++

NAFTA

NORTH AMERICAN FREE TRADE AGREEMENT

++

MICHAEL LYNN GABRIEL
ATTORNEY AT LAW
B.S., J.D., M.S.M. DIP. (TAX), (LL.M.)

NAFTA

TABLE OF CONTENTS

INTRODUCTION 4

1. CANADIAN LAW ON FOREIGN INVESTMENT 11

2. MEXICAN LAW ON FOREIGN INVESTMENT 18

3. TARIFFS AND COUNTERVAILING DUTIES 29

4. CUSTOM PROCEDURES 49

5. COMPETITION, ANTITRUST AND GOVERNMENT PROCUREMENT . . . 61

6. ENERGY 76

7. CROSS BOARDER TRADE AND SERVICES 86

8. INVESTMENT AND INVESTMENT DISPUTES 106

9. FINANCIAL SERVICES 120

10. TELECOMMUNICATIONS 130

11. INTELLECTUAL PROPERTY 144

12. HOUSEHOLD GOODS AND FURNITURE 162

13. TEXTILES AND APPAREL INDUSTRY 177

14. MISCELLANEOUS CONSUMER INDUSTRIES 191

15. LUMBER, WOOD AND PAPER PRODUCTS 202

16. CONSTRUCTION INDUSTRIES 215

17. AGRICULTURE 228

18. COAL AND LIGNITE MINING AND MINING EQUIPMENT INDUSTRIES . 243

19. MEDICAL DRUGS AND EQUIPMENT 255

20. ENVIRONMENTAL REGULATIONS 270

21. DISPUTE RESOLUTION PROCEDURES 278

22. INDUSTRIAL AND METAL WORKING MACHINERY 285

23. ELECTRONICS INDUSTRY 298

24. METALS AND MISCELLANEOUS METAL FABRICATING INDUSTRY . . 309

25. CHEMICAL, PLASTICS AND RUBBER INDUSTRIES 321

26. PUBLISHING, PRINTING AND PHOTOGRAPHIC INDUSTRIES 331

APPENDIX 344

INTRODUCTION

The North American Free Trade agreement (NAFTA) is the most important and expansive trade agreement ever created. The signatories of NAFTA are Canada, Mexico and The United States. Several Central American countries have expressed interest in joining NAFTA as well. NAFTA is the largest free trade zone in the world. NAFTA creates a single $6.5 trillion market with 370 million persons. The primary aspect of NAFTA is its tariff elimination feature. Prior to the enactment of NAFTA Mexican import tariffs were 2.5 times greater on American and Canadian goods than the import tariffs charged by the U.S. or Canada on Mexican goods. Nearly all tariffs on Canadian, Mexican, and American goods are scheduled to be slowly eliminated within 10 years.

NAFTA is in many ways a continuation of the 1988 Canada-United States Free Trade Agreement (CFTA). As a result of the enactment of the CFTA, trade between Canada and the United States experienced unprecedented growth. Both Canada and the United States prospered as a result of the increased trade to an extent that exceeded expectations. Canadian trade in 1992 accounted for 1.5 million U.S. jobs. It was the success of CFTA that prompted Canada and the United States to approach Mexico with the idea of creating a similar program for all of North America.

Mexico, after decades of isolationism, was receptive to the idea of a North American free trade zone. Until 1986 Mexico's

markets had essentially been closed to foreigners. As a result, the Mexican economy had stagnated. In 1986, Mexico had eased some of its restrictions to foreign investment and opened many of its markets. The result was an immediate success. The year Mexico opened its markets (1986) U.S. trade with Mexico was $17.8 billion. In 1992, U.S. trade to Mexico had increased to $40.6 billion, an increase of 228%. Mexico is the U.S.'s second largest market for manufactured goods, much larger than Japan. U.S. trade to Mexico in 1986 supported nearly 700,000 jobs scattered throughout the United States. NAFTA is projected to create another 200,000 U.S. jobs in its first year. Mexico was the third largest trading partner of the United States even before NAFTA. The per capita income for the average Mexican is relatively low compared to a U.S. citizen, but there are more than 90 million Mexicans. The purchasing power is impressive.

NAFTA coverage will extend to products and goods originating in North America (Canada, America or Mexico) or goods and products that contain nonregional materials that have been transformed to such an extent by the manufacturing process that they are now considered as originating in North America. There is a de minimis rule for many products that permits as much as 7% of a product to contain non-North American materials without substantial modification.

Special treatment under NAFTA is afforded automotive goods. Tariffs on passenger cars, light trucks and other vehicles and

parts are to be slowly eliminated, usually in five years but not more than 10. Cars and trucks must have at least 62.5% North American content (be composed of North American originating materials). Other vehicles and parts must have a 60% content. Mexico has agreed to end its Auto and Auto-Transportation decrees that impose production and sales restrictions by 2004. In 2009 Mexico will begin a 10-year elimination of its imports of North American used vehicles. Estimates for the U.S. automobile industry predict that for the first year NAFTA sales will rise from less than 2,000 vehicles to more than 60,000 vehicles.

Most tariffs on textiles and apparel were eliminated immediately upon enactment of NAFTA with the remainder to disappear by 2004. Most U.S. quotas on Mexican textiles and apparel were eliminated on those goods that meet NAFTA's rules of origin (met the required percentage of North American origin).

Broadly speaking, a free trade zone in North America will remove or gradually reduce barriers to trade and permit a more profitable growth of trade among all of the members. Established economic policies of free trade increase efficiency in trade and lead to increased trade and overall improvement in economic well-being. Most economists have predicted that NAFTA will generate a discernible increase in U.S. jobs. The Institute for International Economics predicts a net gain of 170,000 jobs by 1995 with 316,000 new jobs against a loss of 145,000 jobs.

The average Mexican purchases more U.S. imports than the

average person in the European community or Japan. Seventy cents of every dollar a Mexican spends on foreign products is spent for a U.S. product. In 1992, the average Mexican spent $450 on U.S. produced products. In contrast, the average Japanese individual only spent $385 on U.S. products. Mexico is the second largest Market for U.S. telecommunication exports in the world, which increased 20% between 1991 and 1992.

NAFTA will have both its good points and its bad points. Personal feeling on NAFTA will depend on how it affects the individual on a personal basis. The International Trade Commission has estimated that the U.S.'s horticultural, tuna, apparel, construction and household glassware industries are to be the most adversely affected by NAFTA. In contrast, the greatest gains are estimated in U.S. agricultural and capital goods. Capital goods are goods used in the production of other goods: industrial buildings, machinery, equipment, highways, office buildings, government installations. These goods form a nation's productive capacity.

Capital goods have been the slowest increasing export category of U.S. exports between 1988 and 1993. Capital goods remain the largest single export item to Mexico but the percentage has been dropping. In 1987, the percentage of total U.S. capital goods exported to Mexico was 40%. In 1992, this percentage reduced to 33%. The percentage is misleading to an extent because overall trade with Mexico during this period increased by 228%. So the net

cash value of capital exports to Mexico was nearly twice what it had been in 1987. Capital goods account for 40% of all U.S. exports to developing countries and 39% of all U.S. exports in total. The exports of capital goods to Mexico support major employment in high paying U.S. jobs and will continue to do so for many years to come.

Prior to NAFTA, Canada had little trade with Mexico. Canada's reason for joining NAFTA was to assure that it did not lose benefits from its existing free trade agreement with the United States. Canada also recognized the possible advantage that might accrue from having the sizeable Mexican market opened to it. Generally, the tariff reduction schedule established under CFTA remains in force for trade between the U.S. and Canada at lower rates than most of the NAFTA schedules. The result is that most goods traded between Canada and the U.S. are very nearly tariff free whereas goods traded to and from Mexico will still in many cases be subject to tariffs for the next five or 10 years. Canada and the U.S. still have a slight incentive over the next few years to trade between themselves rather than with Mexico until all tariffs are eliminated.

It has been asserted that NAFTA is the best prospect for reducing illegal immigration from Mexico to the United States. A study on the economic impact of illegal immigration was performed in 1991 by Robinson and Hinojosa-Ojeda of the University of California. The report concluded that free trade coupled with

internal reforms could reduce immigration (both legal and illegal) by 260,000 to 1.1 million people by the year 2000. Another study by William Spriggs of the Economic Policy Institute (an opponent to NAFTA) concluded that NAFTA would result in 1.4 million fewer Mexicans migrating to the U.S. by the year 2000. It has also been concluded that a reduction of illegal migration to the U.S. will result in the real wages of U.S. residents increasing as much as 6%. NAFTA does not interfere with a member's right to set its own environmental, health or safety standards. Nonetheless, NAFTA requires each country to make laws and set standards compatible with the other two. Supplemental agreements on environmental issues require that each country actively enforce its environmental laws equally and without discrimination against persons or entities from the other NAFTA members.

Commissions are to be established to settle disputes when a government does not enforce its laws with the result that investors, persons or businesses from the other NAFTA countries are placed in a competitive disadvantage. If for a period of time the nonenforcement of the law continues, trade sanctions may be imposed under NAFTA against the offending country. The United States reserves the right to enforce its own trade laws, and if NAFTA is not operating for the benefit of U.S. workers and businesses, the U.S. may withdraw from NAFTA at any time after six months notice.

An argument against NAFTA often heard is that U.S. companies will abandon the U.S. and relocate in Mexico. While this will

undoubtedly occur in some glaring instances, it will not be the rule. Even before NAFTA, Mexico permitted regulated foreign investment. In addition, there is the maquiladora program that permits American companies to open plants directly across the border and have the finished products shipped to the U.S. tariff free. Despite this fact, only a few foreign companies have opened plants in Mexico and the U.S. is not being overcome with imports from such plants. In fact, the opposite has occurred: U.S. exports from highly paid U.S. workers have flooded Mexico. The economic message is that low wages alone do not guarantee success. Quality of the work and high productivity are more important than low wages alone. The text of NAFTA may be obtained by calling the U.S. Printing Office at (202) 783-3238 or by fax at (202) 512-2250. Payment for the order may be made by credit card using VISA or Mastercard. Documents can also be ordered by mail sent to:

. . . . Superintendent of Documents
. . . . U.S. Government Printing Office
. . . . Washington, D.C. 40402

The prices for the NAFTA publications are:

TEXT OF NAFTA (VOLUMES 1 and 2) 041-001-00376-2 $41.00

TARIFF SCHEDULES (ANNEX 302.2):

UNITED STATES . . 041-001-00377-1 $34.00

MEXICO 041-001-00391-6 $34.00

CANADA 041-001-00390-8 $30.00

SUPPLEMENTAL AGREEMENTS 041-001-00411-4 $6.50

The tariff schedules are the most important NAFTA books. These schedules list the tariff rate that each party imposes on the imported goods from each of the other members and the tariff elimination schedules.

UUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUU

CHAPTER 1

CANADIAN LAW ON FOREIGN INVESTMENT

UUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUU

INTRODUCTION

This chapter is not a part of NAFTA. It is, however, included in this book to give the reader a very basic summary of how foreign investors and their investments are treated in Canada. NAFTA will have very little effect of the Canadian treatment of foreign investments in most areas. The major areas on which NAFTA will apply are covered throughout this book.

In 1988, Canada replaced its Foreign Investment Review Act and with the Investment Canada Act R.S.C. (I.C.A.). It is the stated purpose of the I.C.A. that:

> "Recognizing that increased capital and technology would benefit Canada, the purpose of this Act is to encourage investment in Canada by Canadians and non-Canadians -that contributes to economic growth and employment opportunities and to provide for the review of significant investments in Canada by non-Canadians in order to ensure

such benefit to Canada."

This chapter is directed toward explaining how the I.C.A. has been applied and implemented. Investors from both the United States and Mexico will still be bound by the provisions of the I.C.A. unless specifically changed or exempted by NAFTA. Questions regarding the I.C.A. can be answered by writing to Investment Canada, P.O. Box 2800 "D", Ottawa, Canada, K1P6A5.

A. NOTICE REQUIREMENTS FOR FOREIGN INVESTMENTS

Under section 10 of the I.C.A., foreign investments are subject to complying with notice requirements and review unless otherwise exempt. For new investors, the most important aspect of this section is that foreign investments in most new Canadian businesses or in non-reviewable acquisitions are not subject to the notice requirements of I.C.A, unless the cultural heritage or national identity of Canada or any of it provinces is involved. There are certain transactions, involving vital national interests, which subject to full review under the I.C.A. and must pass a "Net Benefit to Canada Test" in order to be permitted.

For the purpose of the I.C.A., the following definitions are utilized:

1. A Canadian business is defined as being one which meets all of the following requirements:

    a. it carries on business operations in Canada;

    b. it maintains a place of business in Canada;

c. its employs people in Canada; and

d. maintains assets in Canada for use in the business.

2. A new-Canadian business involving a foreign investor that was not previously in existence by the foreign investor and either

a. is unrelated to any other business in Canada in which the foreign investor is engaged; or

b. is affiliated to another business operated by the foreign investor which is given an exception by the federal cabinet because the business activity is considered related to the cultural heritage or national identity of Canada.

3. A Canadian is defined, under Canadian law, as being:

a. a Canadian citizen;

b. a legal permanent resident of Canada;

c. the federal and provincial government and agencies,

d. a corporation, partnership or trust that is controlled by Canadians.

4. A non-Canadian means any corporation, partnership, trust, individual or government which is not Canadian.

1. PROCEDURE

Foreign investors are required to file an application for all non-reviewable transaction or new-Canadian business creations within 30 days with the agency created under the I.C.A. to oversee the I.C.A. The agency is then required to issue a receipt to the

applicant stating that:

1. the proposed transaction is unconditionally non-reviewable; or
2. there will be no review of the proposal unless:
   (a) a notice of review is given within 21 days of the receipt of the application; or
   (b) the federal cabinet exercises its authority under section 15 of the I.C.A. to review investment involving Canada's cultural heritage or national identity.

The only business activities that have been found, to date, to related to Canada's cultural heritage or national identity are those relating to the publication industry, film industry and entertainment (movie and music) industry. Upon review, the investment evaluated as to whether it is in the public interest to permit the investment to go forward.

B. REVIEW OF FOREIGN INVESTMENTS

The I.C.A. requires review of:

1. all direct acquisitions, by foreign investors, of Canadian businesses having assets of more than $5,000,000. Under the Canada-United States Free Trade Agreement, direct acquisition by Americans are not reviewable unless the assets of the acquired businesses exceed $150,000,000.

2. all indirect acquisitions, by foreign investors, of

Canadian businesses having assets:

a. between $5,000,000 and $50,000,000 when the assets of the acquired businesses represent more than 50% of the total international transaction; or

b. under the Canada-United States Free Trade Agreement, acquisitions by Americans are not reviewable except for businesses involving the production of uranium, or the oil and gas industry. Indirect acquisitions in the oil and gas industry are reviewed when the assets of the acquired businesses exceed $500,000,000) and are more than 50% of the total international transaction.

If a proposed investment is subject to review, then the foreign investor is required under section 17(1) of the I.C.A. to file an additional application containing specific responses to questions required to be propounded under the regulations.

1. NET BENEFIT TO CANADA TEST

Investments which are reviewable under .the I.C.A. are subject to the net benefit to Canada test which replaces the earlier significant benefit to Canada test. Under the I.C.A., the Canadian Minister, responsible for the I.C.A. administration, has the final authority to determine whether the proposed investment will be of net benefit to Canada. Unless special permission is obtained, no action may be taken to implement the investment transaction prior to a favorable determination on the application. The Canadian

Minister may permit an investment to go forward pending a final ruling on the application where:

1. it is felt that the delay will cause an undue hardship to the investor; or
2. a Canadian business would suffer undue hardship as a result of the delay;
3. the investment is an indirect acquisition of a Canadian business; or
4. where the government reviews investments related to the cultural heritage or national identity of Canada.

The net benefit test requires that the Minister consider the effect of the proposed investment:

1. on the level and nature of the economic activity of Canada. Included in this is effect on employment, resource processing, utilization of Canadian parts and services, and its effect on Canadian exports;
2. the participation of Canadians in the Canadian businesses and new-Canadian businesses affected;
3. on business productivity, research and development, and product varietability;
4. on competition in Canada and abroad;
5. on Canada's national, industrial and economic public policies on both domestic and world affairs.

The Minister has 45 days after the submission of the application

for transactions under review to state that the proposed transaction passes the net benefit test or that another 30 days is needed to complete the review. If the application is not denied within the time limits, then it is impliedly passed.

CHAPTER 2

MEXICAN LAW ON FOREIGN INVESTMENT

This chapter is not a part of NAFTA. It is, however, included to give the reader a summary of how foreign investors and their investments are treated in Mexico. NAFTA will have very little effect on the Mexican treatment of foreign investments in most areas. The areas in which NAFTA will apply are discussed in Chapters 1 and 2 (Canadian and Mexican Foreign Investments).

Foreign investments in Mexico are primarily governed by the Law to Promote Mexican Investment and Regulate Foreign Investment (LPMI). LPMI considers foreign investment to be any investment in Mexico that is made by:

1. Foreign legal entities (corporations, trusts, partnerships or limited liability companies).
2. Foreign individuals.
3. Foreign economic entities without legal personality, such as associations.
4. Mexican corporations, trusts, partnerships or limited liability companies which are controlled by foreigners in any manner.

Investment in a business by foreign investors who are given the Mexican immigration status of "immigrados" will be deemed an

investment by a Mexican national if:

1. The business activities do not relate to economic decision making or control abroad, and
2. The business activity or geographical area in which the business will operate is not restricted solely to Mexican citizens or Mexican companies with a clause in their formation documents forbidding foreign participation.

Under the LPMI, any foreigner investing in Mexico had to agree not to seek protection from his own government against unfair Mexican business practices. Under LPMI, any foreigner who complained to his government regarding treatment in Mexico risked immediate and automatic forfeiture of all his assets in Mexico. This law was used to terrorize foreign investors. NAFTA changes this law to the extent that U.S. and Canadian investors can report NAFTA violations to their country without fear of automatic confiscation of their investments. For non-Canadian or American foreign investors, the LPMI restrictions still apply.

I. RESTRICTED ACTIVITIES

LPMI specifically reserves for the government of Mexico the management and control of many of its major industries, most particularly, the following industries:

1. Petroleum, hydrocarbons and basic petrochemicals under the state enterprise "PEMEX."
2. Nuclear and electrical production under the state

enterprise "CFE."

3. Mining and development of natural resources. In this area foreign investors are permitted to invest in an ordinary mining concession to an extent of 49%, for special minerals the concession is limited to 34%.
4. Railroads.
5. Banking.
6. Postal, telegraphic and radio-telegraphic communications.
7. Coining and printing of money.

