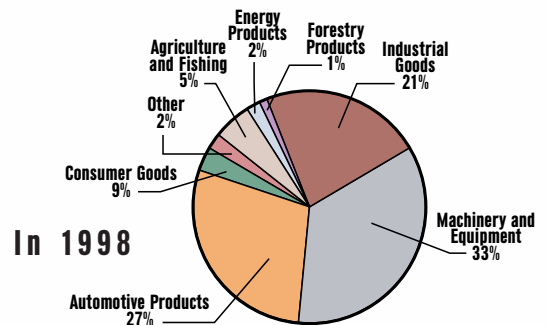
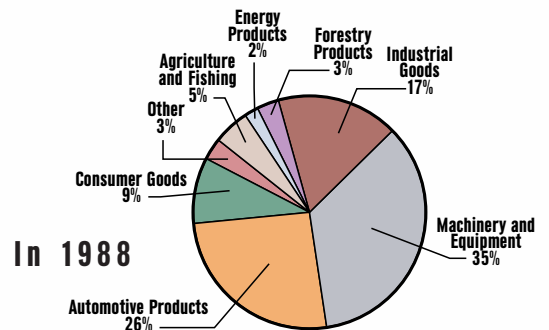
Following already impressive growth since the FTA came into effect on January 1, 1989, Canadian exports to the United States have increased by 80% in the NAFTA's first five years, rising from \$151 billion in 1993 to \$271 billion in 1998. Since 1993, Canada's two-way trade with the United States is also up 80% to \$475 billion in 1998. Canada and the United States currently exchange nearly \$1.5 billion in goods and services each day.

The graphs below demonstrate that trade in machinery and transportation equipment continues to be at the core of trade between Canada and the United States. Since the FTA and subsequently the NAFTA were implemented, Canadian exports to the United States for manufactured and industrial goods, with their higher value-added components, have steadily increased. Similarly, Canada continues to be the main destination of exports from the United States, with Canadian imports from the U.S. reaching \$203 billion in 1998, an increase of 11% over 1997 and 78% during the first five years of the NAFTA.

Composition of Canadian Merchandise Exports to the United States



Composition of Canadian Merchandise Imports from the United States



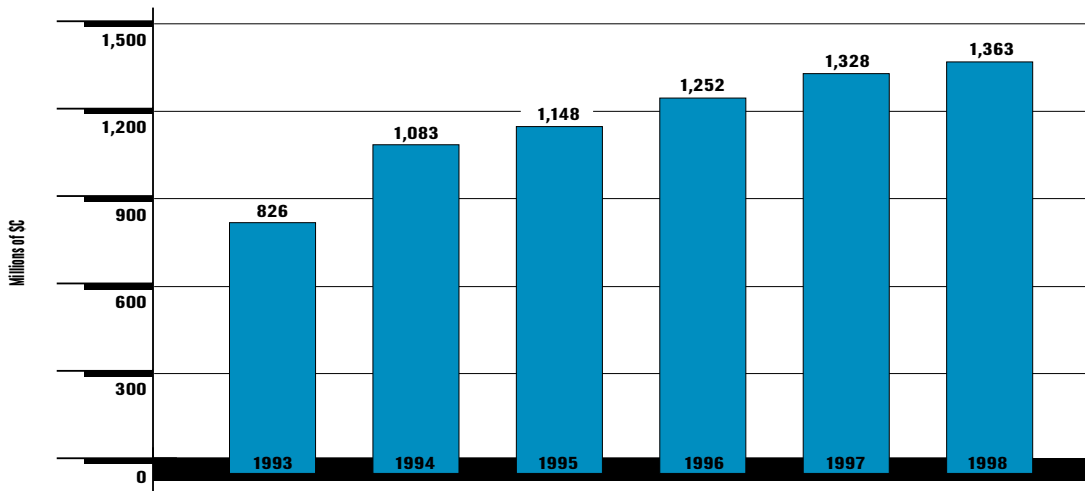
Customs Basis, Statistics Canada

An important benefit of the NAFTA for Canada has been the much improved access to the Mexican market. Canadian firms have been able to expand sales in sectors that were previously highly restricted, such as automotive products, financial services, trucking, energy and fisheries. Also, Canadian exports have become steadily more diversified, with value-added manufactured products accounting for the largest share of total exports to Mexico in 1998. Mexico is now Canada's 13th largest export market and fourth largest import source.

Despite the economic adjustments required in Mexico as a result of the financial crisis of December 1994 and its aftermath, Canadian exports to Mexico have risen consistently since the implementation of the NAFTA, reaching \$1.4 billion in 1998, an increase of 65% over the Agreement's first five years. Canadian imports from Mexico have more than doubled since 1993, increasing to \$7.6 billion by 1998. Overall, two-way trade between Canada and Mexico has shown impressive growth over the NAFTA's first five years, doubling to \$9 billion in 1998. It is important to note that existing statistics are believed to significantly under-report the true magnitude of Canadian exports to Mexico given the high estimated volume of transshipment via the United States. This in turn results in considerable variance in our respective national trade statistics (with Mexican figures showing bilateral trade at \$11 billion and Canadian exports to Mexico at more than \$3 billion in 1998). The statistical agencies in the three NAFTA countries are cooperating with a view to reconciling discrepancies between them, and this work is continuing in 1999.

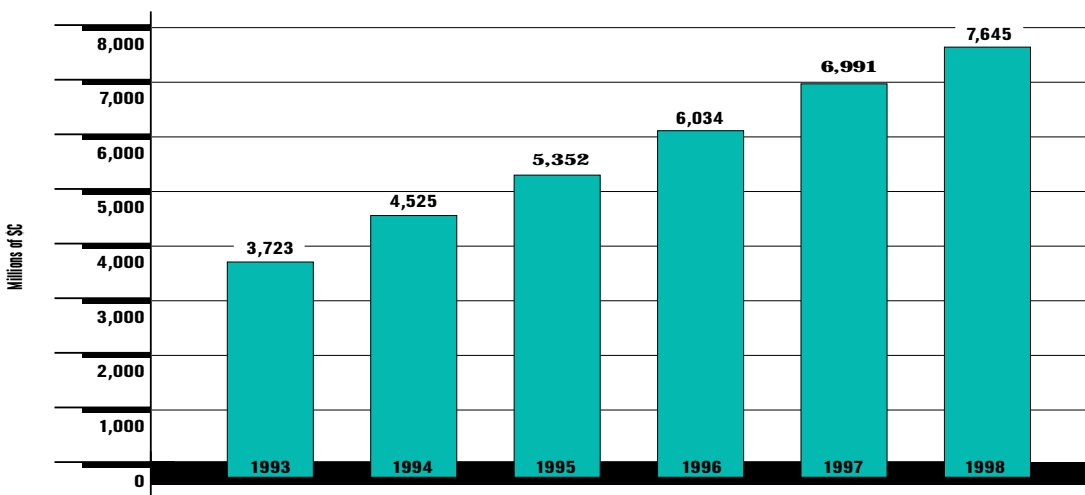
Ongoing market liberalization efforts in Mexico, particularly in the energy, banking, telecommunications and transportation sectors, continue to create opportunities for Canadian exporters. As the Mexican economy evolves and strengthens, its demand for Canadian goods and services will continue to increase.