Foreign investors, under the LPMI, wishing to conduct business in such industries must request permission from the government. In most instances, permission is denied. When permission is granted, it is usually in a partnership arrangement with the government wherein the government controls 51% or more of the business. In some instances, where the construction of a plant or processing facility is required, the foreign investor builds the plant and must sell it to the government upon completion. NAFTA changes some of these requirements (as discussed throughout this book). This law, however, remains in effect for foreign investors from non-NAFTA countries.

In addition to the activities and industries reserved to the government, LPMI specifically reserves participation in certain industries for Mexican citizens or Mexican companies that specifically exclude foreign investment or participation in their

formation documents. These reserved industries are:

1. Radio and television.
2. Overland transportation.
3. Forestry.
4. Gas distribution.
5. Nonbanking financial services.

The above restrictions are eased and, in some cases, eliminated for foreign investors from Canada and the United States under NAFTA. The restrictions remain in effect for foreign investors from non-NAFTA countries.

LPMI specifically permits foreign participation in the following businesses:

1. Sale of telephones (not the operation of a telephone service company).
2. Explosives and firearms manufacturing.
3. Financial leasing.
4. Secondary petrochemicals to 40%.
5. Automotive parts manufacture to 40%.
6. Any other approved investment to a maximum participation of 49%.

When it is deemed in the best interest of Mexico, the National Commission on Foreign Investment may permit a higher participation by foreign investors. In determining whether or not to permit the greater participation, the following must be considered:

1. The extent of Mexican investment involved.
2. Any displacement of business as a result of the investment and business operations.
3. Effect of exports and imports,
4. Effect on Mexican employment.
5. Amount of Mexican products and components used in the finished product.
6. Capital structure of the business involved.
7. The extent the foreign investor identifies with Mexico's national interest.
8. The foreign investor's relationship with other foreign nations.

LPMI permits a foreign investor to invest to 100% in new business activity if:

1. Any amount of preoperative investment is set by the Secretariat of Commerce and Industrial Promotion in fixed assets that are used to conduct business activities.
2. All of the investment comes from outside Mexico from non-Mexican contributions or non-Mexican loans. Investors doing business in Mexico may invest resources derived from Mexican operations in the new business. At the end of the preoperative period, such investments must constitute at least 20% of the aggregate investment in fixed assets.

3. The industrial facilities are not located in the highest industrial concentration zones that are already under a growth rate that is determined and controlled by the Secretariat.
4. The foreign exchange balance of payments of the business established must break even during its first three years of operation.
5. The business creates permanent jobs and engage in the training, development and education of workers.
6. The business uses appropriate technology and obeys Mexican environmental laws.

These LPMI regulations regarding foreign investments are relaxed for foreign investors from the United States or Canada under NAFTA and are discussed in their appropriate chapters throughout this book.

II. FOREIGN OWNERSHIP OF LAND OR WATER

LPMI bars foreigners, foreign companies and Mexican companies, without an anti-foreign-association clause in their formation documents, from owning any interest in land or water within 100 kilometers of the borders and 50 kilometers of the coast or tourist facilities. A foreign individual, but not a foreign company, can apply for a permit from the Ministry of Foreign Relations to own land, water or a concession to exploit water. To get a permit, the foreign individual must agree to comply with the requirements

of Article 27(I) of the Mexican Constitution.

The Ministry of Foreign Relations may permit Mexican credit institutions to acquire title to property located within 100 kilometers of the border and 50 kilometers of the coast or to acquire the shares of Mexican companies owning such real property and to hold such property or shares in trust. The trustee is permitted to lease the property in increments of 10 years. The trust may last to 30 years and is renewable for another 30 years for a maximum of 60 years. Upon the termination of the trust, the shares of the Mexican property must be distributed to Mexican nationals or to a Mexican company that has a clause forbidding foreign participation certificates that are nominative and nonamortizable. The trust beneficiary has the right to use or enjoy realty, receive a liquid part of proceeds from securities, rights of property and net proceeds of sale.

III. TRUSTS

In addition to the use of trusts to own land or water, trusts can also be used to hold shares in Mexican companies that engage in the following activities:

1. Maritime and air transportation.
2. Gas distribution.
3. Manufacture of secondary petrochemical products.
4. Manufacture of automobile parts.
5. Mining.

6. Fishing.

7. Telecommunications.

For businesses involving items 2 and 3, a foreign investor is permitted to own 40% of the business directly and the remaining 60% can be owned through a Mexican trust. A foreign investor can own 49% of a mining business (item 5) directly and can own the remaining 51% in a Mexican trust. These trusts require prior authorization and have a duration of 20 years. The voting of shares of the trust is done through technical committees. The trusts established for items 1 and 2 must have equal numbers of Mexicans and foreigners on their committees with a member appointed by the Ministry.

Foreigners are permitted to purchase shares in Mexican public companies through the use of Mexican trusts. The trust institution must invest its assets in Mexican companies. The shares acquired by the trust company are issued in the neutral "N" series because the foreigners owning the certificates of participation in the shares are not permitted any voting rights. Such foreigners only have pecuniary rights derived from stock ownership.

IV. ACQUISITION OF CONTROL OVER EXISTING BUSINESSES

The LPMI requires foreigners to obtain approval from the Commission of Foreign Investment prior to acquiring 25% of the corporate capital or 49% or more of the fixed assets of an existing Mexican business. The approval requirement extends to a Mexican

company with over 25% foreign ownership or control. The leasing of business assets from an existing business is considered the same as the acquisition of assets. Authorization is also required for foreign investors to assume the management of an existing business. Acts taken without such prior authorization are null and void from the beginning.

Increases in the capital stock of an existing business are permitted without authorization if the proportion between foreign and Mexican investments remain the same. Foreign investors who have owned shares in a business for three years can purchase more than 49% of the shares of the business provided the investors:

1. Invest in new fixed assets valued at 30% or more of the net worth of the fixed assets of the company in its previous fiscal year, and
2. Comply with regulations for stock ownership established by the Commission. Acceptance of the conditions is presumed by purchase of the shares.

V. AUTHORIZATION FOR ACQUIRING INTEREST IN NEW BUSINESSES

The LPMI does not require authorization for the opening or relocation of businesses solely involved in industry, commerce or services if they meet the following requirements:

1. For new businesses, if:

   (a) Opened or operated by maquiladoras, or

(b) Opened and operated by other companies, if the investors:

(i) Invest in fixed assets in an amount equal to 10% of the amount of the net value of fixed assets reported to the Treasury Ministry the previous fiscal year, and

(ii) Agree to comply with Commission regulations, or

(c) They are survivors of mergers.

2. For relocation of existing businesses, if not moved to the growth-controlled areas determined to have the highest industrial concentration.

In order to spur business development, no authorization is required for foreign investment in new fields of economic activity or for new products if the foreign investors agree to the above conditions. Such agreement is inferred by the initiation of such activities.

VI. REGISTRATION BY FOREIGN INVESTORS

The LPMI requires foreign investors to register with the National Registry of Foreign Investment. Such registration for foreign individuals or foreign legal entities occurs within 40 business days following the:

1. Purchase of or leasing of assets as defined in Article 8.
2. Opening or beginning of operations of an enterprise.

3. Acquisition of beneficiary rights under a Mexican trust. Mexican companies are required to apply for registration within 40 business days if:

1. It has or should have knowledge of the direct participation of foreign investors in its stock.
2. It has or should have knowledge of the indirect participation of foreign investors through trusts in the capital stock.

Mexican trusts must comply with the registration requirements within 60 days following creation and investments. All applications and registrations must be written in Spanish and submitted in triplicate. The applications are submitted to the Oficia de Partes de la Secretaria de Comercio y Fomento Industrial. Registrations are effective on the date the application is faxed or sent by registered mail.

NAFTA affects some but not all of the prior existing law. There are still many areas of investment that are off-limits to U.S. citizens and Canadians. On the whole, limitations on foreign investors of NAFTA nations are reduced but not entirely eliminated. This book summarizes the differences between current law and the changes wrought by NAFTA.

CHAPTER 3

TARIFFS AND COUNTERVAILING DUTIES

I. INTRODUCTION

The major element of NAFTA is its elimination of tariffs and import duties on goods that originate within North America. Elimination of tariffs will generate significant economic growth in each of the countries. The countries are required to confer "National treatment" on the other country's goods. Each country is required to treat goods produced by the other countries in the same manner as the same goods produced domestically are treated. There are exceptions to this National treatment. They center on Canada's treatment of liquor and distilled spirits. This National treatment of each other's imported goods is similar to obligations that already bind the countries under GATT.

NAFTA permits each of its members to enact antidumping and countervailing duties on the goods imported from the other NAFTA members. NAFTA concentrates on the review procedure used by the administrative agencies of its members on these topics. Binational review panels are created to resolve disputes regarding antidumping and countervailing duties. In addition, special procedures are set to convene a special committee to determine if a NAFTA member's domestic laws have hindered the binational review panel's work.

The fear has been raised that the tariff reductions implemented by NAFTA could result in a flood of imports that could endanger the continued existence of specific domestic industries. As a safety measure, NAFTA provides a procedure for a NAFTA nation to suspend tariff reductions to help an industry seriously affected by NAFTA imports.

A NAFTA participant may seek emergency action to suspend tariff reductions under the escape clause of the General Agreement on Tariffs and Trade ("GATT"). When a NAFTA nation exercises the GATT escape clause, tariffs import reductions on goods from other NAFTA nations will not be suspended unless they contribute substantially to the injury suffered by protected industry in the NAFTA importing nation. Emergency action is in a very real sense guesswork, and emergency safety measures are not often used. As a result, it is unclear how effective they will be if widely used. The purpose of NAFTA is to increase imports within NAFTA. Yet if increased free trade occurs, some domestic industries will be adversely affected. If this happens on a broad scale, requests for emergency relief may be too great and render NAFTA unworkable. This chapter discusses the tariffs under NAFTA and the market access provision.

II. TARIFFS ELIMINATION

Prior to the enactment of NAFTA, Mexico imposed an average tariff of 10% on most imported goods. They imposed a 20% tariff on

automobile products. The United States imposed a 2.5% tariff on automobiles and an average 3.9% tariff on other Mexican imports. NAFTA schedules elimination of tariffs within 15 years. NAFTA creates four separate tariff categories. Each category has its schedule for tariff elimination. The schedules are:

1. Schedule A duties among the countries were eliminated January 1, 1994. Schedule A goods are no longer subject to tariffs among the countries. Over half of all American exports to Canada and Mexico are on schedule A and are without any tariffs whatsoever.
2. Schedule B goods remain subject to tariffs that are reduced at the rate of 20% per year until 1 January 1998, when they become duty free.
3. Schedule C goods remain subject to tariffs that are reduced at the rate of 10% per year until January 1, 2003, when they become duty free.
4. Schedule D goods remain subject to tariffs that are reduced at the rate of 6.67% per year until January 1, 2008, when they become duty free.

Under NAFTA Annex 302.2, it is agreed between Canada and the United States that the 1988 Canadian Free Trade Agreement tariff reduction schedule remains in effect. Since CFTA was in effect five years before the enactment of NAFTA, duties on goods exported between Canada and the United States will be eliminated before

those goods exported to or from Mexico. Under CFTA, in 1994 Canadian steel producers will pay only 40% of the original tariffs on goods exported to the U.S., a 60% reduction under GATT. In contrast, under NAFTA, Mexican steel producers will pay 90% of the United States normal tariff.

III. IMPORT LICENSES AND QUOTAS

Under NAFTA Article 309, Mexico, Canada and the United States have specifically agreed to eliminate import licenses and quotas. Many industries, however, are exempt from this coverage. Specifically, import licenses and quotas are still imposed on:

1. Automobiles.
2. Automobile parts.
3. Agricultural produce.
4. Textiles.
5. Energy.

Mexico was given special permission, under NAFTA, to continue with licensing requirements for 10 years on designated manufactured items: until January 2003. Once NAFTA has been fully implemented, no import duties will be charged on components that originate in the one country (Mexico, Canada) for export to one of the others.

IV. EXPORT TAXES

Under NAFTA, each country does not impose taxes on exported goods unless the same tax is placed on identical nonexported goods. The United States, for example, could not impose an export tax of

10% on computer disks unless the same tax is also placed on its nonexported computer disks. An exception to this export tax prohibition is set forth in Annex 314 wherein Mexico was permitted to maintain export taxes on basic foodstuffs until January 2003. The following are the basic foodstuffs on which Mexico may continue to assess export taxes:

Beans	Beef	Beef Liver
Beef Steak	Bread	Brown Sugar
Canned Sardines	Canned Nuts	Canned Tuna
Canned Peppers	Chicken Broth	Condensed Milk
Cooked Ham	Corn Tortillas	Corn Flour
Corn Dough	Crackers	Eggs
Evaporated Milk	French Rolls	Gelatin
Ground Beef	Instant Coffee	Cookies
Margarine	Oat Flakes	Pasteurized Milk
Powdered Milk	Rice	Roasted Coffee
Salt	Soft Drinks	Soup Paste
Tomato Paste	Vegetable Oil	Vegetable Fat
Wheat Flour	White Sugar	

Mexico also reserved the right to impose an export tax on any other foodstuff to alleviate a critical shortage in Mexico. If there is a shortage of a foodstuff in Mexico, Mexico may impose an export tax on that item to relieve that shortage temporarily. Such an export tax may be applied for up to one year and extended thereafter with the consent of the parties.

V. DRAWBACKS AND WAIVERS

A duty drawback is the recoupment by manufacturers of import duties paid on foreign products that are later incorporated into goods produced for export among the parties. Under NAFTA Article 303, no member is permitted to refund, waive or reduce the amount

of customs owed on goods imported because the imported goods are to be exported to another member or to be used as material for goods to be exported to another member or to be substituted for an identical good that is used for material of a product to be exported to another member.

Under CFTA, a similar duty drawback program was incorporated between the U.S. and Canada for import duties on Asian products exported between the countries. Under CFTA, the drawback program between Canada and the U.S. was to stop in 1994. NAFTA, however, extended the drawback program under CFTA until 1996. Under NAFTA, a duty drawback program will exist on Mexican related trade until 2001. After 2001, components shipped to Mexico from a non-NAFTA country will no longer be eligible for a duty drawback when the finished product is exported to either Canada or the United States.

VI. COUNTRY OF ORIGIN MARKINGS

Under Article 401, the parties adopt a common marking procedure for goods exported between the countries. Goods exported from a NAFTA country to another NAFTA country will be governed by the NAFTA tariff elimination schedules provided:

1. The goods were completely manufactured in a NAFTA country from materials derived completely from a NAFTA country, or
2. The goods contain parts derived from a non-NAFTA country which were altered significantly as a result of

production in a NAFTA country.

Under NAFTA Articles 401 and 402, two tests were developed to determine if goods traded among NAFTA members have the required percentage of North American content to be covered by the tariff elimination schedules. These tests are discussed in greater detail in Chapter 3 (Customs).

VII. CUSTOMS USER FEES

Under CFTA, customs user fees from trade between the U.S. and Canada were to be eliminated in 1994. NAFTA did not change this time schedule and custom user fees are no longer charged between the U.S. and Canada.

NAFTA scheduled reductions of customs user fees on Mexican related trade. These fees will be eliminated by July 1999. Mexico charges 0.8% on the value of goods and the U.S. charges 0.17% of the import value to a specified ceiling. The elimination of customs user fees applies only to goods that meet the country's rule of origin. If the rule of origin is met on a good then neither the U.S. nor Mexico will impose a higher customs user fee than existed on the NAFTA adoption date. On July 1, 1999, all customs user fees on originating goods traded between Mexico and the U.S. will be eliminated.

VIII. BINATIONAL REVIEW PANEL

In creating binational review panels, NAFTA follows the procedures set forth in the 1988 Canada-United States Free Trade

Agreement (CFTA). The panels consist of five members assembled on a case by case basis for each dispute. The members are selected from a list of potential members that NAFTA nations maintain. Each of the two nations to the dispute selects two panel members. The fifth member is chosen by agreement of the two parties or, absent agreement, by lot.

Panel review of an antidumping or countervailing duty matter of one NAFTA member may be requested by either of the other NAFTA nations. If panel review is requested, judicial review of the NAFTA nation's administrative decision is waived. If panel review is not requested, judicial review is available. The standard of review to be exercised by a binational review panel is limited to determining whether the administrative determination was made in accord with the law of the NAFTA nation that rendered it. The panel must uphold an administrative decision of a member on antidumping or countervailing duties if that decision was made in conformance with the laws of that nation.

IX. EXTRAORDINARY REVIEW OF A BINATIONAL REVIEW PANEL'S DECISION

Generally, the decision of a binational review panel is not subject to any review. This means that, in normal circumstances, a decision from a binational review panel cannot be challenged either in a court or before another administrative agency. A specific exception to the premise of non-review exists for what is called an

"extraordinary challenge of a binational review panel decision."

As with CFTA, NAFTA permits extraordinary challenges of a binational review panel's decision. The review is conducted by a three- member committee. Each NAFTA nation selects one member of the committee from a list of pre-approved judges. Then, one of the NAFTA members to the dispute will be selected by lot to chose the third member.

The review of the binational review panel's decision is limited to determining if:

1. A panel member violated the NAFTA rules of conduct for conducting a panel.
2. A panel member was guilty of gross misconduct, bias or had a serious conflict of interest that rendered his objectivity suspect.
3. The panel failed to follow a fundamental rule of NAFTA procedure as set forth and thus deprived a NAFTA member of a fair hearing.
4. The panel acted arbitrarily and capriciously in exercising their authority.

If a disputing party contends that the other party's domestic law is interfering with the operation of a binational review panel, the party can request consultation with the other member. If the consultation fails to resolve the matter, a special three-member committee is chosen in the same manner as the panel for an

extraordinary challenge.

The special committee will determine if the domestic law of the party in question is interfering with the operation of the binational review panel. If the special committee finds the domestic law does in fact interfere with the operation of the binational review panel, the involved NAFTA members must meet to resolve the matter. If the matter is not resolved by consultations, the complaining NAFTA nation may either decide to no longer participate in the binational review process with the defending NAFTA member, or suspend its NAFTA agreement with that member.

X. EMERGENCY ACTIONS

A. BILATERAL ACTION

A bilateral action under NAFTA is an emergency action by one NAFTA participant against another NAFTA participant to suspend a tariff reduction on an item. Bilateral actions are governed by the procedures set forth in Article 801, which reads in pertinent part as follows:

> "If a good originating in the territory of a party as a result of the reduction or elimination of a duty provided in this Agreement is being imported into the territory of another party in such increased quantities, in absolute terms, and under such conditions that the imports of the good from that party alone constitute a substantial cause of serious injury or threat thereof to a domestic industry producing a like or directly competitive good, the party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury:
>
> (a) suspend the further reduction of any rate of duty

provided under this Agreement on the good,

(b) increase the rate of duty on the good to a level not to exceed the lesser of:

(i) the most-favored nation (MFN) applied rate of duty in effect at the time the action is taken, and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement, or

(c) In the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on the good for the corresponding season immediately preceding the date of entry into force of this Agreement."

When emergency action is initiated by a member, written notice of it and requesting consultations must be given to each NAFTA nation affected. The emergency action must be initiated within one year of the date written notice was given.

Canada is not governed by the bilateral emergency action provisions of Article 801 when dealing with the United States. Canada has elected to remain covered by Article 1101 of the Canada-United Free Trade Act (CFTA). CFTA Article 1101 differs from the NAFTA article in two major areas, specifically, it:

1. Limits the term of any emergency action to no more than three years. NAFTA limits the maximum time for an emergency action to four years.

2. Sets the duty rate on goods at the termination of an emergency period at the rate that would have been in effect had the emergency action not been taken. NAFTA, in contrast,

permits a transition period during which the duty rate for goods covered by an emergency action is gradually reduced to the level that it would have been had the emergency action not been undertaken.

Under NAFTA Article 801, a NAFTA nation is permitted to initiate an emergency action during the tariff reduction period without the consent of the other NAFTA members. After the tariff reduction period has run and the tariffs should be eliminated, an emergency action can be instituted only with the consent of the affected NAFTA member. To illustrate after 126 years (after all tariffs are eliminated), if Mexico wants to take emergency action to add a tariff to protect its steel industry from U.S. imports, it can do so only with U.S. consent. If the U.S. wants to add tariffs to protect its agriculture from Mexican or Canadian imports it can only do so with Mexico's or Canada's consent.

In order for emergency action to be taken, the injury to the affected industry must have been caused by the reduction of tariff duties under NAFTA and not other economic reasons. The emergency action that can be taken under NAFTA is:

1. A suspension of tariff reductions to be made in the future under the schedule adopted under NAFTA, or
2. An increase in tariff being charged that will not exceed:

   (i) The importing nation's most favored nation duty rate

for the good at the time the emergency action is taken, or

(ii) The most favored nation rate that was in effect just prior to the effective date of NAFTA on January 1, 1994.

An emergency action can only be taken once on a particular good. Tariff reductions can be stayed for a maximum period of only three years although an extension for another year is possible for extremely sensitive goods. Any continuation of the tariff reduction beyond this maximum period can occur only with the consent of the NAFTA exporter whose goods are affected.

NAFTA provides a procedure for compensation to the affected nation for the effects caused by any bilateral action. Under NAFTA, once a bilateral action is undertaken, the nation taking the action must offer trade concessions to the affected NAFTA participant. The trade concessions must have "substantial equivalent trade effects" to the affected NAFTA member, or be equivalent to the value of additional duties expected to result from the emergency action.

When the NAFTA parties are unable to agree on the compensation for the emergency action, the affected NAFTA member (the country against whom the emergency action is undertaken) may take tariff action "substantially equivalent" to those of the first NAFTA member for a time period necessary to equal the effect of the

emergency action.

Once the emergency action ends, the tariff rate on the affected goods is set at the rate that would have been charged one year after the date of emergency action had it not been undertaken. For example, assume that Mexico institutes an emergency on automobiles for four years when the duty rate has dropped to 16%. The tariff reduction is 1% per year. After the suspension period of four years has expired, the tariff rate would then be 15% (what the rate would have been the year following if the emergency action had not been taken). On January of the first year following the termination of the emergency action, the NAFTA nation that engaged the emergency action has the option of either setting the duty on the goods covered by the emergency action at the rate set by the NAFTA tariff schedule, or eliminating the tariff in equal annual stages ending on the date of tariff elimination as set by the NAFTA tariff schedule.

B. GLOBAL ACTIONS

NAFTA recognizes GATT and the fact that NAFTA members are bound by GATT trade provisions. A member of GATT under Section 201 of the Trade Agreements Act of 1975, can institute an escape clause proceeding. Under NAFTA, an escape clause proceeding from import duties instituted by a NAFTA member will not apply to imported goods from a NAFTA member unless:

1. The NAFTA imports account for a "substantial share of the

total imports" that adversely affect the importing nation's industry to be protected, and

2. The NAFTA imports "contribute importantly" to the injury suffered by the protected industry.

For global action to affect a NAFTA exporter, NAFTA sets the following criteria:

1. NAFTA imports can only be considered as accounting for a "substantial share of total imports" if the NAFTA exporting nation has been among the top five suppliers of the targeted goods to the NAFTA importer for the previous three years.
2. NAFTA imports can be deemed to "contribute importantly" to serious injury only if the growth rate of imports from the NAFTA nation during the time of the overall import surge is higher than the growth rate of total imports of the targeted goods from all sources during the same period.

Once a global action is undertaken, the nation taking the action must offer trade concessions to the affected NAFTA participant to compensate for the effects on its trade. The trade concessions must:

1. Have "substantial equivalent trade effects" to the affected NAFTA member, or
2. Be equivalent to the value of additional duties expected

to result from the emergency action.

When the NAFTA parties are unable to agree on the compensation for the emergency action, the affected NAFTA member (the country against whom the emergency action is undertaken) may take tariff action "substantially equivalent" to those of the first NAFTA member for a time period necessary to equal the effect of the emergency action.

C. TECHNICAL STANDARDS

NAFTA states that each country retains the right to adopt, apply and enforce standards related measures. NAFTA also recognizes the right of each member to choose the level of environmental, health and safety protection it wishes to maintain. Despite these general recognitions of spirit and intent, NAFTA members have agreed not to use standards-related measures as nontariff barriers to trade. NAFTA nations have agreed to attempt to create technical standards that will not unreasonably restrict trade while providing the required level of chosen protection.

Under Article 906, each NAFTA member has agreed to treat the technical standards adopted by the other members as its own when it can be shown that they are equivalent to those of its own. The exporting member must demonstrate that its technical standards adequately meet the importing member's chosen level of protection of human, animal and plant life along with preservation of the environment. Each member shall treat a technical regulation

adopted by another party as equivalent to its own where the exporting member in cooperation with the importing member demonstrates to the importing member's satisfaction its technical regulation adequately fulfills the importing member's legitimate objections.

1. COOPERATION

NAFTA requires each member to create standardization boards. Each member is encouraged but not required to cooperate in creating uniform technical standards. Article 911 of NAFTA requires each member to provide all technical advice, information and assistance as requested by another NAFTA member for that member's creation of its technical standards for NAFTA.

Specifically, each member is required under NAFTA to provide information on their technical cooperation programs regarding standards-related measures relating to specific areas of interest. Each member is required to consult with the others during the development of or prior to the adoption of or change in the application of standards-related measure.

2. RISK ASSESSMENT

A NAFTA member is permitted to conduct risk assessments on goods and services imported into it. An importing member is not permitted to use the risk assessment as a pretext for deliberately interfering with free trade. NAFTA forbids any member from adopting arbitrary, capricious and unreasonable distinctions

between domestic and imported goods regarding the level of protection that the nation chooses. Under Article 907, if a member conducting a risk assessment determines that it lacks sufficient scientific information, it may adopt a provisional technical regulation on the basis of the available scientific information. After sufficient scientific information is obtained, the party shall review its provisional regulation and revise it as appropriate.

3. CONFORMITY ASSESSMENT

NAFTA adopts a conformity assessment procedure for determining whether or not a technical regulation is being followed by a member. NAFTA requires each member to recognize the other members' conformity assessment boards in the same manner that they recognize their own boards. NAFTA also requires each member to consider another member's request to negotiate uniform agreements for conformity assessments. Each member shall take reasonable measures to facilitate access to its territory for conformity assessment activities by the other members. NAFTA requires that each member not adopt or maintain any conformity assessment procedure that is stricter than necessary to give confidence that it conforms with an applicable technical regulation or standard after taking into account the risks that nonconformity would create.

4. INTERNATIONAL STANDARDS

Under Article 905, NAFTA recognizes that each member retains

the right to adopt technical standards that provide a higher level of health and safety protection than those based on international standards. NAFTA assumes but does not require that the technical standards of its members shall at least equal international standards. NAFTA members are required to establish a Committee on Standards-Related Measures. This committee is given the responsibility of:

1. Facilitating the process by which the members will adopt compatible or uniform technical standards.
2. Promoting cooperation among the members on the development of standards related measures, and
3. Monitoring each member's attempt to implement and administer its technical standards in accordance with the terms of NAFTA.

5. PROCEDURAL TRANSPARENCY

No NAFTA member can adopt or modify its technical standards without first giving public notice of the proposed changes to the other NAFTA members. The required public notice must state what goods or services would be affected by the changes and the reasons behind the changes. Under NAFTA, anyone (not just the NAFTA trade representatives) can comment on the proposed changes to technical standards. The notice procedure is suspended in the case of a health or safety emergency regulation. Once the emergency regulation is in effect, the member instituting it shall permit

comment from the other NAFTA members plus anyone else who would like to comment.

CHAPTER 4

CUSTOMS PROCEDURES

The greatest practical impediment to trade between countries is the paperwork which exporters must prepare in order to sell their product. The cumbersome nature of the paperwork and long delays in delivery that result from any small technical mistake has caused manufacturers to decide not to export their product. The main reason behind the paperwork is so that the importing country can collect tariffs. As tariffs are eliminated, the need for such paperwork is, itself, gradually eliminated. Towards this end, NAFTA has up customs procedures to reflect the gradually reducing tariffs and thus less paperwork as well.

NAFTA concerns increasing trade between Canada, Mexico and the United States. For that reason, it is important for a procedure to be adopted to determine what is the country of origin for products exported between the countries. Without a viable system to determine truth of origin, non-NAFTA countries can ship their product through one NAFTA country to another in order to avoid import duties.

NAFTA adopted the origin rule of the 1988 Canada-U.S. Free Trade Agreement (CFTA) as its standard. To be covered by NAFTA, exported goods must have undergone processing in North America.

Many foreign corporations have significant investments in NAFTA countries. It is hoped these foreign corporations will increase their operations in Canada, Mexico and the United States to qualify for the NAFTA tariff reductions.

I. CERTIFICATE OF ORIGIN

NAFTA creates a uniform certificate of origin for use by NAFTA countries. The Certificate of Origin can be obtained from many stationary stores and from the U.S. Custom Service. The exporter of a product seeking NAFTA tariff reduction must state in the certificate of origin that the product qualifies as an "originating good." An originating good is one that qualifies under NAFTA as a product possessing the required North American content. NAFTA does not require certificates of origin when the value of the exported good does not exceed $1,000. Importers who seek to claim tariff reductions on imported goods under NAFTA must declare the imports qualify as originating goods. The importer's declaration must be based on the exporter's certificate of origin. An importer has one year to seek refund for any excess tariff that was erroneously paid on qualified original goods. For example, assume that a product qualifies for a 10% reduction in tariffs, but the importer mistakenly pays full tariff. The importer can seek a refund for the 10% overpayment within one year of the overpayment.

False statements on a certificate of origin will subject the exporter to the same civil and criminal penalties as an importer

who makes false statements to avoid tariff duties. An exporter who voluntarily corrects a false certificate will not be subject to penalties for the false statement.

II. PRODUCT TRACING

NAFTA imposes upon both exporters and importers the burden of having to maintain records for five years on products that were issued certificates of origin and received reduced tariffs. NAFTA requires that the parties keep records on:

1. The cost of the product exported.
2. The value of the product exported (its finished price).
3. Materials used for the products construction (including the source of the materials and their cost).
4. The cost of assembly of non-NAFTA materials.
5. The payment for the product.

The purpose of requiring the maintenance of these records is to assure that goods for which tariff reductions were given did, in fact, qualify for the reductions. The documentation requirement imposes a greater burden on smaller companies than larger companies. Small companies do not usually maintain such detailed records. Revamping their records policy to maintain such comprehensive records will be difficult. When the tariff savings involved are relatively low, the expense in maintaining these records may exceed the amount actually saved. In such an event, the importer may simply decide to pay the full tariff rather than be

bound by unprofitable record keeping.

The customs agency has the authority to determine if exported products actually qualify for NAFTA tariff reductions. NAFTA permits a customs agency to verify the contents of a certificate of origin by sending written questions to the exporter or visiting the exporter's premises in the exporter's country. Surprise inspections of an exporter's premises are not permitted, but should an exporter deny a request for an inspection, the exporting country can then deny preferential tariff treatment to the exporter.

NAFTA permits exporters and importers to obtain advance rulings from the customs agencies. The advance rulings state how the importing country will treat certain goods if imported from the other NAFTA participants. NAFTA requires each country to establish a program for processing advance rulings. Advance rulings can provide assurance to the exporter. Most exporters want to know how their product will be treated before actually commencing trade.

III. ADMINISTRATIVE OPERATION

NAFTA requires that each NAFTA member give to exporters the same rights of review and appeal it gives to importers in its own territory. NAFTA does not require that each country adopt the same system of review and appeal. Instead, NAFTA merely requires that each country give exporters the same rights of review and appeal it furnishes its own citizens (the importers).

Uniform regulations are required to be adopted by NAFTA

countries for the interpretation, application and administration of "rules of origin." They provide a uniform standard for tariff comparison and NAFTA implementation. NAFTA requires each of the countries to cooperate among themselves in its implementation. Specifically, the countries are required to collect and exchange trade data and statistics. NAFTA also requires that a working group be established to process changes to rules of origin and uniform regulations. In 1989, the United States adopted a "harmonized system of tariff classification." This system has been adopted throughout the world. NAFTA adopted this system, thereby standardizing the origin rules for the NAFTA countries.

IV. COUNTRY OF ORIGIN RULE

NAFTA Article 401 determines what exports are covered by NAFTA. Article 401 states:

> A good shall originate in the territory of a party where:
>
> (a) The good is wholly obtained or produced entirely in the territory of one or more of the parties;
>
> (b) Each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this chapter;
>
> (c) The good is produced entirely in the territory of one or more of the parties exclusively from originating materials; or
>
> (d) The good is produced entirely in the territory of one or more of the parties but one or more of the nonoriginating

materials provided for as parts under the Harmonized System that are used in the production of the good do not undergo a change in tariff classification because:

(i) The good was imported into the territory of a party in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

(ii) The heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts, provided that the regional value content of the good, determined in accordance with Article 402, is not less than 60 percent where the transaction method is used or is not less than 50 percent where the new cost method is used.

Goods exported from a NAFTA country to another NAFTA country will be covered by the tariff elimination schedule of NAFTA if:

1. The goods were completely manufactured or produced in a NAFTA country from materials that derived entirely from a NAFTA country, or
2. The goods contain non-NAFTA derived parts which were significantly changed as a result of production in a NAFTA country, or
3. The goods contain non-NAFTA parts and their assembly into the final product accounted for 60% of the value of the finished product, or
4. The good contains non-NAFTA parts or materials the cost of which do not exceed 7% of the value of the finished products.

V. TARIFF CLASSIFICATION CHANGES

Annex 401.1 describes the tariff changes required to grant North American origin to goods containing non-NAFTA components. Annex 401.1 tariff category listings also state what the manufacturer must do to meet the NAFTA tariff elimination requirement. NAFTA differs from previous tariff treaties in that it does not require a specific percentage of the product value to be derived from the country claiming the tariff reduction. Under the Generalized System of Preference (GSP), 35% of the value of the product must be derived from work or materials provided by the GSP country seeking the tariff reduction.

Article 402 of NAFTA establishes two methods for determining the North American content of the finished products exported between NAFTA countries. Article 402 reads in pertinent part:

> 1. Each party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following transaction value method:
>
> $$RVC = \frac{TV-VNM}{TV} \times 100$$
>
> where RVC is the regional value content expressed as a percentage.
>
> where TV is the transaction value of the good adjusted to a F.O.B. basis; and
>
> where VNM is the value of nonoriginating materials used by the producer in the production of the good.

Under the transaction value test, the North American content of exported goods between NAFTA countries is determined by

subtracting the price paid for non-NAFTA materials used in the products construction from the price of the finished product.

Under the net cost test, the price paid for the non-NAFTA materials used in the product are subtracted from the net cost of manufacturer of the product. The manufacturer is entitled to use either of the above tests in determining whether the product meets the North American origin standard. If the product passes either test, it qualifies for coverage under NAFTA.

VI. AUTOMOTIVE RULES

The importance of the automobile industry to the economies of Canada, Mexico and the United States has resulted in special rules for automotive products. NAFTA Section 403 establishes special origin requirements. Under Article 403, the net cost test is used to determine if the North American origin requirement is satisfied. NAFTA requires that automobiles, light trucks and engines must have new cost basis of 56% starting in 1998 that increases to 62.5% in 2002. For other vehicles and automotive parts the percentages are 55% and 60% respectively. The percentage of North American content is higher than the percentage under CFTA. Under CFTA, the local content was only 50%. The higher limits under NAFTA will now control automotive imports between Canada and the U.S.

In order to spur the construction of new automotive manufacturing facilities, NAFTA reduced the North American origin requirement to 50% for the first five years of production. For

plants refitted for the production of a new series or line of vehicles, the North American content requirement is reduced to 50% for the first two years of production.

VII. U.S. CUSTOMS SERVICE

The United States Customs Service will be primarily responsible for regulating customs matters under NAFTA. To administer and implement NAFTA's customs provisions, the U.S. Customs Service has assigned personnel to man the help desk in Washington D.C. from 8:00 a.m. to 5:00 p.m. EST. The Customs Service provides information service to U.S. importers and brokers and to Mexican and Canadian exporters or producers of goods for export to the United States. The help desk can be reached:

1. By Fax: (202) 927-0097
2. By phone: (202) 927-0066
3. By letter: U.S. Customs Service
NAFTA Help Desk, Room 1325
1301 Constitution Avenue, NW
Washington, D.C. 20229

In addition to direct contact with its personnel, the Customs Service provides information through its "Flash Fax" system. The Customs Service's Flash Fax system will fax information to a caller's fax machine 24 hours per day. This system is automated and covers the areas of general interest to most importers and exporters. The menu of information available from Flash Fax is

obtained by calling (202) 927-1692 or 927-1694.

Besides the help desk and Flash Fax, the information can be obtained from the Customs Service's Electronic Bulletin Board. Through the Bulletin Board, the Customs Service provides the entire trade community the latest information on its customs operations plus NAFTA information. The user, once he has accessed the Bulletin Board, can download specific information into his personal computer. There is a small charge for accessing the system. To access the Bulletin Board the user must:

1. Set the user's communication package on his personal computer as an ANSI terminal,
2. Set the DATABITS field to 8,
3. Set the STOPBITS field to 1,
4. Set the PARITY to N,
5. Set the phone number to (202) 376-7100,
6. Set the terminal background color to black,
7. Disable any call waiting feature.

If problems are experienced regarding the use of this system, call (202) 376-7039 for assistance.