Canadian Merchandise Exports to Mexico



Customs Basis, Statistics Canada

Canadian Merchandise Imports from Mexico

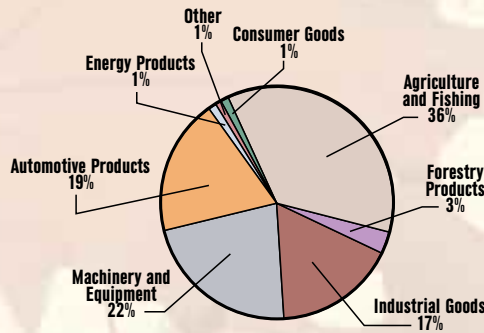


Customs Basis, Statistics Canada

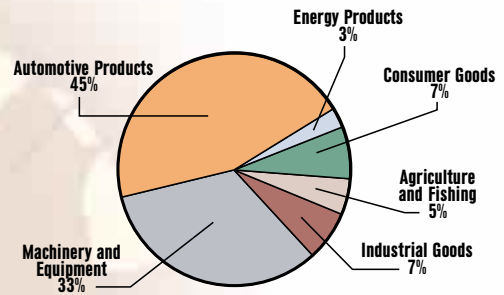


Composition of Canadian Merchandise Trade with Mexico, 1998

Exports to Mexico



Imports from Mexico



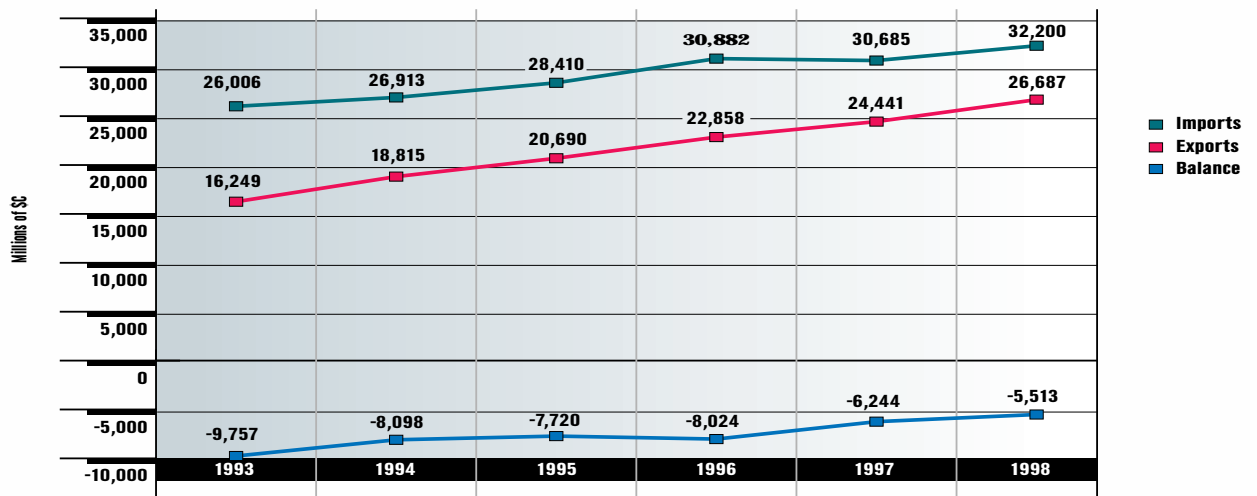
Customs Basis, Statistics Canada

Trade in Services

The NAFTA expanded the extent of coverage under the Canada-U.S. FTA to include virtually all aspects of cross-border trade in services. The Agreement also provides for enhanced access and for fair, transparent and non-discriminatory treatment in the provision of cross-border services between the NAFTA members. As well, the NAFTA ensures that Canadian business travelers can count on improved access to the United States and Mexico in order to pursue the business opportunities created by the rest of the Agreement. It sets out the governing principles and rules under which citizens of each country may have temporary access to the other countries to pursue business opportunities without meeting a labour market test.

The value of the two-way trade in services (such as travel, freight and shipping and commercial fees) between Canada and the United States has almost doubled since the Canada-U.S. FTA was concluded in 1988, growing to \$58.9 billion in 1998. Over the five-year period following NAFTA

Canadian Trade in Services with the United States



Balance of Payments Basis, Statistics Canada

implementation – ending on December 31, 1998 – Canadian service exports to the United States rose by 64% to \$26.7 billion, while imports from the United States increased by 24% to \$32.2 billion. In 1998, exports of Canadian services to the United States and Mexico continued to show small increases, moderating Canada's traditional deficit in this sector.

The fastest-growing component of services trade has been in the computer and information services area, in which there is a high degree of specialization. In fact, bilateral trade between Canada and the United States in informatics services has emerged as one of the fastest-growing sectoral relationships in the world. Exports to the United States have also increased in such areas as communications, architecture, engineering and other technical services. Imports of services to Canada from the United States, meanwhile, have increased in areas such as management and advertising services.

Although trade in services is on the rise, it currently corresponds to only 12.4% of Canada's total merchandise trade with the United States. Given the large contribution of services to Canada's gross domestic product (GDP) (services currently make up almost two-thirds of GDP), the rapid growth of the services sector in both economies and the NAFTA's provisions to liberalize services trade between the NAFTA parties, this trade is expected to increase in the future.