In addition to the general information available from the Customs Service through its help desk, Flash Fax or Bulletin Board, specific information on NAFTA can be obtained on:

1. Duty phaseouts.
2. Temporary admission.
3. Rules of origin.
4. Marking.

5. Drawback.
6. User fees.
7. Vessel repair.
8. Certificates of origin.
9. Verification procedures.
10. Advance ruling procedures.

VIII. EXPORT INFORMATION

To provide assistance to exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for the dispersement of information. These phone numbers are:

A. UNITED STATES DEPARTMENT OF COMMERCE

1.	Office of Mexico	(202) 482-0300
2.	Office of Mexico, "FLASH FACTS" Information Line	(202) 482-4464
3.	Office of Canada	(202) 482-3103
4.	Office of Canada, "FLASH FACTS" Information Line	(202) 482-3101
5.	Office of Textile and Apparel, Martin Walsh	(202) 482-3400
6.	Industrial Trade Staff	(202) 482-3703

B. UNITED STATES CUSTOMS SERVICE

1.	NAFTA HELP DESK	(202) 692-0066
2.	NAFTA HELP DESK, "FLASH DESK"	

Information Line (202) 692-1692

C. MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545
2. FAXLINE (011-525) 256-4737

CHAPTER 5

COMPETITION, ANTITRUST, AND GOVERNMENT PROCUREMENT

I. INTRODUCTION

NAFTA is opposed to antitrust activities by any of its members. Each NAFTA nation has pledged not to engage in antitrust activities. In comparison, the Canada-United States Free Trade Agreement (CFTA) did not have antitrust provisions. Mexico, prior to NAFTA, was not interested in enforcing antitrust law. Mexico has an antitrust law, the Antimonopoly Law, which it has irregularly enforced. Mexico has no agency, department or division primarily devoted to prosecuting antitrust conduct.

As a result of NAFTA, Canadian and U.S. companies will be at a distinct disadvantage if Mexico does not enforce its antitrust law. To protect U.S. companies from antitrust conduct in Mexico, the United States Justice Department has revived a policy of pursuing civil and criminal actions against Mexican industries in violation of Mexican law that conspire to deprive U.S. companies of their right to participate in Mexico. Enforcement of this policy will cause a great deal of friction in Mexico. The real intent of this policy is to show Mexico that antitrust is important to the United States. In fact, the debate in Congress prior to passage of

NAFTA showed that Congress would consider withdrawing from NAFTA if Mexico does not enforce the antitrust provisions of NAFTA.

The biggest employer in any country is the government. In the United States nearly one out of every six citizens works for some form of government (local, state, or federal). Mexico has an even higher percentage of government employment because it has state control of the major industries (energy and natural resources). Government contracts account for a large amount of a nation's public spending. NAFTA is intended to open the government procurement contracts of its members. In Mexico, the most important government procurement will be in its oil monopoly (Petroleus Mexicanos "PEMEX") and its energy monopoly (Comision Federal de Electricidad "CFE"). Prior to NAFTA, Mexican government procurement contracts favored Mexican suppliers. Mexico is not a signatory to GATT, unlike Canada and the U.S. As a result, NAFTA has the effect of requiring the Mexican government to be nondiscriminatory regarding Mexican, Canadian and U.S. competition for government procurement.

II. NONDISCRIMINATION AND NATIONAL TREATMENT

NAFTA Article 1003 requires each nation not to discriminate in government procurement contracts except where specifically permitted. Article 1003 reads in pertinent part as follows:

> 1. Each party shall accord to goods of another party, to the suppliers of such goods and to service suppliers of another party, treatment no less favorable than the most favored treatment that the party accords to:

(a) Its own goods and suppliers, and

(b) Goods and suppliers of another party.

2. No party may:

a. Treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership, or

b. Discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for the particular procurement are preferred to goods or services of another party.

Article 1003 requires each party to treat goods and services of the other NAFTA members in the same manner as those goods and services of its own domestic suppliers. In addition each member must treat local subsidiaries of companies formed in the NAFTA nations the same as its own domestic suppliers. Example: The Canadian government did not purchase a product offered by a Mexican subsidiary located in Canada that was supplied by its plant in Argentina. Since the goods did not originate in Mexico, Canada or the U.S., the Canadian government can deny the contract.

III. COVERED PROCUREMENTS

NAFTA covers only purchases by the federal governments of Mexico, Canada and the United States. NAFTA does not apply to procurements from any of the individual states in the United States or Mexico nor does it apply to the provincial entities of Canada. The United States also is permitted to continue to grant preferences for small and minority-owned businesses over Mexican

and Canadian competitors.

NAFTA requires the federal governments of the NAFTA nations to consult with their states and provinces within the first five years of NAFTA's existence. The federal governments are required to attempt to get their states and provinces to extend NAFTA coverage to their government procurement. NAFTA only applies to government procurement contracts that exceed the following amounts:

1. For goods and services procurement contracts for federal agencies must exceed $50,000. For construction contracts with federal agencies, the cost of the contract must exceed $6,500,000.
2. For government controlled enterprises, such as PEMEX, CFE, the contracts must exceed $250,000 for goods and services and $8,000,000 for construction.

Contracts for less than the above amounts are not covered by NAFTA. Members of NAFTA can favor their own domestic suppliers over suppliers from the other NAFTA members in granting such procurement contracts.

Special provisions exist for procurement contracts with Mexico's PEMEX and CFE. NAFTA permits Mexico to reserve 50% of its 1994 procurement contracts for Mexican suppliers. This reserve decreases steadily until 30% in 2000 which is terminated in 2003. NAFTA states that no more than 10% of each year's reserve can fall within each product classification. The purpose of this is to

prevent Mexico from concentrating its reserve on just a few products.

Annex 1001.2b(3) lists the special government-owned enterprises that are not covered by NAFTA. The procurement contracts that Mexico may remove from NAFTA coverage are those made:

1. For commercial resale by government-owned retail stores,
2. Pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements), or
3. By one entity from another entity of Mexico.

Under Annex 1001-2B, Canada has also excepted certain procurements from NAFTA coverage. Canada has exempted procurements related to:

1. Shipbuilding and repair.
2. Urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel.
3. Contracts respecting FSC 58 (communications, detection and coherent radiation equipment).
4. Set-asides for small and minority businesses.
5. Departments of Transport, Communications, Fisheries and Oceans respecting Federal Supply Classification (FSC) 70 (automatic data processing equipment, software supplies and support equipment), FSC 74 (office machines, text

processing systems and visible record equipment) and FSC 36 (special industry machinery).

6. Agricultural products made in furtherance of agricultural support programs or human feeding programs.

Explicit in NAFTA is that procurement contracts relating to national security are exempt from NAFTA coverage. Included under the national security exception are oil purchases related to any strategic reserve requirement.

IV. SERVICE CONTRACTS COVERED

Government procurement of service contracts are covered by NAFTA unless specifically excepted. Excepted from NAFTA coverage are the following service contracts:

1. Service contracts relating to transportation, public utilities, and telecommunications.
2. Service contracts for federally-funded research or government sponsored research.
3. Mexico excludes "all risk-sharing contracts with PEMEX," which in the oil business are drilling and developing oil and gas fields or the building and operating of refining and processing facilities.
4. Canada excludes service contracts relating to printing or publishing. In addition, Canada excepts business services, which is defined to mean most legal and financial services.

V. TECHNICAL SPECIFICATIONS

Article 1007 requires each NAFTA nation to assure that its agencies and government agencies comply with NAFTA. Article 1007 reads in pertinent part, as follows:

> 1. Each party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade.
>
> 2. Each party shall ensure that any technical specifications prescribed by its entities are (where appropriate):
>
>   a. Specified in terms of performance criteria rather than design or descriptive characteristics, and
>
>   b. Based on international standards, national technical regulations, recognized national standards or building codes.
>
> 3. Each party shall ensure that its entities do not seek or accept in a manner that would have the effect of precluding competition advice that may be used in the preparation or adoption of any technical qualification for a specific procurement from a person that may have a commercial interest in that procurement.

Under NAFTA Article 1007, each nation's government agencies and enterprises are required to:

1. Use "where appropriate" performance criteria, rather than design or descriptive characteristics. This means that if a supplier from a NAFTA country can provide a product that does the job, the agency should consider the product.

2. Use technical specifications that are based on recognized international and national standards and code;

3. Only require specific patents, trademarks or producers to be used when there is no other way to describe the goods or services to be provided. In such instances, the agencies or enterprises must state that equivalent items may be substituted for the specified items.

VI PROCUREMENT PROCEDURE

Articles 1008 through 1016 cover the procurement procedure for NAFTA. The provisions therein are more comprehensive that corresponding provisions of either GATT or the CFTA. Under NAFTA, each member is required to provide to foreign investors, from other NAFTA countries, who are competing for government contracts:

1. Equal access to all information needed to submit a bid. No member can create an advantage for a bidder by withholding of information from other bidders;
2. Use fair qualification procedures for bidders. NAFTA requires each member to adopt a single qualification procedure to be followed by all of its agencies and government enterprises. Specifically, NAFTA requires that all agencies must:
   a. Give notice of the conditions required for qualification, including financial ability and technical criteria for the product or services.
   b. Judge the financial and professional expertise of each bidder on the basis of his "global business

activity" in addition to his activities within the procuring country.

c. Accept bids for procurement as long as there is time for the bidder to complete the qualification for the bid prior to the selection process.

3. Under NAFTA Article 1015(5), agencies are forbidden to make it a condition to bid or be awarded a government contract that the bidder previously was awarded a contract from the federal agency or government enterprise. In addition, it cannot be made a condition for a contract that the bidder previously had engaged in business in country. This allows companies from the other NAFTA countries to apply that have not done business in that country or have not had a government contract.

4. Under NAFTA Article 1007, invitations for bids must be issued for all procurements that relate to NAFTA. Bid invitations from federal agencies must contain all the information necessary for a bidder to understand the requirements of the bid. Government enterprises may use a qualification notice instead of a formal bid invitation. Bidders are placed on a list and when contracts come up, the bidders are sent all of the information on the contract needed to prepare a bid.

5. NAFTA Article 1007 requires government agencies and enterprises to provide a minimum of 40 days from the publication of the invitation of bids to awarding the contract. Contracts can only be awarded to bidders who are found to be capable of performing the contract and either submitted the lowest bid, or submitted the bid that is the most advantageous for the government.

VII. BID PROTESTS

Bid protests are covered under NAFTA Article 1017 which reads, in pertinent part, as follows:

> "An investor of a party, on behalf of an enterprise of another party that is a judicial person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other party has breached an obligation under:
>
> (a) Section A or Article 1503(2) (State Enterprises), or
>
> (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the party's obligations under Section A, and that the enterprise has occurred loss or damage by reason of, or arising out of that breach.
>
> ******************************
>
> Where an investor makes a claim under this Article and the investor or a noncontrolling investor in the enterprise makes a claim under Article 1116 arising out of events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a tribunal established under Article 1126, unless the tribunal finds that the interest of the disputing party would be prejudiced thereby."

Article 1017 permits a losing bidder to protest any detail in the bidding process. Bid protests are resolved under NAFTA by a reviewing authority with no substantial interest in the outcome of the procurements. The reviewing entity has the authority to halt the procurement until its decision is rendered. A bidder is not required to attempt to resolve the dispute with the procuring entity before filing its complaint.

VIII. ANTITRUST COOPERATION

The antitrust provisions of NAFTA are governed by Chapter 15. Article 1501 reads in pertinent part as to antitrust cooperation:

> "Each party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the parties will consult from time to time about the effectiveness of measures undertaken by each party."

NAFTA nations specifically acknowledge that antitrust activities interfere with the implementation of NAFTA and the achievement of free trade. Each member has pledged to aid the others in effective enforcement of antitrust laws. Cooperation is pledged in discovery and prosecution of antitrust and anti-competition activities in violation of NAFTA.

Disputes regarding antitrust activities are not processed under the normal dispute settlement provisions discussed in Chapter 18. Enforcement of antitrust provisions is weak and depends on the integrity and honesty of the countries. When there is an antitrust dispute taken by one NAFTA member over the actions of another, the

only remedy available under NAFTA is to request consultations over the matter. Consultations cannot be required nor do they have to be conducted in good faith. The only clout that any NAFTA member really possesses to ensure enforcement is for the country to refuse to enforce the antitrust provisions in its own territory in retaliation to nonenforcement of the other members or withdraw from NAFTA.

IX. STATE ENTERPRISES

NAFTA does not limit a member establishing state owned enterprises. Article 1503 reads, in pertinent part,:

> "Each party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the party's obligations wherever such enterprise exercises any regulatory, administrative or other governmental authority that the party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges."

The state enterprises of each party operate in a nondiscriminatory manner in the sale of its goods or services to investments in the Party's territory of investors from another NAFTA country. NAFTA recognizes the right of its members to have state-owned enterprises to accomplish legitimate government purposes. NAFTA forbids state-enterprises from violating any provision of NAFTA that the federal government of the NAFTA nation is bound to follow. A NAFTA nation cannot get around NAFTA merely by delegating authority to a state enterprise to act for it. A

state enterprise will be bound to the same extent as its federal government. If conduct is exempt under NAFTA, a state enterprise may engage in it without violating NAFTA. If the conduct is not exempt from the provisions of NAFTA, the state enterprise must comply with NAFTA. The main areas state enterprises are usually not permitted to violate NAFTA are in granting of licenses, imposing fees or the establishing quotas. State enterprises must treat the foreign investors, exporters or service providers the same as the domestic investors, producers and service providers.

X. MONOPOLIES

NAFTA recognizes that each member retains the right to create monopolies in its own country. Article 1502 reads, in pertinent part:

> "Where a party intends to designate a monopoly and the designation may affect the interest of persons of another party, the party shall:
>
> (a) Provide prior written notification to the other party of the designation, and
>
> (b) Endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 2004.
>
> Each party shall ensure that any government monopoly it maintains or designates:
>
> (a) Acts in a manner that is not inconsistent with the party's obligations under this Agreement,
>
> (b) Acts solely in accord with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including its consideration for price, quality, availability, marketability,

transportation and other terms and conditions of purchase or sale,

(c) Provide nondiscriminatory treatment to investors, to goods and to service providers of another party in its purchase or sale of the monopoly goods or services in the relevant market, and

(d) Not use its monopoly position, either directly or indirectly, including its dealings with its parent, its subsidiary or other enterprises with common ownership, in anticompetitive practices in a nonmonopolized market in its territory that adversely affect an investment from another party.

The above limitations do not apply to procurement by government agencies of goods and services for government purposes with no view toward commercial resale.

While monopolies may be established they may have an adverse effect on free trade. Whenever a nation intends to allow a monopoly, it must notify the other members and attempt to fashion the monopoly in such a way as to limit its effect on NAFTA. Monopolies are required to:

1. Use only commercial considerations when selling or purchasing the goods or services of the monopoly.
2. Not discriminate against the goods or services provided by the nationals of the other NAFTA nations when buying or selling the monopoly goods or services.
3. Not use the advantages derived from being a monopoly in anticompetitive acts in nonmonopoly markets.

Unlike the federal antitrust provisions, the articles on state enterprises and monopolies do not contain the exception from the

dispute settlement provisions of NAFTA. A citizen or enterprise of a NAFTA nation who feels discriminated against by a state enterprise or monopoly may seek redress by asking its country to seek consultations, intervention by the NAFTA Trade Commission or review by an arbitration panel.

In furtherance of the stated goal of an antitrust, free-trade zone, NAFTA requires its members to create a working group on trade and competition. Article 1504 reads:

> "The Commission shall establish a Working Group on Trade and Competition, comprising representatives of each party, to report and to make recommendations on further work as appropriate to the Commission within five years of the date of entry into force of this Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area."

The purpose of this working group is to evaluate the progress of the members in eliminating antitrust activities in their national areas. After five years, the working group is to make recommendations to the NAFTA nations on how to develop an effective antitrust operation in North America.

CHAPTER 6

ENERGY

I. INTRODUCTION

NAFTA does not address energy issues among the participants on a broad scale. Unlike the United States, the government of Mexico controls the country's basic energy resources. In Mexico, all activities related to natural gas or oil are controlled by the government controlled monopoly, "PEMEX." All Mexican electrical and nuclear activities are controlled by the government monopoly, "CFE." NAFTA will not open any new opportunities in the oil or natural gas, refining, basic petrochemicals, or direct provision of electricity to customers. It is expected that NAFTA will, however, increase the sale of U.S. natural gas to Mexico. In 1991, Mexico purchased 0.3 percent of the total U.S. production. Mexico's yearly oil production is about a quarter of that of the United States. Mexico does not have a coal industry, and its natural gas production is only about 5% of that of the U.S.

NAFTA does provide opportunities for foreign participation in certain defined areas. Mexico's need for electricity is predicted to increase at nearly 5% per year. Mexico lacks the needed capital to build the new plants necessary to keep pace with the need, Foreign companies are permitted to acquire, build and operate

plants in Mexico for the generation of electricity. The generated electricity must be either used at site or sold to the Mexican monopoly, CFE. Mexican energy imports to the U.S. account for over one half of the value of Mexico's imports to the U.S. Mexican energy imports were basically unrestricted prior to NAFTA. The real effect of NAFTA on the energy issues is to increase U.S. energy exports to Mexico. The United States imported 40% of its crude oil in 1991. Mexico was the fourth largest supplier of oil to the United States in 1991 after Saudi Arabia, Venezuela and Canada.

The energy industry is vital to the U.S. economy. In 1991, the U.S. produced $95.8 billion dollars of fossil fuels (crude oil, natural gas and coal). Crude oil and natural gas accounted for $74 billion dollars, The shipment of petroleum products were valued, in 1991, at $166.6 billion dollars. In 1991, the energy industry employed 691,000 production workers with an estimated 120,000 jobs in the refineries and gas plants.

II. PRIVATE INVESTMENT

Mexico is moving toward greater privatization of its basic industries. For the first time NAFTA permits private participation in the energy field. Specifically, NAFTA permits:

1. Private entities to operate electric facilities for their own use. This is an important concession for Mexico. It permits manufacturers to use co-generation technology to

generate electricity from their manufacturing processes and thus lower manufacturing costs. This is important where the manufacturing will occur in areas not presently served with an adequate source of electricity. It encourages development.

2. The private production of electricity for sale to the Mexican government. Mexico cannot on its own keep pace with its projected electricity needs. It is willing to permit private individuals to build electric plants and sell electricity to the government. Without an increased availability of electricity, Mexico would not be able to service all of the new plants and construction anticipated to be generated by NAFTA. The electricity to be generated will be sold to CFE on terms negotiated between the facility owner and CFE.

NAFTA expanded the Mexican "Build-Lease-Transfer" program ("BLT"). This program permits foreign companies to build an electric plant on a leased site. Upon completion, the plant is transferred to CFE. NAFTA expands the program to permit the foreign company to own the plant and earn profit on the sales of electricity to CFE.

Under NAFTA, Mexico retains investment restrictions on all basic petroleum feedstocks including those used for blending gasoline. A major change: for the first time unrestricted U.S. and

Canadian investment in production, distribution and foreign trade in secondary petrochemicals is permitted. Basic petrochemicals are defined in Annex 603.6. NAFTA reduced by one-half the number of basic petrochemicals. NAFTA removes the prior Mexican distinction for secondary and tertiary petrochemicals. Secondary petrochemicals are anything not listed in Annex 603.6 and include propylene and butylene. A key provision of NAFTA was the placing of the key aromatics and olefins in the secondary petrochemical list. These aromatics and olefins are the major constituents in the production of most chemicals. In addition, aromatics and olefins are needed for the manufacture of plastics and synthetic rubber. By placing these petrochemicals on the secondary list, NAFTA has opened the door for unrestricted Canadian and U.S. investment and participation in Mexico's plastic and synthetic rubber industries.

By opening the Mexican petroleum industry, even by the little amount that NAFTA does, creates very real opportunities for the American and Canadian businesses. Due to the inefficiency of Mexican production operations in the 1980's, it cost Mexico about $9 per barrel to extract oil from the ground; whereas in the United States it was $4 per barrel. There are several concerns regarding NAFTA's petroleum provisions:

1. PEMEX is the principal source of petroleum feedstocks in Mexico for the production of secondary petroleum petrochemicals. In 1991, there was a shortage in those

feedstocks which limited foreign investment; if the product is not available, then there is nothing in which to invest. The inefficiency of PEMEX may result in production being unavailable for foreign investment for several more years.

2. NAFTA permits U.S. and Canadian suppliers of basic petrochemicals to contract directly with the end users in Mexico. If the chemicals are on a restricted list, PEMEX will set the price paid for these products.

3. The arbitration process for NAFTA relies heavily on the good will of Mexico. Under the NAFTA provisions, a foreign investor is only permitted legal recourse for a dispute if there is an anticompetitive practice that discriminates against foreign-owned business. Mexico has carved a huge exception for anti-competition. Mexico, through its National Commission on Foreign Investment, retains the right to reject the acquisition of a Mexican business by foreign investors without any right of appeal.

The most important consideration is that PEMEX is not and will not be able to meet all of Mexico's near-term energy demands with domestic resources. In particular, any Mexican increase in natural gas production will continue to remain low in PEMEX's plan of operation. PEMEX does not plan to increase development of its

natural gas resources because it lacks the funds to do so and is not seeking foreign investors to assist. Current natural gas production will continue to be absorbed entirely as a replacement for oil in the polluted central part of Mexico.

In addition to opening the petroleum and energy industry in Mexico, NAFTA also opens its coal resources for foreign investors. Mexico does not have a national agency for the management of its coal resources (such as PEMEX for oil or CFE for electricity). As a result, Mexico has not developed its coal resources. For the first time, NAFTA permits unrestricted investment by Canadians and U.S. citizens in Mexican coal developments.

III. GOVERNMENT PROCUREMENT

Mexico is required under NAFTA to open 50% of its PEMEX and CFE procurement contracts for competition with U.S. and Canadian companies. After eight years, the number of government PEMEX and CFE contracts on which the U.S. and Canadian companies can bid will increase to 70%. After 10 years, U.S. and Canadian companies will be able to compete on all PEMEX and CFE contracts. Contracts in which U.S. and Canadian companies cannot compete will be reserved for Mexican companies. Companies from non-NAFTA countries will not be able to compete for them. The government contracts can be for equipment or services or both.

NAFTA requires Mexico to open (as of January 1994) one-half of all large PEMEX and CFE procurement contracts for bids by U.S. and

Canadian businesses. The participation is to increase to 100% by 2003. Under NAFTA, Canadian and U.S. companies are to receive the same treatment on their bids as Mexican companies. These provisions apply only for contracts with PEMEX and CFE for goods over $250,000 or construction services worth more than $8 million dollars. For contracts with other governmental entities the threshold level is lower. Under NAFTA, for the first time, Mexican contracts for the drilling of oil and gas wells could have performance clauses that tie compensation to agreed terms of performance (such as the amount of oil or gas discovered).

IV. SUPPLY CONTRACTS

For the first time, end users of natural gas basic petrochemicals will be able, under NAFTA, to negotiate supply contracts directly with PEMEX and CFE for the first time. Prior to NAFTA, only state enterprises were permitted to negotiate supply contracts. NAFTA does not permit supply contracts in violation of a country's law and makes such contracts subject to the importing nation's regulatory law. The demand for electricity is increasing along the northern border of Mexico. In addition, the improvement in the electrical system by the integration of better types of generation in both U.S. and Mexico makes it easier to export the electricity. This increased demand opens opportunities for U.S. manufacturers of electrical equipment. As with PEMEX and the petroleum contracts, investors will have to negotiate with CFE for

electricity sales to receive national treatment. Such investments in supply contracts will probably be approved because Mexico lacks the ability to meet all its current and projected needs for electricity.

V. EXPORTS

Mexico exports over one-half of its crude oil production. In contrast, Mexico imports very little petroleum products or natural gas. In 1991, the United States had an energy trade deficit with Mexico of 4 billion dollars. Prior to NAFTA, the U.S. imposed a minor tariff of 5.25 cents per barrel on oil imported from Mexico. The average price for such oil was $14 per barrel. Liquified petroleum gases, such as butane, propane, and methane, entered the U.S. duty-free. In contrast, Mexico assessed tariffs on U.S. petroleum exports as high as 20%. U.S. natural gas and coal exports were assessed tariffs of 10%. Energy-related equipment imported from the U.S. was also assessed a tariff of 10%. NAFTA prohibits any participant from imposing any tax on an energy or petrochemical export that is not imposed on the same energy or petrochemical product consumed in the exporting country.

Mexico still retains sole control over its natural gas and basic petrochemicals and all of the production, transportation and distribution of its natural gas and basic petrochemicals. NAFTA changes Mexican law in that it allows U.S. and Canadian exporters of natural gas and basic petrochemicals to negotiate directly with

potential end users in Mexico. Any agreements must be approved by PEMEX. PEMEX will probably be treated as the purchaser and then resell it to the end user. NAFTA also permits unrestricted investment by U.S. citizens and Canadians in selected petroleum products such as paraffin, lubricants and road-surfacing materials. NAFTA opens investment in petrochemicals in Mexico to Canadian and U.S. businesses in two ways. Such businesses may engage in unrestricted exporting of secondary petrochemicals for the first time. Moreover, such companies may build plants for the production of secondary petrochemicals which can be both sold in Mexico or exported for the first time.

Canadian and U.S. gas sales to Mexico will increase faster than the growth rate in northern Mexico for several years after the implementation of NAFTA (January 1994). This unique projection is based on the assumption that during this period Mexico will be struggling with the burdens imposed by its clean air laws. In 1992, the United States doubled its 1991 sales of natural gas to Mexico. It is envisioned that the gas sales will ultimately be capped by the economic growth rate of northern Mexico. Eventually, given its vast reserves, Mexico will become a new exporter of natural gas.

The U.S. coal industry is expected to experience a boon as a result of NAFTA. The industry will gain fuller access to the Mexican market and will be commercially competitive with the

elimination of the 10% coal tariff. For the first time, coal can be delivered from the western U.S. at a price that will be competitive to that of exported natural gas. The CFE plans to add new coal-fired plants for the production of electricity. The supplying of these plants with coal without a tariff will give American suppliers a distinct price break over competing foreign coal suppliers such as South America or Australia.

CHAPTER 7

CROSS BORDER TRADE IN SERVICES

INTRODUCTION

One area in which NAFTA is unique in its treatment of cross border trade in services. For the first time, a major trade treaty deals with free trade commitments on services provided across international borders. GATT discusses free trade treatment for both goods and services, but NAFTA actually implements it. NAFTA applies only to actions of the federal governments of Canada, Mexico and the United States. Individual states and provinces are not directly bound by NAFTA. The governments of Canada, Mexico and the United States have two years from NAFTA's implementation (January 1996) to create a list of all state, province or local restrictions that will apply to cross border service providers. The fact that local, state and provincial governments continue to maintain restrictions on foreign service providers may seriously weaken this area of NAFTA and may result in retaliatory trade actions from the local governments, states or provinces of the affected service providers.

In 1991, the U.S. exported $8.1 billion dollars of services to Mexico. Of that figure, $6.6 billion dollars related to

transportation services, including tourism and travel. In comparison, the United States imported $7.8 billion dollars of services from Mexico of which $6.2 billion dollars related to transportation. The difference between U.S. and Mexican imports reflects the increased trade the United States has experienced with Mexico since 1986 when Mexico began to open its market to Americans.

Illegal immigration is a terrible problem in the United States. Illegal immigration from Mexico to the United States is estimated to be around one million persons per year. It is estimated that nearly three million illegal aliens reside in California. The cost of illegal aliens and the social services provided to them is estimated to run nearly 20 billion dollars per year. In the United States, there is a very real concern that NAFTA might result in even more illegal immigration. The United States reserved the right to continue to impose immigration restrictions it feels necessary for its own self-interest. Despite U.S. concerns on immigration, NAFTA does provide a more simplified process for the temporary business travel of citizens of one NAFTA member into the territories of the other members. These NAFTA provisions were modeled in large part on the Canada-United States Free Trade Act of 1988(CFTA). Even so, some of the treatment afforded Canadians under CFTA is not available to Mexicans under NAFTA because of America's immigration concerns.

This chapter of NAFTA deals with temporary entry for business purposes. NAFTA does not affect or change any nation's policies or laws regarding obtaining of permanent resident status. To illustrate, under NAFTA Canadian and Mexican nationals who obtain temporary entry are not given any advantage or procedure for obtaining permanent resident status in the United States over persons from other countries.

II. CROSS BORDER SERVICES

A. STANDARDS FOR TREATMENT

NAFTA is unique among trade agreements because of the scope of its involvement in the issues of cross border services. Sweeping changes to the laws of Mexico, Canada and the United States are made to permit cross border trade in the areas of finance, business services, land transportation and telecommunications. NAFTA takes the position that all cross border trade in services is permitted unless specifically excluded under the Agreement. The General Agreement on Tariffs and Trade (GATT) is just the opposite. In countries that adopted GATT, only those services specifically listed were permitted free trade status. The service provisions of NAFTA's Chapter 12 do not apply to the areas of government procurement, financial services or energy related services; they are addressed in their own chapters. Furthermore, this chapter does not apply to grants and subsidies governed by separate GATT rules in its Tariff section. Negotiations were undertaken in the

Uruguay conference on GATT to add an agreement on services that has not been approved. The Canada-United States Free Trade Agreement (CFTA) had a limited provision for free trade of services. NAFTA adopts the CFTA, expands it and extends its provisions to Mexico.

The United States and Mexico imported about $8 billion dollars from each other. The United States exported to Canada services worth nearly $18 billion dollars in 1991; while it imported only about $8 billion in services. The U.S. experienced a trade surplus of nearly $10 billion dollars from its service trade with Mexico. Transportation is the largest factor of services, accounting for nearly 80% of all services.

NAFTA Article 1204 requires that each of its nations extend to foreign providers of services of other NAFTA countries the better of the following treatments:

1. NATIONAL TREATMENT FOR FOREIGN SERVICE PROVIDERS

NAFTA article 1202 requires that foreign service providers of a NAFTA country be treated in the same manner as a domestic service provider under the same circumstances. Foreign service providers are to be treated as domestic service providers regarding establishment, acquisition, expansion, management, conduct and sale of their operations.

NAFTA is an agreement between federal governments. The individual states and provinces are not always treated as the federal government. One instance of such different treatment is in

foreign investment. Under NAFTA, individual states and provinces are permitted to treat foreign service providers differently from how the federal government is required to treat them. Individual states and provinces are required under NAFTA, at a minimum, to give foreign service providers of a NAFTA nation the "most favored" treatment that they give service providers in the state or province.

2. MOST-FAVORED-NATION TREATMENT

NAFTA Article 1203 requires that a NAFTA nation give service providers of a NAFTA nation treatment that is at least equal to that given to service providers of another NAFTA or non-NAFTA nations. A NAFTA member is required to give foreign service providers of a NAFTA nation either the same national treatment it gives its own domestic service providers or the treatment that bestows the greatest benefits on the NAFTA service provider. NAFTA requires that the treatment given foreign service providers from NAFTA countries be the one which bestows the greatest benefit on the service provider. For example, if the most-favored-nation treatment is better for the foreign NAFTA member than the national treatment of domestic service providers, then the most-favored-nation treatment rule is applied.

NAFTA nations must treat foreign service providers of a NAFTA nation in a nondiscriminatory manner. The standard for this treatment is that it must be at least equal to the highest standard

of nondiscrimination of either the National Treatment rule or the Most-Favored-Nation rule. NAFTA nations have agreed to give foreign service providers of NAFTA countries fair and equitable treatment along with full protection and security in accordance with the minimum standards as set by international law.

B. NO NEED TO MAINTAIN A LOCAL PRESENCE

One of the major impediments to cross border trade in services for Mexico has been its requirement that the provider had to maintain an office in Mexico. NAFTA changes that law as it affects service providers of NAFTA countries. Under NAFTA Article 1205, foreign service providers from a NAFTA nation can no longer be required to maintain an office in order to do business in a NAFTA country. The officers or directors of an enterprise formed in a NAFTA country that provides services to another NAFTA country do not have to reside in that country in order for the enterprise to do business. Example: A cleaning business is formed in Texas. It can do business in Mexico although all of its officers and directors live in Texas and not Mexico.

C. RESERVATIONS

NAFTA permits each member to exempt certain services from coverage under NAFTA Article 1206:

1. Articles 1202, 1203, and 1205 do not apply to :
   a. Any existing nonconforming measure that is maintained by:

i. A party at the federal level, as set out in its Schedule to Annex I,

ii. A state or province, for two years after the date of entry into force of this Agreement and thereafter as set out by a party in its Schedule to Annex I in accordance with paragraph 2, or

iii. A local government.

b. The continuation or prompt renewal of any nonconforming measure referenced in subparagraph a, or

c. An amendment to any nonconforming measure referenced in subparagraph a. to the extent that the amendment does not decrease the conformity of the measure as it existed immediately before the amendment, with Articles 1202, 1203, and 1205.

2. Each party may place in its Schedule to Annex I within two years of the date of entry into force of this Agreement any existing nonconforming measure maintained by a state or province, not including local government.

3. Articles 1202, 1203, and 1205 do not apply to any measure that a party adopts or maintains with respect to sectors or activities, as detailed in its schedule to Annex II.

NAFTA coverage is also exempted from the restrictions imposed

by local, state and provincial constituents of the NAFTA members. A list of those local restrictions that are preserved must be prepared within two years of the enactment of NAFTA (January 1996). Each member has the right to deny NAFTA coverage to businesses that provide benefits through an entity that is owned or controlled by an individual or company from a non-NAFTA country.

NAFTA requires that each member list any quantitative restrictions it places on service providers. The following are the reserved restrictions of NAFTA nations relating to cross border trade:

CANADA

Coastal Fishing. The Department of Fisheries and Oceans is responsible for controlling activities of foreign vessels within Canadian territorial waters. Port privileges (including the purchase of fuel and supplies), ship repair, crew exchanges and transhipment of fish catches are usually granted only to fishing vessels from nations with which it has favorable fishing relations.

Cultural Property Exporter or Importer. Only a resident of Canada or an institution of Canada may be designated an "export examiner of cultural property" for the purposes of the Cultural Property and Export Act. This means a citizen or permanent resident or a corporation with its head offices in Canada.

Customs Broker Licensing Regulations. To be a licensed customs broker or brokerage in Canada:

1. An individual must be a Canadian citizen or permanent resident,
2. A corporation must be incorporated in Canada with a majority of its directors being Canadian citizens or permanent residents, and
3. A partnership must be composed of persons who are Canadian citizens or permanent residents, or corporations incorporated in Canada with a majority of their directors being Canadian citizens or permanent residents.

An individual who is not a licensed customs broker but who transacts business on behalf of a licensed customs broker must be a Canadian citizen or permanent resident.

<u>Duty Free Shop Regulations</u>. To be a licensed duty free shop operator at a land border crossing in Canada:

1. An individual must:
   a. Be a Canadian citizen or permanent resident,
   b. Be of good character,
   c. Be principally resident in Canada, and
   d. Have resided in Canada for at least 183 days of the year preceding the year of application for the license.
2. A corporation must:
   a. Be incorporated in Canada, and

b. Have all of its shares beneficially owned by Canadian citizens or permanent residents who meet the requirements of paragraph 1.

Local Presence for Export and Import Permits. Only individuals ordinarily resident in Canada, enterprises having their head offices in Canada or branch offices Canada of foreign enterprises in Canada may apply for and be issued import or export permits or transit authorization certificates for goods and related services subject to controls under the Export and Import Permits Act.

Oil and Gas Accords. A benefits plan must be submitted prior to receiving authorization to begin any oil and gas development project. The plan must call for the employment of Canadians and for providing Canadian companies an opportunity to participate on a competitive basis in the supply of goods and services in the work or activity.

Patent Cooperation Treaty and Trademark Regulations. Patent agents and trademark agents must be residents of Canada and registered with the Patent Office. The residency requirements end January 1996.

Transportation.

1. Air Transportation. Aircraft repair and maintenance of Canadian registered aircraft must be performed by Canadian Certified persons. Canada recognizes repair

performed in the United States by U.S. certified repairmen.

2. Land Transportation. Only persons of Canada, using Canadian registered and either built or duty paid trucks and buses, may provide truck or bus service between points in Canada.

3. Water Transportation.

   a. To register a vessel in Canada for international maritime transportation services, the owner must be:

      i. A Canadian citizen or a citizen of a Commonwealth country, or

      ii. A corporation incorporated under Canadian law or the law of a Commonwealth country.

   b. Masters, mates and engineers must be certified by the Department of Transport as ship's officers while engaged on Canadian registered vessel. Only Canadian citizens or permanent residents may be certified as ship's officers.

   c. Only Canadian citizens or permanent residents may receive a license to perform pilotage services in Canada. A permanent resident must become a Canadian citizen within five years to keep the license.

E. MEXICO

<u>Communications</u>. The holder of a concession for a commercial

broadcast station or for a cable television system is required to obtain an authorization from the Secretaria de Gobernacion to import in any form from radio or television programming for broadcast or cable distribution within the territory of Mexico. The use of Spanish language is required for the broadcast, cable or multipoint distribution system for radio, television and cable programming including advertising unless the Secretaria de Gobernacion authorizes the use of another language.

Only Mexican nationals and Mexican enterprises may obtain a concession to own, construct or operate a cable television system.