Services trade with Mexico, though not calculated to the same level of detail by Statistics Canada, has also been on the rise since the implementation of the NAFTA, due in large part to the increased participation of Canadian firms in the Mexican economy. Canadian firms have been actively involved in the transportation sector through the provision of consultation services in the privatization of Mexican railways and in the management of the newly privatized railways. Canadian charter companies will benefit from greater liberalization in bilateral air services. In the energy sector, Canadian consultants have participated in Mexico's privatization of natural gas distribution and transmission. On the agriculture side, Canadian service suppliers are contributing consulting and training services in the area of food safety, and expert advice and assistance in the implementation of the Hazard Analysis and Control of Critical Points (HACCP) system. Furthermore, the development of distance learning programs, the projected establishment of private health clinics, and the provision of telecommunications services all point to the increasing diversity of Canada's participation in Mexico's services sector. Mutual recognition agreements negotiated under the NAFTA in areas such as legal consulting and engineering will, once implemented, further increase Canadian participation in Mexico's service industries.



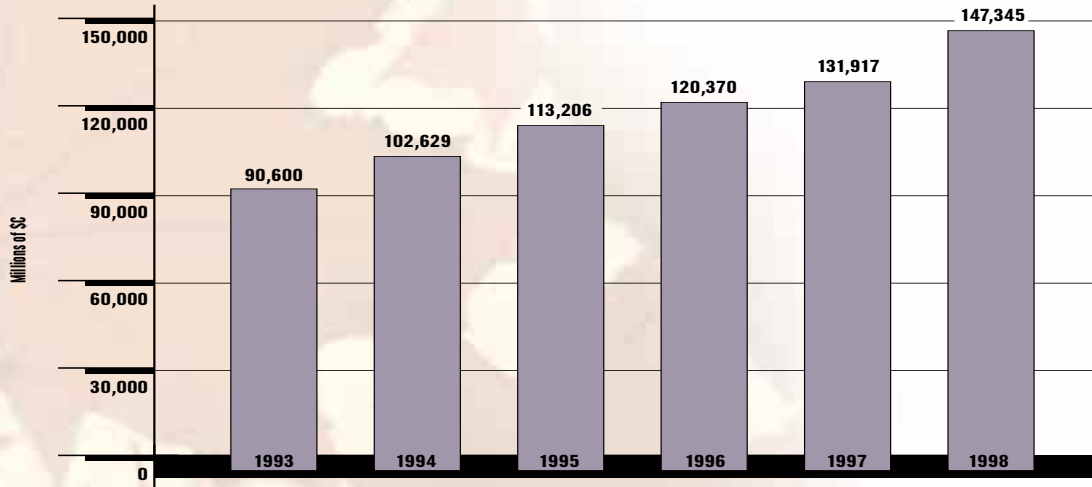
I n v e s t m e n t

Investment is key to economic growth, and since 1993 foreign direct investment (FDI) in Canada has risen by 54%, reaching \$218 billion in 1998. The NAFTA has contributed to enhancing Canada's attractiveness to foreign investors while providing more opportunities for Canadians to invest in NAFTA partners' economies. The Agreement's provisions ensure greater certainty and stability for investment decisions by guaranteeing fair, transparent and non-discriminatory treatment of investors and their investments throughout the free trade area. The NAFTA's contribution to increased competitiveness has also generated greater capital investment in Canada. This investment has generated job growth and has led to valuable high-tech knowledge transfers. About 68% of the \$218 billion in foreign direct investment comes from our NAFTA partners.

Since the implementation of the NAFTA, there have been notable investment gains in Canada in the area of financial services, transportation equipment, automobile equipment, chemicals, energy, communications, and food and beverages.



U.S. Investment in Canada



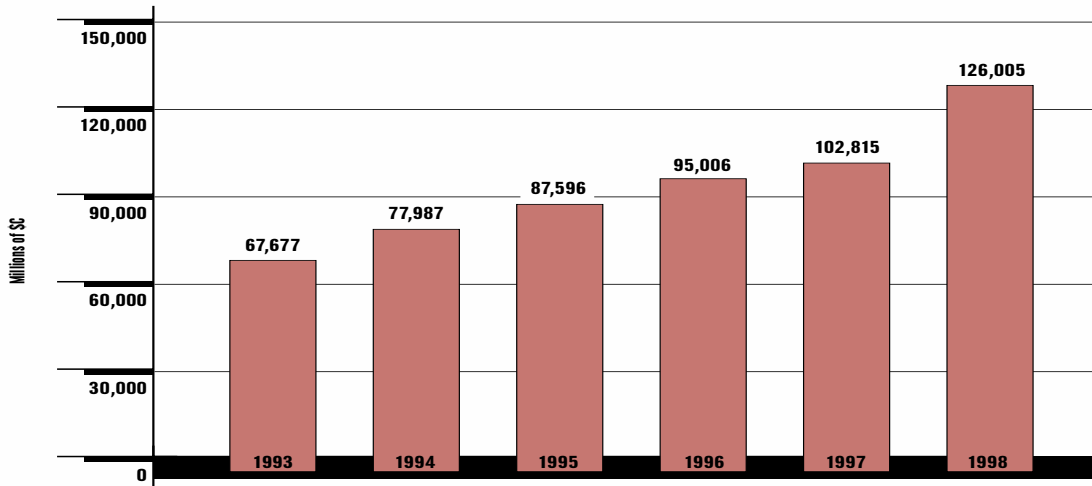
Stock of FDI, Statistics Canada

The increased flows of FDI into Canada since the early 1990s have also had an important effect on the renewal of plants and equipment. FDI in machinery and transportation equipment alone increased 26% between 1990 and 1998.

The United States remains the largest foreign investor in Canada. The stock of direct investment from the United States increased for the fifth straight year since the implementation of the NAFTA, growing by 12% between 1997 and 1998 to \$147.3 billion, representing more than two-thirds of total foreign direct investment in Canada. In the five years since the NAFTA was implemented, U.S. investment in Canada increased by 63%, from \$90.6 billion in 1993.

The United States also remains the largest destination for Canadian foreign direct investment. In 1998, the stock of Canadian investment in the United States reached \$126 billion, up 23% over 1997 and 86% during the NAFTA's first five years. Canadian companies are increasingly using outward investment (through mergers, acquisitions, partnerships, joint ventures, strategic alliances or new investment) to strengthen their operations, penetrate new markets and acquire new technologies, resources and skills. Such investment abroad brings concrete benefits to Canada in terms of R&D activities, growth and export opportunities, leading to job creation back in Canada.