Persons of Canada or the United States may provide all enhanced or value-added services, except videotext or enhanced packet switching services, without the need to establish local presence. Investors from the U.S. or Canada may own 100% of the enterprise established or to be established in Mexico to provide enhanced or value-added service. They may own 49% of an enterprise which provides videotext or enhanced packet switching services.

Medical Doctors. Only Mexican nationals licensed as doctors in Mexico may provide in-house medical services.

Professional Licenses. Only Mexican nationals may be licensed in professions that require a license. This restriction is to end January 1996.

Only Mexican lawyers may have an ownership interest in a Mexican law firm. Canadian lawyers are permitted to form

partnerships with Mexican lawyers.

Only Mexican nationals who are licensed in Mexico as accountants may perform audits for tax purposes for state enterprises or enterprises with foreign investments. This requirement is eliminated January 1996.

Only Mexican nationals can be a commercial public notary. This requirement is eliminated January 1996.

Only Mexican nationals can be veterinarians. This requirements is eliminated January 1996.

Pesticide Spraying. Only Mexican nationals may receive a concession to spray pesticides. This requirement is eliminated in January 2000 and replaced with a permit requirement with no citizenship element.

Transportation.

1. Air Transportation. No permit will be issued to a person from Canada or the U.S. to provide aerial sightseeing, advertising, heli-logging, inspection, mapping, photography, surveying or spraying.

Only Mexican nationals and Mexican enterprises can obtain a concession to operate an aircraft repair facility.

Only Mexican nationals and enterprises may operate airports or heliports and provide air navigation services.

2. Land Transportation. Only Mexican nationals and enterprises without foreign participation, may obtain a permit to

operate a bus or truck station or terminal. In January 1997, investors from a NAFTA country can participate in a Mexican enterprise to conduct such operations.

Railway crew members must be Mexican nationals.

Only Mexican nationals and Mexican enterprises may receive a concession to provide road and bridge administration services.

Only Mexican nationals and Mexican enterprises without foreign participation may obtain a permit to provide intercity bus services, tourist transportation services or truck services for the transportation of goods or passengers to or from the territory of Mexico. In January 1997, investors from a NAFTA country can participate in a Mexican enterprise to conduct such operations across the border states: Baja California, Chihuahua, Coahuila, Nuevo Leon, Sonora, and Tamaulipas. After January 2000 all restrictions are eliminated.

3. Water Transportation. A concession to construct or operate a marine or river works, shipyard or roads for land transportation may only be granted to Mexican nationals or Mexican enterprises.

A concession to construct and operate maritime and inland port terminals, including docks, cranes and related facilities, will only be granted to Mexican nationals or Mexican enterprises.

Maritime cabotage services are reserved to Mexican-flagged vessels. Only such vessels may transport cargo for the Federal

Government. All port workers must be Mexican nationals.

F. UNITED STATES

Patent Attorneys and Agents. A patent attorney or agent must be a US citizen or an alien lawfully residing in the US.

Transportation.

1. Air Transportation. Aircraft repair and maintenance of U.S. registered aircraft must be performed by U.S. certified persons. The United States recognizes repair performed in Canada by Canadian certified repairmen.

Only air carriers that are registered in the U.S. may operate aircraft in domestic air service and provide international schedules and nonscheduled air service as U.S. air carriers.

A person from Canada or Mexico may provide aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance and spraying if adequate reciprocal rights are given U.S. nationals.

2. Land Transportation. Only persons using U.S. registered and either U.S. built or duty paid trucks or buses may provide truck or bus service between points in the territory of the US. A moratorium exists to give new grants of operating authority to provide bus or truck services in the US to citizens of Mexico. Such restrictions will be eliminated in part by January 1997 and in toto by January 2000.

3. Customs Brokers. Only U.S. citizens may obtain a customs

broker license. A corporation, association or partnership may receive such a license if at least one officer holds a valid customs license.

Included in the above list are restrictions on the number of providers or the operations of the providers within a particular area.

G. LICENSING REQUIREMENTS

NAFTA forbids its members using licensing standards to create artificial barriers to free trade. Each country still retains control over its licensing and regulatory affairs. The difference is that NAFTA requires that the granting or denial of licenses should:

1. Be based on objective and transparent criteria,
2. Only require performance necessary to ensure the quality of the service to satisfy the country's chosen standard of health and safety, and
3. Not constitute a restriction on the providing of cross border services in general.

A NAFTA requirement that each member maintain citizenship or residency to obtain a professional license remains in effect for two years following the implementation of NAFTA. At the end of the two years, the citizenship or residency requirement for professional licenses for NAFTA foreign nation service providers are to be completely eliminated.

III. TEMPORARY ENTRY

A. BUSINESS VISITORS

NAFTA Article 1603 permits temporary business visits for meetings, conferences, order taking, or after-sales service. The visits can only be for a short time, as determined on a case-by-case basis. The visits will only be permitted if the person's principal place of business is in another NAFTA country and the person's source of pay is outside the admitting country he is visiting.

B. TREATY TRADERS AND INVESTORS

Under NAFTA, persons referenced as treaty traders and investors are permitted temporary access to NAFTA countries. Such persons are defined under NAFTA as being:

1. Persons who are attempting to carry on substantial trade between their NAFTA country and the NAFTA country of admission, or
2. Executives, managers, or persons possessing essential skills that are needed in an enterprise in which a national of the same NAFTA country is investing a substantial amount of capital.

C. INTRACOMPANY TRANSFEREES

One of the most common type of temporary visit is an "intracompany transferee." An intracompany transferee is defined as an executive, manager or other person with special knowledge or

skills who is being transferred between related companies and across a NAFTA border. The NAFTA nation who is receiving the transfer may require the intracompany transferees to be employed by the related company in the other NAFTA country for at least one full year out of the previous three years before the transfer.

D. PROFESSIONALS

NAFTA also permits persons engaged in a "business activity at a professional level" to be admitted for temporary visits. Under NAFTA, 60 separate professions are listed with minimum requirements for a person to be considered a professional. This list is essentially the same as that of CFTA. Under both CFTA and NAFTA, a bachelor's degree and licensing in the field is needed to be considered a professional. In a few instances, a person can qualify as a professional with a two-year degree and 3 years of experience in the field. Under both CFTA and NAFTA, no preclearance or labor-market procedures are required to gain temporary entry into a NAFTA country. NAFTA does permit a member to impose the same procedure for entry on NAFTA professionals as it does professionals from other countries. Under this rule, the United States can require Mexican citizens seeking temporary entry to complete the general application procedure for temporary admissions of professionals.

If the United States requires Mexican professionals to go through the general application procedure for temporary

professionals, an application must be submitted to the Department of Labor. The application must certify that the employer is paying a certain wage level, has given notice to its employees of the employment of a foreign national and is maintaining documentation regarding the position. Canadian professionals cannot be required to comply with this procedure for admission because there is no labor clearance provision under CFTA mentioned in the treaty. Canada can impose no such requirement against U.S. professionals. Under NAFTA, 5,500 annual professionals may seek temporary entry to the United States from Mexico. There is no limit on the number of Canadian professionals who may seek temporary entry into the United States under either the CFTA or NAFTA.

E. VISA REQUIREMENTS

Each NAFTA nation has reserved the right to require a visa for any of the temporary business entries. Initially all NAFTA nations have elected not to require such visas. Under CFTA, the United States requires visas only for Canadian treaty traders and investors. Given that fact, it is likely that the U.S. will ultimately require visas for Mexican treaty traders and investors. If no visa is required, the person seeking the temporary NAFTA entry will have to prove that he qualifies for entrance upon arrival at the immigration inspector. If a visa is obtained, eligibility is determined at the time the visa is issued.

F. LAND TRANSPORTATION

NAFTA permits U.S., Canadian and Mexican providers of truck, bus and rail transportation to ship goods between the three countries. U.S. trucking companies are permitted to travel throughout Mexico starting January 1994. U.S. bus companies will have full access to Mexico as of January 1997. U.S. companies are also granted the opportunity to invest and operate Mexican port facilities for the first time.

CHAPTER 8

INVESTMENT AND INVESTMENT DISPUTES

I. INTRODUCTION

Prior to NAFTA investors faced significant problems investing in foreign countries. Mexico had many laws that seriously impinged on the freedom of foreign investors or forbade them doing business in Mexico. A prime example of Mexican hostility to foreign investment was the "Calvo Clause." Prior to NAFTA all foreign investors had to agree to the terms of the "Calvo Clause." Foreign investors:

1. Were limited to the standard of National treatment,
2. Were limited to presenting their disputes to Mexican courts, arbitration was not allowed, and
3. Were precluded from complaining about their treatment to their government under penalty of forfeiture of all of their investments in Mexico.

The result of the law, which hindered foreign investment, in Mexico was terrible. The Calvo Clause literally froze foreign investments in Mexico. Only the largest corporations with their international financial clout could risk complaining to their government regarding unfair treatment without fear that their entire investment would be seized. The government of Mexico and its

government enterprises were riddled with corruption. Both U.S. newspapers and the United States Congress documented instances where U.S. citizens were illegally arrested when they disputed their treatment involving Mexican government contracts and performance. This maltreatment seriously threatened U.S. acceptance of NAFTA. Should it continue, NAFTA will probably fail. Because of its antiforeign investment policies, Mexico's pre-NAFTA economy was growing at a snail's pace and was on the verge of collapse. Having natural resources alone is not enough to assure a viable economy in a country that does not have the economic ability to develop those resources. NAFTA provides freedom of investment by NAFTA nationals to any NAFTA country. In addition, dispute resolution procedures are established to prevent improper treatment of foreign investors.

II. OPEN INVESTMENT PRINCIPLES

Under NAFTA each member has agreed to treat foreign investors and their investments in the following manner.

A. NATIONAL TREATMENT OF FOREIGN INVESTORS

NAFTA Article 1102 requires that foreign investors of a NAFTA country be treated in the same manner as domestic investors under the same circumstances. All investors, foreign and domestic, are to be treated equally concerning establishment, acquisition, expansion, management, conduct or sale of their investments.
No Party is permitted to:

1. Impose on an investor of another party a requirement

that a minimum level of equity in an enterprise in the territory of the party be held by its nationals other than nominal qualifying shares for directors or incorporators of corporations, or

2. Require an investor of another party by reason of its nationality to sell or otherwise dispose of an investment in the territory of the party.

NAFTA is an agreement between federal governments; individual states and provinces are not treated as the federal government. Thus individual states and provinces are permitted to treat foreign investors differently from the way the federal government is required to treat them. Individual states and provinces are required at a minimum to give foreign investors of a NAFTA nation the most favored treatment they give investors in the state or province.

B. MOST-FAVORED-NATION TREATMENT

NAFTA Article 1103 requires a NAFTA nation to give investors of another NAFTA nation treatment that at least equals that given to investors of another NAFTA or non-NAFTA nation. A NAFTA nation is required to give foreign investors from a NAFTA nation either:

1. The same national treatment it gives its own domestic investors under the same circumstances, or
2. The best most-favored-nation treatment it gives foreign investors from any nation.

NAFTA requires that the treatment given foreign investors of NAFTA nations bestow the greatest benefit on the investor. If the most-favored-nation treatment is better for the foreign NAFTA nation than the national treatment of domestic investors, the most-favored-nation treatment rule would be applied.

C. NONDISCRIMINATORY TREATMENT

NAFTA requires that NAFTA members treat foreign investors of a NAFTA country in a nondiscriminatory manner. The standard for measuring this treatment is that it must be at least equal to the highest standard of nondiscrimination of either the national-treatment rule or the most-favored-nation rule.

D. MINIMUM STANDARD TREATMENT

NAFTA nations have agreed under Article 1105 to give foreign investors of NAFTA countries fair and equitable treatment and full protection and security in accordance with the minimum standards as set by international law. Each member shall accord to the investors and their investments of another member nondiscriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

E. NO PERFORMANCE REQUIREMENTS

NAFTA members are forbidden, under Article 1106, from establishing performance requirements as a condition for investing in the nation. NAFTA specifically forbids laws or regulations that

require foreign investors to:

1. Export at a higher level,
2. Maintain a minimum level of domestic content in goods that are manufactured or processed,
3. Give preference to domestic goods and services over those from other countries (including other NAFTA members),
4. Have the value of its exports equal the value of its imports, or
5. Restrict sales of goods or services in the nation.

While NAFTA members are forbidden from doing any of the above, they are permitted to:

1. Require location of production in a certain area,
2. Provide a particular service,
3. Train and employ workers in the nation,
4. Construct and expand facilities, and
5. Perform research and development.

F. NO NATIONAL MANAGEMENT REQUIREMENTS

NAFTA forbids its members to require that senior management of foreign investments be composed of citizens of the NAFTA nation. Example: Mexico cannot require that the senior management of a corporation from Canada doing business in Mexico be composed of all Mexican citizens. Nor can a NAFTA member require that a majority of the board of directors of a foreign NAFTA corporation doing

business in Mexico be composed of Mexicans or be of a particular nationality. Mexico could not require that the boards of directors of all corporations doing business in Mexico be composed of a majority of Mexican citizens.

Under NAFTA Article 1107, a member can require that a majority of the board of directors or any committee of an enterprise of that member that is an investment of an investor of another NAFTA country be of a particular nationality or be a resident of the territory of that member provided that the requirement does not materially impair the ability of the investor to exercise control over the investment.

III. EXCEPTIONS

While the above is a general statement of the investment policy between NAFTA countries, each NAFTA nation establishes exceptions to the applicability of NAFTA. The main exceptions of both Mexico and the United States are covered below.

A. MEXICO

1. KEY INDUSTRIES. Under the Mexican Constitution, the Mexican government has exclusive control over certain key industries and activities. The key industries and activities not covered by NAFTA are:

a. Petroleum and national gas industry and petrochemicals.
b. Electrical industry.
c. Nuclear industry.
d. Satellite communications.
e. Telegraph and radio telegraph services.
f. Postal services.

g. Railroads.
h. Printing and coinage of money.
I. Maritime regulation of ports.
j. Operation of airports and heliports.

B. LAND

Mexico continues to forbid foreign investors owning real property within 50 kilometers of the coast or 100 kilometers of Mexico's border. This prohibition directs foreign investment to the inland areas of Mexico. This has always been an impediment to foreign investment and still remains so. A majority of Mexican citizens live within the prohibited areas. Foreign investors are prohibited to own their plants if built in those areas.

Mexico still permits a Mexican trust with a foreign national or foreign corporation as the beneficiary. The disadvantage is that the trustee must be a Mexican national which means that the investment is really under foreign control.

C. ACQUISITION REVIEW

Mexico reserves the right to review purchases by foreign investors of a NAFTA nation of more than 49% of a Mexican business. The review is limited to those businesses having gross assets of $25,000,000 in the first year of NAFTA and increases yearly to $150,000,000 in the tenth year and thereafter.

D. CABLE TELEVISION INDUSTRY

Foreign investors are limited to owing 49% of a cable company. Mexican nationals must own and control the majority of cable television systems.

E. CONSTRUCTION

For the first five years of NAFTA, foreign investors from NAFTA nations are forbidden to own more than 49% of a Mexican construction company. After the 5 years, the restriction is removed and foreign investors of NAFTA nations may own 100% of a construction company.

F. DRILLING RISKS

Foreign investors with prior approval of PEMEX may own no more than 49% of an enterprise engaged in "nonrisk sharing" service contracts. Under these contracts, the enterprise engages in the drilling of wells for the production of oil and gas. Foreign investors can have a maximum of 49% of the enterprise.

G. MARITIME

Under Mexican law, only Mexican nationals may obtain permits from the fishing ministry to engage in deep sea fishing. Foreign investors of a NAFTA nation, with Mexican permission may purchase or own more than 49% of a Mexican enterprise engaged in deep sea fishing.

Only Mexican nationals can operate shipyards or vessels registered and flagged as Mexican. Foreign investors of a NAFTA country are required to obtain prior permission in order to own more than 49% of an enterprise that operates foreign flagged vessels used to provide international maritime transport services.

H. AUTOMOBILE

Foreign investors of a NAFTA country are not permitted to own more than 49% of a Mexican enterprise engaged in the auto parts industry. An exception exists which permits foreign investors of a NAFTA nation may own 100% of an auto parts enterprise if the investors are not owned, controlled or affiliated with a manufacturer of motor vehicles.

I. MAQUILADORAS

NAFTA reduces and eliminates in eight years the prohibition against maquiladoras in Mexico selling more than 50% of the total value of its exports. This is an important limitation of free trade; companies engaged in the Maquiladora program are still denied full access to the Mexican market.

J. MINING

For the first five years of NAFTA, foreign investors of a NAFTA nation may not own more than 49% of a Mexican enterprise engaged in the extraction of minerals. After the first five years, foreign investors may own 100% of a Mexican enterprise.

K. AIR TRANSPORTATION

Foreign investors of a NAFTA nation may not own more than 25% of a Mexican enterprise providing commercial air services. For such an enterprise, the President and two-thirds of the board must be Mexican nationals.

L. GROUND TRANSPORTATION

Mexico has adopted the following preferences concerning ground

transportation:

1. For the first six years after the implementation of NAFTA, bus and truck service within Mexico shall be reserved solely to Mexican nationals. Foreign investors of a NAFTA nation will be permitted gradually to own more interest in an enterprise engaged in cross-border bus and truck service.
2. After 10 years in effect, NAFTA permits foreign investors to own 100% of an enterprise providing bus services, tourist services and truck services for the transportation of international cargo within Mexico.

B. UNITED STATES

A. AIR TRANSPORTATION

Foreign investors of a NAFTA nation may not own more than 25% of a U.S. enterprise providing commercial air services. Non- U.S. nationals may own and control foreign air carriers operating between the United States and foreign points. The United States Federal Aviation Administration must certify aircraft stations that perform work on commercial aircraft registered in the United States.

Within six years after the implementation of NAFTA, the United States will repeal the requirement that the operation of specialty air services in the United States by enterprises owned by foreign investors of a NAFTA member must have special permission.

B. NUCLEAR INDUSTRY

The United States denies foreigners licenses for the transfer, manufacture, production, use or importation of any facilities for the production or use of nuclear materials.

IV. DISPUTE RESOLUTION

Subchapter B of NAFTA's Chapter 14 establishes a procedure to adjudicate investment disputes under NAFTA. An impartial tribunal is required to hear the dispute and render a decision. NAFTA gives foreign investors of NAFTA nations the right to present his claim to the tribunal of the NAFTA nation where the investment was made or to submit the claim to arbitration. Once the election of remedy is made, the foreign investor may not raise the claim again using the other method. NAFTA creates a three-year statute of limitation for raising the claim. The three-year period starts to run from the time that the foreign investor knew or should have reasonably discovered that NAFTA provisions were violated.

V. PRECLAIM PROCEDURES

NAFTA Chapter 11 requires that the foreign investor of a NAFTA nation attempt to resolve the matter through consultation or negotiation before any dispute is referred to the tribunal or arbitration. The investor go to arbitration only after such consultation or negotiation has failed. An investor is required to give the NAFTA nation written notice at least 90 days before a claim for arbitration is filed. The claim must state in detail the

basis of the complaint, the amount of damages incurred and the relief sought.

VI. ARBITRATION

Foreign investors of a NAFTA nation must wait at least six months before submitting a claim for arbitration. Under NAFTA, the investor selects one of the following arbitration procedures:

1. If the NAFTA nation in the dispute and the NAFTA nation of foreign investors are signatories of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("ICSID Convention"), the procedures of the ICSID Convention, or
2. If both the disputing NAFTA nation and the NAFTA nation that domiciles the disputing foreign investors are not members of the ICSID Convention, then either:
    a. The Additional Facility Rules of the ICSID, or
    b. The arbitration rules of the United Nations Commission on International Trade Law ("UNCITRAL Arbitration Rules") will apply.

The arbitration panel will consist of three members. One member will be appointed by each party and the third member, known as the presiding arbitrator, will be appointed by mutual consent of the parties. If the parties are unable to appoint an arbitrator, the Secretary General of ICSID will appoint the arbitrator. NAFTA nations created a list of presiding arbitrators prior to the

implementation of NAFTA. From this list the presiding arbitrator is chosen. The location of the arbitration shall be determined in accordance with the arbitration selected by the investor.

The arbitration panel is only permitted to render compensatory monetary damages in the event it rules in favor of the foreign investors. The arbitration panel is not permitted to award punitive damages or any type of equitable relief such as injunctions or restraining orders. An arbitration award will not set a precedent. The award is limited to just that particular case and is not binding on future cases against the NAFTA nation who was a party or the other NAFTA nations in general. If a foreign investor prevails in arbitration, the award may be enforced by the following methods:

1. By the ICSID Convention.
2. By the terms of the New York Convention.
3. By the terms of the Inter-American Convention.
4. By the Institutional Arrangements and Dispute Settlement Procedures (Chapter 20) of NAFTA. By this procedure, a panel determines if the refusal of the defaulting NAFTA nation to pay the award is a violation of NAFTA and recommends that the award be paid or not paid.

NAFTA does not cover private disputes among foreign investors of a NAFTA country with private nationals of another NAFTA country. Those disputes will continue to be resolved in accordance with the

laws of the respective nations of the parties.

CHAPTER 9

FINANCIAL SERVICES

I. INTRODUCTION

NAFTA opens the financial and banking industry in Mexico to U.S. and Canadian participation. For over 50 years Mexico has virtually kept foreign banks and financial institutions out of the country. By pre-NAFTA law foreign investors were not permitted to own more than 5% of a Mexican bank. This protectionism hurt Mexico, hindering foreign investment at least as much as it helped the Mexican industry to prevent foreign competition.

As a result of NAFTA, Mexican banks are actively seeking foreign investors and partners. Mexican banks are seeking alliances with foreign institutions to improve their systems and banking technology so they can compete more effectively in the world-wide banking market.

II. COMMERCIAL PRESENCE AND CROSS-BORDER SERVICES

NAFTA Article 1404 permits financial service providers to conduct operations in any NAFTA country. NAFTA nations do retain the right to regulate or ban solicitation activities that seduce their nationals to purchase their financial services from another NAFTA member. Each NAFTA nation still retains the right to determine the form used to provide financial services in their country. NAFTA countries cannot forbid their nationals purchasing

their financial services from providers in another NAFTA country. On the other hand, this obligation does not require a party to permit such providers to do business or solicit in its territory; yet NAFTA forbids its nations from enacting any new laws that are intended to restrict these cross-border provisions.

Without prejudice to other means of regulation of cross-border trade, a party may require the registration of cross-border financial service providers and the financial instruments of another party.

III. NONDISCRIMINATORY TREATMENT

Under NAFTA, each nation has agreed to treat foreign financial service providers and their investments in the following manner:

A. NATIONAL TREATMENT FOR FOREIGN FINANCIAL SERVICE PROVIDERS

NAFTA Article 1405 requires that foreign financial service providers of a NAFTA country be treated in the same manner as a domestic investor under the same circumstances. Article 1405 reads in pertinent part:

1. In the case of an investor of another party with an investment in a financial institution an investment of such investor in a financial institution or a financial institution of such investor located in a state or province, treatment [is to be] no less favorable than the treatment accorded to an investor of the party in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor located in that state or province in like circumstances, and

2. In any other case, treatment [is to be] no less

> favorable than the treatment accorded to an investor of the party in a financial institution, its financial institution or its investment in a financial institution in like circumstance.

Foreign financial service providers are to be treated equally as are domestic financial service providers concerns establishment, acquisition, expansion, management, conduct or sale of their investments.

B. MOST-FAVORED-NATION TREATMENT

NAFTA requires that a NAFTA nation give financial service providers of a NAFTA nation treatment that is at least equal to that given to financial service providers of another NAFTA or non-NAFTA nation. A NAFTA nation is required to give foreign financial service providers of a NAFTA nation either:

1. The same national treatment it gives its own domestic financial service providers under the same circumstances, or
2. The best most-favored-nation treatment it gives foreign financial service providers of any nation.

NAFTA requires that the treatment given foreign financial service providers of NAFTA nations bestow the greatest benefit on the investor. If the most-favored-nation treatment is better for the foreign NAFTA nation than the national treatment of domestic financial service providers, the most-favored-nation treatment rule is applied.

NAFTA requires that NAFTA nations treat foreign financial

service providers of a NAFTA nation in a nondiscriminatory manner. The standard for measuring is that it must be at least equal to the highest standard of nondiscrimination of either the National Treatment rule or the Most-Favored-Nation rule. Under NAFTA, Mexico is given a transition period to January 1, 2000 to implement these provisions. Temporary safeguards are in place to protect the Mexican industry during this transition.

IV. MEXICAN FINANCIAL SERVICES

Under NAFTA Article 1407, each party is required to permit a financial institution of another party to provide any new financial service of a type that the party permits its own financial institutions, in like circumstances, to provide under its domestic law. A party may determine the institutional and judicial form to be provided and may require authorization. Where such authorization is required, a decision shall be made within a reasonable time, and the authorization may only be refused for prudent reasons.

NAFTA creates a transition period until January 1, 2000 for Mexico to implement its obligations. NAFTA divided the financial industry into three categories that are treated separately. NAFTA provides transition rules that govern implementation while opening markets.

A. BANKING AND SECURITIES

During the transition period, Mexico will exercise control

over the entry of foreign banks into its country. Mexico will exercise that control by the temporary imposition of aggregate market shares percentages for foreign banks and individual market share caps. In accordance with NAFTA provisions, Mexico, during the transition period, will:

1. Limit foreign banks to an aggregate participation in Mexico of 8% in 1994 with annual increases to 15% in 2000. The aggregate participation is based on the relationship of the foreign banks capital to that of the entire industry.
2. Limit the market share of Canadian and U.S. banks during the transition period to 1.5%. This market share will be based on the total capital of all commercial banks.
3. Limit foreign securities firms to an aggregate participation in Mexico of 10% in 1994 with annual increases to 20% in 2000. The aggregate participation is based upon the relationship of the foreign securities firms to that of the entire industry.
4. Limit the market share of Canadian and U.S. securities firms during the transition to 4%. This market share is based on the total capital of all security firms.

After January 1, 2000, a special limitation will remain in effect on foreign service providers in the banking industry. After the transition period, no foreign financial service provider can

acquire a Mexican bank through either purchase or if the foreign service provider would then own or control commercial banks with aggregate capital exceeding 4%. This denies acquisition of the six largest banks in Mexico by Canadian or U.S. interests. If the United States adopts interstate branch banking, the NAFTA banking provisions will be reconsidered to permit direct branch banking rather than requiring separately capitalized subsidiaries.

Nothing in NAFTA prevents a party from adopting and maintaining reasonable banking measures for:

1. The protection of investors, depositors, financial market participants, policy holders, policy claimants, persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider,
2. The maintenance of the safety, soundness, integrity or financial responsibility of financial institutions of cross-border financial service providers, and
3. The ensuring of integrity and stability of a party's financial system.

NAFTA requires that reciprocal rights be granted to each of the NAFTA countries. This is probably the most important part of the NAFTA banking provisions. This provision is a major step in the development of international Mexican-U.S.-Canadian banking and financial markets. Expansion of Canadian and U.S. banks into Mexico will be determined in large part by the expansion of U.S.

and Canadian business into Mexico. Businesses will create the desire for U.S. and Canadian banks to follow their clients to preserve their client base. Canadian and U.S. banks are significantly more efficient than their previously closed and restricted Mexican counterparts. Canadian and U.S. banks will have a significant business advantage in providing banking services to domestic clients doing business in Mexico.

B. INSURANCE

NAFTA will have significant effect on the Mexican insurance industry by eliminating the previous restrictions on U. S. or Canadian ownership of insurance services in Mexico. NAFTA opens the Mexican insurance industry to Canadian and U.S. insurance companies in a couple of important areas. NAFTA permits:

1. U.S. and Canadian insurance companies to enter joint ventures with Mexican insurance companies. The equity participation limits for such foreign companies are 30% in 1994, 51% in 1998, and 100% in the year 2000. Unlike banks and security firms, there are no aggregate or individual market share limitations on these insurance joint ventures.
2. U.S. and Canadian insurance companies will establish Mexican subsidiaries. These subsidiaries are subject to a transition period market share limitation of 6% of the authorized capital of the industry which increases to

12% in 1999. In addition, during the transition period, no subsidiary shall have an authorized capital share greater than 1.5% of the authorized capital share of the entire industry.

3. U.S. and Canadian insurance that had an ownership interest in Mexican insurance companies prior to the implementation of NAFTA (January 1994) are permitted to increase their equity participation in those companies to 100% by January 1996.

During the period of NAFTA implementation, U.S. and Canadian participation in the Mexican insurance market will expand significantly. The Mexican insurance market will still remain closed to foreign investors who are not Canadian or U.S.

C. FINANCE COMPANIES

NAFTA permits nonbank financial service providers to establish limited scope financial institutions in Mexico. These financial companies are permitted to engage in the following activities:

1. Consumer lending.
2. Commercial lending.
3. Mortgage lending.
4. Credit card services.

During the transition period the capital of finance companies may not exceed 3% of the aggregate assets of all commercial banks and finance companies in Mexico. In calculating the 3% limit, the

assets of financial affiliates of automobile manufacturers will not include the value of the vehicles.

D. FINANCIAL SERVICES IN THE UNITED STATES

Investments by Mexican financial institutions in the U.S. were permitted before NAFTA. To equalize the effects of the Mexican restrictions on U.S. institutions, the United States implemented restrictions on some Mexican financial service providers. Many Mexican banks were privatized in the 1990's as the result of acquisition of financial groups that controlled Mexican security houses. An area of NAFTA negotiation was how Mexican financial groups owning both banks and security houses would be treated in the U.S. As a result of NAFTA, a Mexican financial group that controlled a Mexican bank that both:

1. Had a subsidiary or branch in the U.S. prior to January 1, 1992 and
2. Acquires a Mexican security firm that owns or controls a security firm in the United States is permitted to continue to engage in the same preacquisition activities for five years after the acquisition. The U.S. security firm will not be permitted to expand by acquisition during that five-year period. Transactions between the U.S. firms and their affiliates shall be regulated by the U.S. under the National Treatment Standard.

V. NO NATIONALITY REQUIREMENTS

No NAFTA nation can require a financial institution to employ persons of a particular nationality as key managers as a condition for doing business in the country. In addition, no NAFTA nation can require a financial institution doing business in its territory to have more than a simple majority of its nationals on the controlling board of the financial institution, or to require more than a simple majority of the board controlling the financial institution to reside in its territory.

The United States has an exception to this provision as it applies to federal banks under the National Bank Act. Also this NAFTA provision does not apply to banks established under state law if the state law has different requirements.

CHAPTER 10

TELECOMMUNICATIONS

I. INTRODUCTION

Telecommunications has long been a sore point in trade relations of the NAFTA countries. The United States had been running a trade deficit with Mexico as regards telecommunication services. NAFTA predicts greater use of the telecommunication industry as it expands to provide enhanced services in voice mail and data links and equipment marketing. The Mexican telecommunication industry generates six billion dollars of revenue annually. NAFTA will open that market to Canadian and U.S. firms for investment.

The need for foreign participation in Mexico's telecommunication industry Telefons de Mexico ("TELMEX") is evidenced by the fact that:

1. Telmex is required to provide long distance service to every town having a population greater than 500. In 1992 there were 10,000 towns that did not have such service.
2. Telmex is required to expand its network to 20 lines per hundred persons by the year 2000. To meet this goal, Telmex faces a legal requirement to add an estimated 1.6

million lines per year.

The rapid expansion of the Mexican system is expected to generate more opportunity for U.S. companies and eliminate the trade deficit in the telecommunication sector.

Canada and Mexico are the biggest customers for U.S. telecommunication equipment. In 1992 Canada imported $1.2 billion and Mexico imported $964 million in equipment. Together, such imports accounted for over a quarter of U.S. exports. In addition, Canada and Mexico have been the biggest customers for U.S. telecommunication services. In 1991, the U.S. collected more than $1 billion in calls to Mexico and more than $800 million in calls to Canada.

The basic telecommunication services market for Canada is estimated to be $15 billion dollars, while Mexico's market is estimated to be $4 billion dollars. The basic telecommunication services market is specifically excluded from NAFTA because there is no need for NAFTA involvement. Excellent cooperation already is evident in telecommunications. In Mexico, basic telecommunication services include not only local and long distance and international calling but mobile phones, paging, air-to-ground, telex and fax services.

II. ACCESS

Generally, NAFTA has the effect of opening each country's public telecommunication network to foreign companies and investors

from other NAFTA nations for the purpose of:

1. Leasing private lines.
2. Attaching terminal equipment.
3. Creating private networks.
4. Performing private switching, signaling and processing functions, and using private operating protocols.

NAFTA requires that access and use of telecommunications be provided on reasonable and nondiscriminatory terms and conditions to the citizens and enterprises of all NAFTA nations.

III. INVESTMENT

All foreign investment restrictions and local presence requirements in Canada and the United States for all value added, enhanced and packet-switched services have been eliminated for NAFTA nations (January 1994). In Mexico, the above foreign investment restrictions and local presence requirements remain in force until July 1995.

NAFTA forbids any nation from adopting or continuing to enforce certain trade-distorting performance requirements. In particular, NAFTA eliminates export performance requirements, technology transfer requirements and specific product mandates. Mexico is required by the year 2001 to eliminate all maquiladora performance requirements and export targets. In addition, Mexico is required to increase to 100% the amount of maquiladora production that can be sold in Mexico by the year 2001.

NAFTA permits, for the first time, investors from Canada and the United States to own 100 percent of newly formed business to produce telecommunication equipment in Mexico. No government approval is needed for such investment; pre-NAFTA law limited ownership to 49%. There are limitations on foreign investment in existing businesses that produce telecommunication equipment. Canada reserved the right to approve investment by U.S. and Mexican investors in existing enterprises exceeding $150 million in Canadian dollars. Mexico reserved the right to approve investments by Canadian and U.S. investors in an existing business exceeding $25 million dollars; that increases to $150 million dollars in the year 2003.

Foreign investors from a NAFTA country have the right to take the profits out of the country. For the first time, investors from a NAFTA country are freely permitted to take their profits, dividends, interest, capital, royalties, and other investments from another NAFTA country. For Mexico, in particular, the fear of the currency restrictions has long impeded foreign investment. Now, U.S. and Canadian investors can invest with more confidence and assurance that they can readily get their profits and investments out of the country upon demand.

One of the most important aspects of NAFTA is that for the first time, U.S. and Canadian investors in Mexico are permitted to seek binding arbitration on disputes involving alleged violations

of NAFTA obligations. This is an important change because Mexico has long had a law (which is still applicable to other non-NAFTA investors) which punishes a foreign investor for complaining on his treatment in Mexico by confiscating the investment.

IV. INFORMATION, PRICING AND ENHANCED SERVICES

The rates charged citizens and enterprises by a NAFTA nation must be based "on the economic costs directly related to providing such services." In addition, privately leased circuits must be available on a flat-rate basis. NAFTA nations are required to provide the public with information regarding their public services and networks. The countries are required to provide the public with information about their public services and networks. The countries are required to provide the following information:

1. Tariffs.
2. Terms and conditions of service.
3. Technical specifications for interfacing with networks.
4. Permits and licensing requirements.

NAFTA defines enhanced services as those involving computer usage. Enhanced services include:

1. Electronic mail (E Mail).
2. On-line information.
3. Data retrieval (modem or fax).
4. Data processing.
5. Alarm services.

Each NAFTA nation is required to ensure that any licensing, permit, registration or notification procedure it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory. All applications for the providing of such services must be processed expeditiously. No NAFTA nation shall require a person seeking to provide the public enhanced or value added services (1) to cost-justify its rates or file a tariff unless a monopoly has been granted, (2) to correct an anticompetitive activity, (3) to interconnect its network with any particular customer or (4) to conform to any particular standard or technical regulation other than for interconnection to a public telecommunications transport network. Foreign providers of enhanced services for other NAFTA nations will be able to apply for and receive licenses to operate on reasonable, transparent and nondiscriminatory terms.

V. TECHNICAL STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their individual telecommunication industry. NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their telecommunications network. Technical standards are to be adopted only to prevent technical damage to the public network, to prevent billing equipment malfunctions, and to assure safety and access.

NAFTA requires adoption of standards for terminal equipment

attached to the telecommunication network. Standards cannot be adopted that have no relationship to safety but have the effect of inhibiting foreign competition. Each NAFTA country is required to bestow nondiscriminatory treatment on a telecommunication exporter of a fellow NAFTA country. This means that the exporter must be treated at least the same as a domestic supplier of the goods or, if none, at least the same as exporters from non-NAFTA countries. This is free trade in its simplest form. Each NAFTA country must treat the exports of a fellow NAFTA country as though it was manufactured in that country. By treating all such goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the new effect that capitalism functions according to market operations and not artificial government regulation.

Each NAFTA nation is required to give fellow nations advance notification of any proposed changes in its telecommunication standards. This is a major improvement over the GATT process in that it provides early discussion and resolution by the nations before any such changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in the fellow NAFTA countries. GATT has no set time frame for commenting on proposed changes in standards. In comparison, NAFTA requires a 60-day comment period before any

changes in standards can be adopted. Mexico under its Federal Law of Meteorology and Standardization requires longer comment period than NAFTA: 90 days.