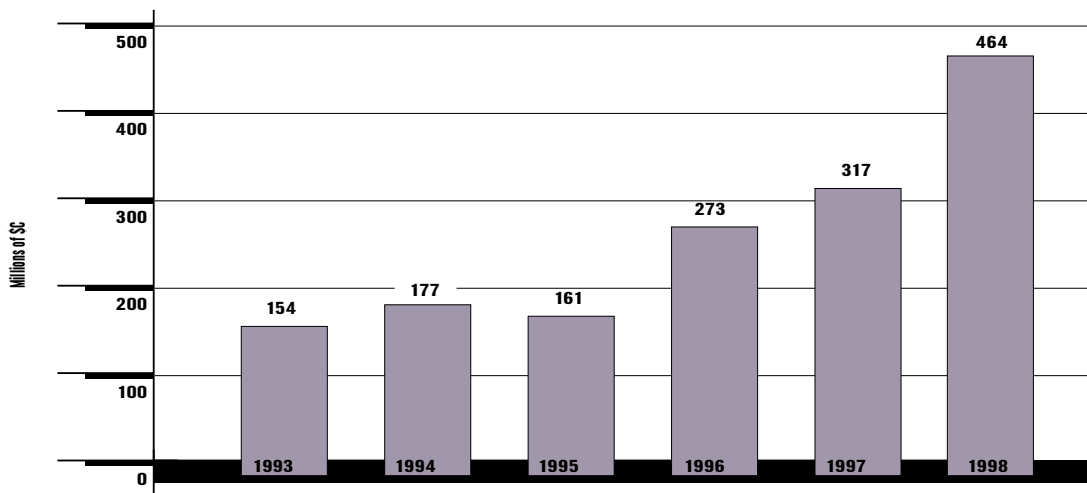
Canadian Investment in the United States



Stock of FDI, Statistics Canada

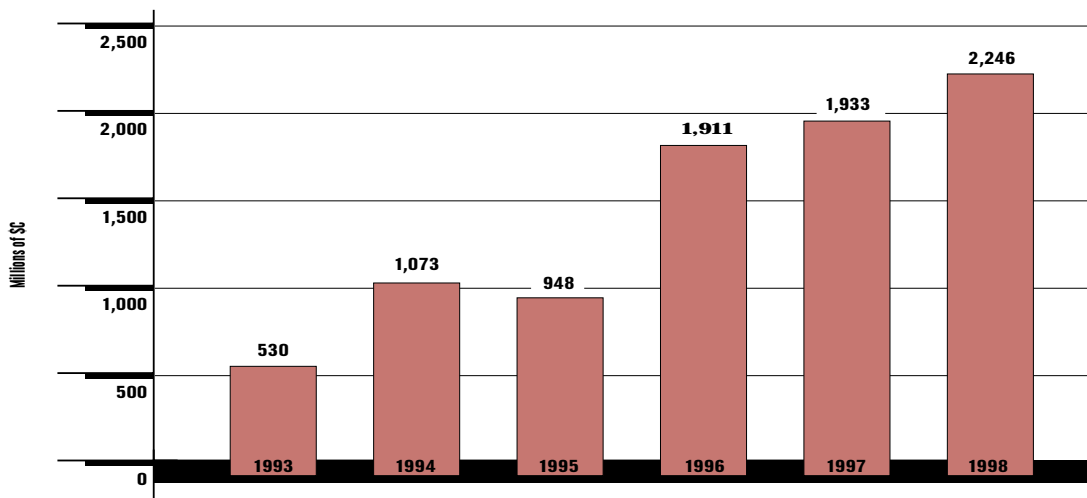
The implementation of the NAFTA also led to significant increases in FDI between Canada and Mexico. Since 1993, Canadian investment in Mexico has quadrupled to \$2.2 billion in 1998. Current Canadian investment in Mexico is concentrated in mining, banking and telecommunications. Further potential exists in sectors such as gas and energy. Mexican investment in Canada is growing, but remains small.

Mexican Investment in Canada



Stock of FDI, Statistics Canada

Canadian Investment in Mexico



Stock of FDI, Statistics Canada



Summary of Recent Reports

Over the past few years, a number of studies and assessments have addressed the issue of the impact of the NAFTA on the North American economy. On the whole, these reports show that the effects of the NAFTA have been positive. The Department of Foreign Affairs and International Trade has published a comprehensive bibliography of recent publications on the NAFTA entitled *The Impact of FTA/NAFTA on Canada: What Does the Recent Literature Say?* This bibliography will be available on the Department's website (www.dfait-maeci.gc.ca). Refer to the NAFTA page on this site for a wide range of additional information on the NAFTA and its impact on Canada.

While it is clearly difficult to isolate the impact of a trade agreement such as the NAFTA on economic variables such as trade and investment flows or economic growth and job creation, a number of recent academic analyses attempt to shed light on these linkages. Among these is a recent report entitled *Trade and Investment in the Americas: Survey of North American Businesses* released on March 3, 1998, by the Bank of Montreal, its United States subsidiary (Harris Bank) and Mexican affiliate (Grupo Financiero Bancomer). The findings of this survey support the conclusion that the NAFTA has had a positive impact on sales and job growth in Canada and throughout North America, and has not contributed to declining wages. The survey further reports that businesses across the continent expect to pursue cross-border opportunities even more aggressively over the next two years.

A study published in March 1997 by the C.D. Howe Institute, entitled *Trading Up: The Impact of Increased Continental Integration on Trade, Investment and Jobs in Canada*, concludes that the FTA/NAFTA contributed to a sharp increase in Canada-United States trade "over and above what could have been expected from macroeconomic factors or past industry trends." It shows that trade grew most rapidly in those sectors liberalized by the Agreement. The study also found that "the commonly expressed view that free trade has contributed to Canada's employment problems does not find support in the data."

Other studies which focus more on the United States-Mexico dimension of the NAFTA come to a similarly positive conclusion. For the most part, they show that the impact of the NAFTA on jobs has been neutral to moderately positive. The U.S. President's report on the NAFTA to Congress, released in July 1997 and available on the United States Trade Representative's website (www.ustr.gov), estimates that the Agreement "had a modest positive effect on U.S. net exports, income, investment and jobs supported by exports." Job growth associated with exports to Mexico is estimated at between 90,000 and 160,000. Mexican perspectives on the NAFTA can be found at the website (www.naftaworks.org), which is managed by the Mexican trade ministry, SECOFI (Secretaria de Comercio y Fomento Industrial).

Much of the academic and business assessment of the NAFTA is positive, particularly as it pertains to the Agreement's impact on trade and investment flows. However, there are studies that suggest that the NAFTA has been less effective in addressing certain other aspects of Canada's economic performance (though these studies rarely suggest that Canada's performance in these areas would have been stronger in the absence of the NAFTA). Some cite concerns about Canada's overall productivity performance and suggest that the NAFTA is having limited impact in boosting Canadian productivity. This runs counter to what might be expected under increased continental competition. One such study is a recent assessment of the NAFTA by Jeffrey Rubin and John Lester entitled *Has Free Trade Made Canadian Manufacturing More Efficient?* This study is published by CIBC Wood Gundy Economics. The report notes that productivity vis-à-vis the United States has slipped due to many factors, but primarily due to the depreciation

of the Canadian dollar versus the U.S. dollar. This depreciation, the authors argue, has allowed Canadian firms to delay or avoid rationalization of their business operations.

A recent study by Industry Canada, *Keeping Up with the Joneses*, concludes that Canada's sound macroeconomic fundamentals (low inflation and interest rates, healthier fiscal situation, improved business confidence) have significantly improved the business climate in Canada. Yet it also notes that we are lagging behind the United States on key microeconomic fundamentals (including R&D investment, innovation, technology intensity and diffusion), which is contributing to a lower level of total factor productivity in Canadian manufacturing industries. The study points to the need for greater efforts in Canada on R&D, innovation and the use of knowledge. Of interest, however, is the study's finding that the better-performing industries in Canada are those that are the most active in export trade to the United States.





S u c c e s s S t o r i e s

By reducing barriers to trade and investment throughout the continent, the NAFTA has stimulated enhanced efficiencies in the Canadian economy and expanded opportunities for Canadian firms. While the impact as captured in statistical measures may seem dry, the reality is that this translates directly into more and better jobs for Canadians, more choice and better prices for Canadian consumers, and enriched lives through a flourishing of people-to-people exchanges across North America.

For example, Denis Coderre, the President of a Quebec-based transportation firm, SGT 2000, affirms that “by easing restrictions and reducing tariffs, the Agreement has facilitated transportation of all kinds of products. For us, it has meant a boost in volume and more jobs.” The competitiveness of Canadian companies, coupled with the NAFTA’s comprehensive trade and investment rules, has allowed Canadian firms to vie for contracts and opportunities across North America. The President of Testori Americas Corporation, a P.E.I. firm which exports 80% of its aircraft and related components, mainly to the U.S., maintains that the NAFTA has “made a level playing field of North America, where contracts are won or lost strictly on the basis of efficiency and cost effectiveness.”

The NAFTA has been particularly helpful to Canadian firms that were reluctant or unable to enter Mexico due to the high tariff walls and restrictive investment rules that existed before the implementation of the Agreement. Arie van der Lee, Vice-President of Alberta-based Alternative Fuel Systems Inc., believes that “the Mexicans really want to deal with Canadian companies, but prior to the NAFTA, there were trade obstacles, most of which have been removed over the past five years.”

The NAFTA has also stimulated the sharing of technology and new forms of strategic partnerships based on a more stable and predictable business environment. Bob Richards, from Genesis Organic Incorporated in Newfoundland, claims that “the NAFTA has paved the way for significant technology transfer opportunities in the environment among potential North American joint venture partners.” Mark Zenuk, of the Commodity Marketing Group at the Saskatchewan Wheat Pool, similarly points out that “the NAFTA is a critical element in enabling improved trade relations and more strategic long-term business planning between Canada and our North American trading partners.”

The temporary entry provisions of the NAFTA have facilitated the movement of business people across North America and enhanced productive interactions between Canadians and their U.S. and Mexican colleagues. Gordon Maynard, from McCrea and Associates in Vancouver, maintains that “there’s no question that the provisions of [the] NAFTA accommodate business necessities without undue bureaucracy.” Brownstein and Brownstein, a law firm in Montreal, views the NAFTA as “a real boon in facilitating the flow of personnel” into the U.S. and Mexico.

Many academics in Canada also agree that the NAFTA has played a significant role in making Canadian companies more efficient and in preparing them for the challenges of the global economy in the new millennium. Professor John Kirton from the Centre for International Studies at the University of Toronto asserts that “[the] NAFTA has forced us to rationalize, to get our cost structure down and to learn how to market and produce for countries that are very different from ours.” Professor Steven Globerman from Simon Fraser University in B.C. maintains that the economic integration of Canadian industries with those of the United States and

Mexico has prompted “specialization across and within Canadian businesses.” With “increased specialization,” Globerman argues, “comes increased productivity.”

Over the years, Canadians have proved that they can work with diverse cultures and excel in foreign markets. By producing for markets that are “very different from ours,” Professor Kirton believes that Canadians gain a “strengthened sensitivity to, and respect for, other cultures.” In the words of Professor Isaiah Litvak, Professor of International Business at York University, free trade agreements such as the NAFTA “encourage valuable cultural exchanges – such as in the performing arts – as well as international academic exchanges.”

Communities across Canada have also experienced the benefits of the NAFTA. Diane Richler, Executive Vice-President of the Canadian Association for Community Living in Toronto, believes that “by improving trade and economic relations between governments, [the] NAFTA has opened the door to talk about other issues of concern throughout North America. For people who have a disability and for civil society organizations which represent them, this has provided opportunities to build inclusive communities, improve democratic representation in the region and promote the recognition of human rights.” The NAFTA has created opportunities for community members to discuss practical and effective long-term strategies to improve the quality of life across North America.





AT FIVE YEARS

N A F T A

Canada has made a priority of strengthening the NAFTA work program to enhance the transparency, accountability and effectiveness of the NAFTA Working Groups and Committees

N A F T A

I n s t i t u t i o n s

The NAFTA Commission

The Free Trade Commission, which consists of cabinet-level representatives from the three member countries, is the central institution of the NAFTA. The Commission supervises the implementation and further elaboration of the Agreement and helps to resolve disputes arising from its interpretation. It also oversees the work of the NAFTA's Committees, Working Groups and other subsidiary bodies. The Commission last met on April 29, 1998. Ministers have agreed that the Commission's next meeting will take place in Canada in the spring of 1999, in the context of the fifth anniversary of the NAFTA.

Working Groups and Committees

The NAFTA envisages further work towards fulfilling the objectives of the free trade agreement. Under the auspices of the NAFTA, over 30 Working Groups, Committees and other subsidiary bodies have now been established to facilitate trade and investment and to ensure the effective implementation and administration of the NAFTA (a list of the Working Groups and Committees follows). Key areas where this work is being undertaken include trade in goods, rules of origin, customs, agricultural trade and subsidies, standards, government procurement, investment and services, cross-border movement of business people, and alternative dispute resolution.

The NAFTA Working Groups and Committees also help to smooth the implementation of the Agreement and provide forums for exploring ways of further liberalizing trade between members, for example the two rounds of accelerated tariff removals completed under the auspices of the Committee on Trade in Goods. The NAFTA Working Groups and Committees also provide an apolitical arena for the discussion of issues and, through early dialogue on contentious points, the possible avoidance of disputes. In recent months, the Advisory Committee on Private International Disputes regarding Agricultural Goods has made considerable progress in developing an innovative, private sector-based mechanism for resolving disputes on trade in perishable fruits and vegetables.

Canada has made a priority of strengthening the NAFTA work program to enhance the transparency, accountability and effectiveness of the NAFTA Working Groups and Committees. At the NAFTA Commission's



initiative, a comprehensive review of the achievements and priorities of the NAFTA work program was launched in 1998. Initial results of this exercise include a Canadian initiative, within the Investment and Services Working Group, to discuss issues related to the implementation of Chapter Eleven, including the investor-state provisions.

Political direction for the NAFTA work program is provided by Ministers through the NAFTA Commission. In addition, NAFTA Deputy Ministers of Trade meet twice annually to provide high-level oversight of the NAFTA Working Groups and Committees. Day-to-day management of the NAFTA work program, and of the implementation of the Agreement more broadly, is carried out by the NAFTA "Coordinators" - the three senior trade department officials designated by each country.



The Canadian Section of the NAFTA Secretariat

The NAFTA Secretariat, comprising the Canadian, U.S. and Mexican Sections, was created by the NAFTA pursuant to Article 2002. It is responsible for the administration of the dispute settlement provisions of the Agreement. The mandate of the NAFTA Secretariat also includes the provision of assistance to the Commission and support for various non-dispute-related Committees and Working Groups. The Canadian Section of the NAFTA Secretariat is located at 90 Sparks Street, Suite 705, Ottawa ON, K1P 5B4, and can be reached by telephone at (613) 992-9388 and by fax at (613) 992-9392.

More specifically, the NAFTA Secretariat administers the NAFTA dispute resolution processes under Chapters Fourteen, Nineteen and Twenty of the NAFTA and has certain responsibilities related to Chapter Eleven dispute settlement provisions. Each National Section maintains a court-like registry relating to panel, committee and tribunal proceedings. The NAFTA Secretariat also maintains a trilateral website (www.nafta-sec-alena.org/) on which updated information on active and completed NAFTA disputes is available.



List of NAFTA Working Groups and Committees

- Committee on Trade in Goods
- Committee on Trade in Worn Clothing
- Working Group on Rules of Origin
- Customs Subgroup
- Committee on Agricultural Trade
- Working Group on Agricultural Grading and Marketing Standards
- Working Group on Agricultural Subsidies
- Advisory Committee on Private International Disputes regarding Agricultural Goods
- Committee on Sanitary and Phytosanitary Measures:
 - SPS Technical Working Group on Animal Health
 - SPS Technical Working Group on Plant Health
 - SPS Technical Working Group on Dairy, Fruits, Vegetables and Processed Foods
 - SPS Technical Working Group on Meat, Poultry and Egg Inspection
 - SPS Technical Working Group on Pesticides
 - SPS Technical Working Group on Food Additives and Contaminants
 - SPS Technical Working Group on Fish and Fishery Products
 - SPS Technical Working Group on Veterinary Drugs and Food
- Working Group on Emergency Action
- Committee on Standards Related Measures
- Land Transportation Standards Subcommittee and its various working groups:
 - Driver and Vehicle Standards
 - Vehicle Weights and Dimensions
 - Traffic Control Devices
 - Rail Safety
 - Dangerous Goods/Hazardous Materials Transportation
- Telecommunications Standards Subcommittee
- Automotive Standards Council
- Subcommittee on Labeling of Textile and Apparel Goods
- Working Group on Government Procurement and Small Business
- Investment and Services Working Group
- Financial Services Committee
- Working Group on Trade and Competition
- Temporary Entry Working Group
- Chapter Nineteen Operation Working Group
- Advisory Committee on Private Commercial Disputes



AT FIVE YEARS

N A F T A

The background of the page is a photograph of a large industrial distillery. Several large, shiny copper pot stills are visible, supported by blue metal stands. The ceiling is high with a complex network of pipes and structural beams, and the lighting is warm and yellowish. The text is overlaid on the right side of the image.

**The vast majority of trade in
North America now takes
place in accordance with the
clear and well-established
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World Trade Organization**



D i s p u t e

S e t t l e m e n t

O v e r v i e w

The vast majority of trade in North America now takes place in accordance with the clear and well-established rules of the NAFTA and the World Trade Organization (WTO). Nonetheless, in such a large trading area, disputes are bound to emerge. In such cases, the NAFTA directs the governments concerned to seek to resolve their differences amicably through the NAFTA's Committees and Working Groups or other consultations. If no mutually acceptable solution is found, the NAFTA provides for expeditious and effective panel procedures.

One of the principal elements of the NAFTA is the establishment of a clear set of rules for dealing with the settlement of disputes. Dispute settlement provisions for countervailing duty and anti-dumping matters are covered under Chapter Nineteen. Chapter Twenty of the NAFTA includes provisions relating to the avoidance or settlement of all disputes regarding the interpretation or application of the NAFTA. There are also special rules for disputes under Chapter Eleven (Investment) and Chapter Fourteen (Financial Services). Administrative support to Chapter Nineteen and Chapter Twenty panels is provided by the Canadian, U.S. and Mexican National Sections of the NAFTA Secretariat.

C h a p t e r N i n e t e e n

Chapter Nineteen of the NAFTA provides for a system of binational panel review in place of final judicial review for domestic decisions regarding anti-dumping and countervailing duty matters. Prior to the entry into force of the Canada-U.S. FTA and then the NAFTA, anti-dumping, countervailing duty, and injury final determinations of a government could only be appealed: in the case of a U.S. final determination, to the Court of International Trade; in the case of a Mexican final determination, to the Tribunal Fiscal de la Federación; or in the case of certain Canadian final determinations, to the Federal Court of Appeal; or for some Revenue Canada decisions, to the Canadian International Trade Tribunal (CITT).

As of March 1999, there are three active Chapter Nineteen cases reviewing Canadian government anti-dumping decisions on imported products from the United States (baby food, cold-reduced flat-rolled carbon steel sheets and copper pipe fittings). There are five cases in which a U.S. decision is being appealed by



Canadian producers (three carbon steel flat products, cut to length steel plate case, and brass sheets). As well, a Canadian agency's decision on hot-rolled carbon steel plate from Mexico was appealed and a Mexican decision is being appealed by Canadian producers (rolled steel plate). One case, involving the review of a Canadian agency's decision in an anti-dumping case on concrete panels from the United States that was requested in 1997, was completed during 1998. There are also a number of cases involving trade remedy actions by Mexico and the United States, not involving Canadian firms.

Chapter Twenty

Canada regards Chapter Twenty as a central element of the North American Free Trade Agreement. It is invaluable in ensuring that our trade relations with the United States and Mexico are based on an established set of rules as opposed to economic or political power. As such, the objectives of the Chapter Twenty provisions are similar to those of the dispute settlement provisions of the WTO.

There have been relatively few applications of the NAFTA Chapter Twenty dispute settlement provisions compared with activity under Chapter Nineteen. Canada was a respondent in a case brought by the U.S. regarding tariffs on certain U.S.-origin agricultural products. The United States and Mexico have also used this procedure regarding a United States safeguard action on corn brooms. In 1998, Canada took action under Chapter Twenty procedures on meat labeling and on certain measures by U.S. states restraining Canadian exports of grain and livestock. As well, several consultations were held in 1998 under Chapter Twenty concerning Mexico-U.S. disputes on sugar, bus and trucking services, in which Canada participated as a third party. On bus and trucking services, following NAFTA Commission meetings in 1998 convened to address these disputes, Mexico requested arbitral panels under Chapter Twenty to have them resolved.

Chapter Eleven

For investment disputes relating to obligations of NAFTA parties under Chapter Eleven, the NAFTA sets out dispute resolution procedures to resolve complaints between the investor and the host state. Complaints that are subject to NAFTA Chapter Eleven are resolved by arbitration, based on the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) and the International Centre for the Settlement of Investment Disputes (ICSID). A roster of potential panelists is to be established for Chapter Eleven, whose members shall have expertise in investment law or practice. It is slated to be completed in the spring of 1999.

The first investor-state complaint to be submitted to arbitration pursuant to NAFTA Chapter Eleven with the Government of Canada was launched by a U.S. company, Ethyl Corporation Inc., on April 14, 1998. Ethyl Corporation Inc. alleged that the federal Manganese-based Fuel Additives Act relating to the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT) breached Canada's obligations under NAFTA Chapter Eleven, and that these breaches harmed its investment in Canada. Following the Government's response to the

recommendations of a separate dispute settlement panel established under the Agreement on Internal Trade (AIT) which found the Act to be inconsistent with the objectives of the AIT, on July 20, 1998, the Government moved to resolve other challenges to the legislation, and agreed to a payment of US\$13 million to Ethyl, representing its reasonable costs and lost profit in Canada. Following this settlement, Ethyl terminated its legal actions.

The second investor-state complaint involving the Government of Canada to be submitted to arbitration pursuant to NAFTA Chapter Eleven dispute settlement procedures was launched by the U.S. company S.D. Myers Inc. on October 30, 1998. S.D. Myers alleges that the Canadian export restriction on PCB wastes that was imposed under the PCB Waste Export Interim Order, and subsequently rescinded, breached Canada's obligations under NAFTA Chapter Eleven, prohibited the investor from doing business in Canada and damaged its investment in Canada. Arbitral proceedings are underway.

Two U.S. investors in Canada (Sun Belt Water Inc. and Pope & Talbot Inc.) served Canada Notices of Intent to Submit Claims to Arbitration on December 2, 1998, and December 24, 1998, respectively. As of March 1999, neither of these complaints has resulted in a request for arbitration. In its Notice of Intent, Sun Belt Water Inc. alleges that Canada breached its obligations under NAFTA Chapter Eleven through the actions and conduct of British Columbia in a separate lawsuit, and that Sun Belt Water Inc. has suffered a loss as a result of this breach. In its Notice of Intent, Pope & Talbot Inc. alleges that Canada breached its obligations under NAFTA Chapter Eleven by implementing the Canada-U.S. Softwood Lumber Agreement in a manner which discriminated against the company's investment in Canada, and that these breaches have harmed the U.S. investor.

As of March 1999, several cases involving Mexico and the United States are before arbitral tribunals under the investor-state dispute settlement provisions of NAFTA Chapter Eleven.

Chapter Fourteen

For financial services concerns, the NAFTA establishes a mechanism for the settlement of disputes by providing that Section B of Chapter Twenty shall apply, with modifications. The Agreement requires that a separate roster of potential panelists be established for Chapter Fourteen, whose members shall have expertise or experience in financial services. The Chapter Fourteen roster is currently in place.

There have been no consultations or cases under Chapter Fourteen.



**The North American
Agreements on Labour and
Environmental Cooperation**

**were designed to facilitate
greater cooperation between
the partner countries**

AT FIVE YEARS

N A F T A

The North American Agreements

on Labour and Environmental Cooperation

Negotiated and implemented in parallel to the NAFTA, the North American Agreements on Labour and Environmental Cooperation were designed to facilitate greater cooperation between the partner countries in those areas and to promote the effective enforcement of each country's laws and regulations.

L a b o u r

“The North American Agreement on Labour Cooperation underlines the Government of Canada’s belief that trade arrangements must go hand in hand with social development and improved living standards. It also provides a framework for Canada, the United States and Mexico to work together to cooperate on the promotion and protection of key labour principles in the areas of industrial relations, employment standards and occupational safety and health.”

The Honourable Claudette Bradshaw
Minister of Labour

The Commission for Labour Cooperation was created in 1994 by the North American Agreement on Labour Cooperation (NAALC) to promote cooperation on labour matters between NAFTA members and the effective enforcement of domestic labour law. The Commission consists of a Council of Ministers (comprising the labour ministers from each country) and a Secretariat, located in Dallas, Texas. The Commission website is located at (www.naalc.org).

The Secretariat provides administrative, technical and operational support to the Council and is charged with the implementation of an annual work program. National Administrative Offices (NAOs), located in the departments responsible for labour in each of the three countries, serve as domestic implementation points for the Agreement. The current annual work program for the NAALC focuses on occupational safety and health, employment and job training, labour law and workers’ rights and productivity.

The Ministerial Council last met in Charlottetown in October 1998. Ministers completed a comprehensive examination of the operation and effectiveness of the NAALC after four years of implementation. Conclusions of



this review included recommendations for strengthening the program of international cooperation managed by the NAOs and reinforcing the ministerial consultation process by, for example, commissioning special studies.

The Canadian Intergovernmental Agreement regarding the NAALC provides a mechanism for provincial participation and has been signed by Alberta, Manitoba, Quebec and P.E.I. This agreement gives the provinces a means to participate in developing and managing Canada's involvement in the NAALC. With the combined participation of these provinces and the federal government, the NAALC now covers more than 40% of the Canadian workforce.

As of March 1999, a total of 20 submissions had been received under the NAALC since its entry into force in January 1994. Twelve of the submissions were directed at Mexico, six at the United States. Two of the submissions were directed at Canada (closure of a McDonald's franchise in St-Hubert, Quebec, while unionization efforts were underway; and collective bargaining rights for rural postal carriers at Canada Post, which the U.S. declined to accept). Two submissions have been received at the Canadian NAO: one regarding labour practices at a plant in Ciudad de Los Reyes, Mexico, and the other regarding enforcement by the U.S. of employment standards legislation in workplaces employing foreign nationals. An update on these submissions and further information is available from the Canadian Office for Inter-American Labour Cooperation at its website (<http://labour.hrdc-drhc.gc.ca/doc/nafta/>).

Environment

“Environmental issues are increasingly global in scope and require creative solutions. We need to ensure that trade agreements respect the sovereign right of governments to set environmental policy, while supporting trade goals. Together, the NAFTA and the North American Agreement on Environmental Cooperation ensure that trade liberalization and environmental protection are mutually reinforcing.”

The Honourable Christine Stewart
Minister of the Environment

The Commission for Environmental Cooperation (CEC) was created in 1994 by the North American Agreement on Environmental Cooperation (NAAEC) to enhance regional environmental cooperation, reduce potential trade and environmental conflicts and promote the effective enforcement of environmental law. It also facilitates cooperation and public participation in efforts to foster conservation, protection and enhancement of the North American environment. The Agreement, signed by Canada, Mexico and the United States, and implemented alongside the NAFTA, demonstrates that the objectives of sustainable development and trade liberalization can be pursued in a mutually reinforcing manner.

The CEC consists of three principal components: the Council, the Joint Public Advisory Committee (JPAC) and the Secretariat. The Council, which is the governing body of the CEC and is composed of cabinet-level representatives from each of the three countries, most recently met in Mérida, Mexico, in June 1998. The Council reaffirmed its commitment to the CEC and called for a focus on environmental sustainability in open markets, and stewardship of the North American environment as outlined in its *Shared Agenda for Action*. This work program focuses on promoting trade in environmentally friendly goods and services and exploring the linkages between environment, economy and trade.

The Joint Public Advisory Committee is composed of 15 members, five from each of the three countries; it advises the Council on any matter within the scope of the Agreement. The Secretariat provides administrative, technical and operational support to the Council and is charged with the implementation of the annual work program under the direction of the Council. The Secretariat also plays a role in the consideration of complaints from non-governmental organizations or persons asserting a party's failure to enforce its environmental laws. So far, the Secretariat has received 20 submissions that qualified for further consideration by the Secretariat under the Submissions on Enforcement Matters process. These included eight submitted against Canada, four against the United States and eight against Mexico. All of these are at different stages of consideration by the Secretariat, ranging from assessing whether they merit requesting a response from a party to the actual preparation of a factual record in relation thereof. To date, a factual record for a Mexican submission has been developed and published and one for a Canadian submission is in preparation. A full list of these submissions and their status is available on the CEC website (www.cec.org). The Secretariat also prepares reports on any environmental matters within the scope of the annual program.

Regarding the NAAEC, the Canadian Intergovernmental Agreement provides a mechanism for provincial participation and has been signed by Alberta, Quebec and Manitoba. This agreement facilitates the provinces' participation in developing and managing Canada's involvement in the NAAEC.





**Canada will be working with its
NAFTA partners in the period
ahead to ensure that the
Agreement remains the vital,
state-of-the-art instrument
its architects intended**

The Road Ahead

The NAFTA is of course not a static agreement. It has created a living, breathing framework for managing current and future priorities in the North American marketplace. Beyond the economic sphere, the NAFTA has stimulated a stronger sense of community and shared interests among the North American countries, which in turn has fostered enhanced cooperation in areas such as education, science and technology, indigenous peoples and youth.

Canada will host the next meeting of the NAFTA Commission – marking the fifth anniversary of the NAFTA – in April 1999. This will be an ideal opportunity to evaluate the impact of the Agreement over the first five years, assess the ongoing and multi-faceted work program, and chart the way forward. As the NAFTA countries begin to develop a common vision for the North American trade policy framework heading into the new century, our early experience with the NAFTA and emerging challenges and opportunities will shape Canadian priorities.

Among them:

- ensuring the continued smooth implementation of the NAFTA, with particular attention to the few areas where we have slipped behind in our commitments, such as in respect to certain land transportation services;
- reviewing the investment chapter of the NAFTA, Chapter Eleven, to see if we can be more explicit in our common understanding of certain provisions, particularly those related to expropriation and compensation (the aim being to ensure that the provisions are interpreted consistently and in the manner intended by the parties, not to amend or renegotiate the NAFTA in any way);
- exploring areas that were either not fully addressed in the NAFTA or where further progress or even a different approach may be possible – this could include, for example, prospects for greater cooperation in respect to the use of trade remedies, or in making North American technical standards regimes more compatible and less trade-distorting;
- evaluating the impact of rapid technological change on the North American marketplace, so that new ways of doing business such as electronic commerce are fully reflected in the NAFTA rules;
- seeking greater openness and transparency in the NAFTA institutions across the board, both to demystify and broaden public understanding of the NAFTA and to ensure that the work program is as relevant and responsive as possible to those it is intended to serve; and
- exploring opportunities for greater cooperation in the development and interaction of our trade, labour and environment policies, so that the goals of trade liberalization, sustainable development and enhanced respect for workers' rights are pursued in a mutually reinforcing manner.

As we look back over the first five years of the NAFTA, there is little doubt that the Agreement has served Canada exceedingly well. As is clear from the foregoing, however, much remains to be done. Implementation of the NAFTA remains a work in progress, and the rapidly changing nature of the North American marketplace requires continuous adaptation to ensure that new priorities are addressed and that the “rules of the game” remain current and relevant. Canada will be working with its NAFTA partners in the period ahead to ensure that the Agreement remains the vital, state-of-the-art instrument its architects intended. This will solidify Canada's standing as one of the world's premier trading nations with a dynamic, well-diversified and globally competitive economy.