NAFTA eventually envisions a time that a single lab will be able to certify that a product meets the technical standards of all three countries. It is the intention of NAFTA nations that labs in Canada and the United States will eventually be accredited in Mexico the same as Mexican labs. U.S. labs will be able to certify a product for sale in Canada, Mexico or the United States, significantly reducing the costs of such products. Canada and the United States implemented this provision immediately on enactment of NAFTA, but Mexico was given until 1999 to fully implement this provision.

A trilateral telecommunication equipment standards subcommittee was established by the NAFTA countries. The purpose of this subcommittee is to harmonize and correlate the standards of each country to make them uniform. Ultimately, the subcommittee will establish a single set of standards and a uniform test for telecommunications equipment throughout North America.

VI. PRIVATE NETWORKS

NAFTA permits U.S. companies, for the first time, to establish private intracorporate systems to assist Mexican facilities in communicating with other North U.S. operations. For the first time, U.S. companies may operate their own communications networks

without needing to be associated with a Mexican company. This is a major departure from pre-NAFTA. Mexican law required all foreigners seeking to do telecommunication business in Mexico to have in a joint-venture Mexican partner. Private networks may also be connected with the public phone network or with other private networks.

NAFTA forbids any partner allowing anticompetitive activity by monopoly telephone companies. All telecommunication tariffs must reflect the economic cost of providing service. In addition, NAFTA requires telephone companies to provide private leased lines at fixed and flat-rate pricing with the right of the lessee to resell any excess capacity.

NAFTA follows the U.S. practice of permitting customers to purchase or lease the equipment to be installed on their property: phones, computers, faxes. Customers are permitted to attach their compatible equipment to the public phone systems. NAFTA specifically permits private networks to use their own private computer interfaces and to conduct their own specialized operations for their specialized systems.

VII. TARIFFS

NAFTA permits tariffs on telecommunication equipment. The tariffs are divided into three categories and gradually will be gradually eliminated over 15 years. The tariffs on PBX equipment and fiber and cellular phones (80% of the U.S. telecommunication

exports) were eliminated in January 1994. The tariffs on central office switching systems remain in force until 1999.

Upon the enactment of NAFTA, more than 80% of all U.S. telecommunication exports to Mexico became duty free. Exports of most telecommunication line equipment, private branch exchanges, cellular phones and modems receive immediate tariff relief. Telecommunications parts exports, accounting for more than 40% of total U.S. telecommunication equipment exports to Mexico, are also duty free. Tariffs on paging alert devices for tone use only, coaxial cables and antennae are to be eliminated by the year 2004. The tariffs on the remaining telecommunication exports will be terminated by the year 1999.

Mexico is precluded, under NAFTA, from raising its tariffs on U.S. telecommunications goods above pre-NAFTA rates (that ranged between 15% and 20%). Mexico is expressly forbidden under NAFTA to raise tariffs on U.S. products to "GATT Bound" levels (which can be high as 50% on the value of the products). This is an advantage to U.S. exporters, who will not have to pay such a GATT tariff. U.S. and Canadian exporters will enjoy an advantage over exporters from non-NAFTA countries who will have to pay the GATT tariff to sell their products in Mexico. Most Mexican telecommunication exports to the U.S. were duty free prior to the enactment of NAFTA and remain duty free thereafter. Upon the enactment of NAFTA, all tariffs on Mexican exports of telecommunication goods were

eliminated.

Prior to the enactment of the Canada-United States Free Trade Agreement (CFTA), Canadian tariffs on U.S. telecommunications exports were as high as 17.5%. After enactment of CFTA, most Canadian duties on U.S. exports of telecommunications goods were eliminated. Under CFTA, all Canadian tariffs on U.S. telecommunications exports will be eliminated by the year 1998.

Mexico has agreed under NAFTA not to engage in antidumping activities and not to impose any countervailing duties on imported goods from other NAFTA countries. Canadian and U.S. exporters will be treated the same as Mexican importers. Disputes regarding anti-dumping and countervailing duties will be addressed through binational panels. The jurisdiction of a panel is limited to determining whether or not the country's activity is consistent with its domestic law and whether or not it is the same treatment given to its own citizens.

VIII. VALUE-ADDED SERVICES

The value-added network services (VANS) is increasing in the United States. The VANS market provides a variety of enhanced communications services to the user. Included in such services are electronic mail, computer processing through modems, electronic data exchange, electronic fund transfer, facsimile transmissions, point of sale payments, travel reservations, videotext, voice mail, computerized libraries and research activities.

In the United States, the VANS industry accounted for $3.5 billion in 1993. The U.S. VANS systems is the largest in the world and is unregulated. The growing interrelationship of the world business community is resulting in world wide growth in the demand for VAN services. U.S. firms as the world leaders in VANS are in the position to reap the growing demand for such services.

The Canadian market accepted VANS through the Canadian-U.S. Free Trade agreement. NAFTA will not affect the U.S. or Canadian VAN operations. It is Mexico that will achieve the greatest growth in the VAN industry. NAFTA clears VAN providers from the U.S. and Canada with unrestricted access to the Mexican market. Mexico's demand for VAN services is expected to grow from $22 million in 1991 to $150 million in 1996. Firms from Canada and the United States are permitted for the first time to conduct their VAN operations directly in Mexico or provide such services from outside the country through existing facilities. The United States is situated to provide cross-border VAN services from its already developed facilities.

NAFTA requires Mexico to eliminate all restrictions on investment from U.S. and Canadian investors in its enhanced telecommunications (VANS) sector. Mexico has until July 1995 to remove restrictions on packet-switched data networks and videotext services. Since NAFTA does not regulate basic telecommunication services, Mexico still restricts foreign investing in TELMEX,

Mexico's governmental provider of basic services and providers of cellular phone services.

IX. RULES OF ORIGIN

NAFTA applies to goods manufactured in Canada, Mexico and the United States. Only those goods considered to have North American origin are considered for the free trade provisions of NAFTA. The NAFTA rules of origin, used to determine North U.S. manufacturing content, are easier to use than those of the Canada-United States Free Trade Agreement. NAFTA has a de minimus rule that permits 7% of the goods to be other than North American manufacture.

The rules of origin under NAFTA require telecommunications equipment to be wholly of North U.S. origin. Any telecommunications equipment that is not wholly of North U.S. origin is treated as if it had undergone "significant processing" in Mexico, Canada or the United States. NAFTA has adopted the Harmonized System of tariff classification for determining if significant processing of the equipment has occurred. In addition to the significant processing rule, NAFTA permits producers of line-telecommunications equipment to use one nonoriginating printed circuit for every nine North American printed circuits.

X. MONOPOLIES

Where a NAFTA nation maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the

provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, a member shall ensure that the monopoly does not use its dealings with affiliates to operate in such an anticompetitive manner as to affect a person or investor or another NAFTA nation. Such prohibited conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

CHAPTER 11

INTELLECTUAL PROPERTY

I. INTRODUCTION

NAFTA is intended to promote the highest standards of protection for intellectual property. Patents, trademarks, copyrights and trade secrets are all regulated thereunder. NAFTA adopts and extends the protections for intellectual property contained in the International Property Rights law that Mexico adopted in June 1991. Through NAFTA, export driven growth of U.S. and Canadian technology and entertainment products will occur.

NAFTA requires each country to provide for the enforcement of the rights of authors, artists and inventors and reduction in infringement and piracy. Patent protection for U.S. and Canadian producers of computer programs, encrypted satellite signals and other creations is extended through NAFTA to Mexico. NAFTA limits compulsory licensing of patents and resolves points of long standing contention regarding patent coverage by U. S. pharmaceutical and agricultural companies.

The lack of protection for intellectual property rights in Mexico has been a serious impediment to U. S. sales there. High technology exports account for 32% of total U. S. exports but account for only 16% of exports to Mexico. NAFTA, by reducing the threat of piracy, increases the incentive for U.S. companies and

inventors to develop new technologies and products. These higher levels of protection will lead to increased research and development by U. S. businesses.

II. NATIONAL TREATMENT

It is one of the stated goals of NAFTA to provide the means for adequate and effective protection and the enforcement of intellectual property rights among the NAFTA nations. Article 1703 reads in pertinent part:

> "Each party shall accord to nationals of another party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. With respect of sound recordings, each party shall provide such treatment to producers and performers of another party, except that a party may limit rights of performers of another party with respect to secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other party."

Article 1721 broadly defines the intellectual rights. The coverage extends to:

> "Copyright and related rights, trademark rights, patents, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights."

The definition of "intellectual property rights" is more notable by what is not covered. NAFTA does not include protection against unfair competition, which is ordinarily considered part of the infringement on a trademark. Article 1702 of NAFTA does require each nation to follow the 1967 Paris Convention For the Protection of Industrial Property and its requirements for protection against unfair competition.

In fixing the minimum standards for the protection of such intellectual property rights, NAFTA incorporates several international agreements on the subject. Specifically incorporated into NAFTA are:

1. The 1971 Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms.
2. The 1971 Berne Convention for the Protection of Literary and Artistic Works.
3. The 1967 Paris Convention for the Protection of Industrial Property.
4. The provisions (for Mexico by January 1, 1996) of either:
    a. The 1978 International Convention for the Protection of New Varieties of Plants, or
    b. The 1991 International Convention for the Protection of New Varieties of Plants.

Article 1704 permits NAFTA nations to prohibit the following licensing practices or conditions as an abuse of intellectual property rights:

> "Nothing in this Chapter shall prevent a party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions."

To accomplish its goals, NAFTA creates a comprehensive definition of what constitutes intellectual property. NAFTA then sets the minimum standards for the protection of intellectual property. Finally, NAFTA requires each nation to apply its National Standard in dealing with foreign nationals from another NAFTA nation. Under this rule, each nation must accord foreign nationals from other NAFTA countries treatment no less favorable than that which the country affords its own citizens.

III. COPYRIGHTS

NAFTA incorporates the copyright protection of the Berne Convention to its nations along with works embodying original expression. Article 2 of the Berne Convention extends copyright protection to artistic works of all types. Specifically covered by the Berne Convention are:

1. Translations.
2. Compilations and collective works.
3. Dramatic works.
4. Musical works.
5. Choreological works.
6. Cinematographic works.
7. Drawings.
8. Architecture.
9. Paintings and sculpture.
10. Works of applied art.

Article 1705(2)(a) assures that a copyright owner has the right to authorize or prohibit reproductions, distributions or displays of the protected work to the public and the right to prohibit the importation into the territory of any NAFTA nation any of the prohibited material without the copyright holder's

permission. Article 1705(2) reads in pertinent part:

> "(2) Each party shall provide to authors and their successors in interests those rights enumerated in the Berne Convention with respect to works covered by paragraph 1, including the right to authorize or prohibit:
>
> (a) The importation into the party's territory of copies of the work made without the right holder's authorization,
>
> (b) The first public distribution of the original and each copy of the work by sale, rental or otherwise,
>
> (c) The communication of a work to the public, and
>
> (d) The commercial rental of the original or a copy of a computer program."

Implicit with copyright protection is the right to control the renting or reproduction of the work. Copyrighted work may not be reproduced or copied for sale without the permission of the copyright owner. The prime example is the record industry: A record or tape does not automatically have the right or permission of the copyright owner to make copies of the tape or record for sale. This subarticle clarifies and specifically states the NAFTA position on works that are copyrighted and imported to a NAFTA country: they cannot be distributed or displayed in any NAFTA nation without the consent of the copyright owner. Any person who participates in the unauthorized distribution of copyrighted material in non-NAFTA countries will be liable for copyright infringement.

A. COMPUTER PROGRAMS

Computer programs are specifically stated as being covered.

Article 1705:

> "Each party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:
>
> (a) All types of computer programs are literary works within the meaning of the Berne Convention, and each party shall protect them as such, and
>
> (b) Compilations of data or other material, whether in machine readable or other form, that by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such."

Article 1705 provides that computer programs of whatever type or nature are protected as literary works and data compilations. While the compilation is given protection, the data used to construct the compilation is not protected. Article 1705 adopts U.S. copyright as stated in the case Feist Publications Inc. vs. Rural Telephone Service Co. 112 S. Ct.1292 1991 and grants the authors and their successors in interest as owners of the copyright with the exclusive right to reproduce, distribute or otherwise trade in the work. The owner of a copyright also has the sole power of control of the commercial rental of copies of computer programs. The purpose of this provision is to preclude persons from renting or purchasing a computer program to make copies for sale to other persons or entities.

B. SOUND RECORDINGS

Sound recordings such as CD's, records and tapes are covered as copyrighted material. Article 1706 governs the treatment of

sound recordings as follows:

> "Each party shall provide the producer of a sound recording the right to authorize or prohibit:
>
> (a) The direct or indirect reproduction of the sound recording,
>
> (b) The importation into the party's territory of copies of the sound recording made without the producer's authorization,
>
> (c) The first public distribution of the original and each copy of the sound recording by sale, rental or otherwise, and
>
> (d) The commercial rental of the original or a copy of the sound recording, except where expressly otherwise provided in a contract between the producer of the sound recording and the authors of the works therein.

NAFTA requires each nation to give copyright protection to sound recordings for at least 50 years from the end of the year the recording was made. Specifically prohibited is the commercial rental of copyrighted sound recordings without the copyright owner's consent. NAFTA treats performances of sound recordings differently from records, tapes and CD's, giving the copyright owner control over the reproduction, importation and first distribution of the work.

Article 1706(1)(d) applies if a sound recording contains compilations from several sources (such as a tape or record album). A sound recording which is composed of copyright works of different copyright holders can only be released for rental or recording with the consent of the copyright holders. If an album contains 10 different copyrighted songs held by 10 different holders, there can

be no rental or recording of the album without the consent of the 10 copyright holders and the holder of the copyright on the album. A song on a copyright album requires the consent of both the holder of the copyright on the album and the copyright holder of the song.

C. FILMS IN THE PUBLIC DOMAIN

Special treatment is given to films in the public domain. Normally a film is considered in the public domain if its copyrighted. United States copyright law prior to 1989 required a copyright holder to attach a copyright notice to each copy of film when it was distributed. If the notice was not attached to all films distributed everywhere in the world, the copyright was immediately lost. The copyright was lost even if the film was distributed only in an area that did not require the copyright notice to be attached. The copyright notice requirement in U. S. copyright law was changed in 1989. Films distributed since 1989 do not lose their copyright protection merely because they do not have the copyright notice.

NAFTA imposes the requirement that the United States grant copyright protection to films produced in Canada or Mexico that would be public domain under U.S. law because of their failure to comply with U. S. copyright notice requirements.

D. ENCRYPTED SATELLITE SIGNALS

The cable television industry has been targeted by NAFTA as an important part of free trade. The telecommunications industry has

the most sectors of each of the NAFTA nations economies. To protect and regulate the growth of this industry, NAFTA contains Article 1707 as follows:

> "Within one year from the date of entry of this Agreement, each party shall make it:
>
> (a) A criminal offense to manufacture, import, sell, lease or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal, and
>
> (b) A civil offense to receive in connection with commercial activities or further distribute an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any lawful activity prohibited under subparagraph (a)."

Under this article, each member is required to impose criminal and civil liability on anyone manufacturing unauthorized satellite decoding devices for sale or rental. The purpose behind this article is to prevent people from purchasing equipment to receive and decode satellite signals without paying the signal generator. NAFTA prevents people from receiving and decoding commercial pay-for-view television signals such as HBO, Cinemax, Disney Channel and other encrypted television signals without paying for the service. NAFTA also applies to all encrypted satellite signals containing telephone communications or computer data; NAFTA makes it a crime for a person to receive and decode encrypted satellite signals. NAFTA gives standing to any person or entity who has a

protected interest (not only the transmitter but the person or entity that owns the copyright or license for the show that is illegally received) in the signal to sue both the person receiving the signal and the supplier of the equipment used to receive it.

IV. TRADEMARKS

NAFTA provides a uniform treatment of trademarks throughout the NAFTA nations. A trademark is defined as a symbol that distinguishes one business good from those of other businesses. Potential area of conflict: Mexico retains the right to regulate the use of trademarks under its health, safety and welfare powers. Trademark law reduces consumer confusion between identical goods. Article 1708(2) reads as follows:

> "Each party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar goods or services with respect to the owner's registered trademark, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a party making rights available on the basis of use."

NAFTA presumes that identical trademarks carry with them the likelihood of consumer confusion and create the presumption of trademark infringement.

A. SERVICE MARKS

Service marks are defined as any logo, words or symbols that are used to distinguish the services provided by one business from those services provided by other businesses. Service marks are to

be given the same protection as trademarks of a business.

B. FAMOUS MARKS

NAFTA imposes the obligation on each of its nations to protect all famous trade and service marks of the nationals of the other NAFTA nations. Article 1708(6) reads as follows:

> "Article 6 of the Paris Convention shall apply with such modifications as may be necessary to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the party's territory obtained as a result of the promotion of the trademark. No party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods and services."

Such protection is extended even if those trademarks or service marks are nor registered with the NAFTA member where the infringement occurs.

C. TRADEMARK REGISTRATION

Article 1708 sets a uniform procedure for registration of trademarks within NAFTA countries. Included in the registration system are procedures for the protection of unregistered marks by virtue of their use in NAFTA countries. A mark, be it trademark or service, must actually be used in order for its registration to be maintained. NAFTA permits its nations to conform the registration of mark to its actual use. If a corporation registers a trademark and does not use it, NAFTA nations can terminate the registration and protection given to that mark. While use may be required to maintain registration, no NAFTA nation may require use of the mark

prior to application for registration.

NAFTA requires its nations to give an applicant from another NAFTA nation three years to put a mark into use before denying the registration. This NAFTA provision is similar to the United States Lanham Act which requires use of a mark within six months of the U. S. Trademark issuing a "notice of allowance." This period may be extended 24 months on showing good cause.

1. TERM

NAFTA requires its nations to give mark protection for a term of 10 years after registration. Once a mark is registered, the registration can be renewed indefinitely for terms of 10 years.

2. ABANDONMENT

Article 1708(8) states the circumstances that indicate a mark has been abandoned and will void registration. It reads as follows:

> "Each party shall require the use of a trademark to maintain a registration. The registration may be canceled for reason of nonuse only after an uninterrupted period of at least two years of nonuse, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each party shall recognize as valid reasons for nonuse circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions or other government requirements for goods or services identified by the trademark."

Nonuse of the mark for two consecutive years will create the presumption that the mark was abandoned. This presumption can be overcome only if the holder of the mark's registration is able to

show that there were reasons independent of the holder's will that prevented the use of the mark.

3. LICENSING

A holder of a registered mark can grant licenses to other persons or entities to use the mark. A licensee's use of the mark shall be attributed to the mark holder for the purpose of maintaining the mark's registration. As long as a mark licensee uses the mark, the mark shall not be abandoned. No NAFTA nation may require compulsory registration of trademarks or service marks.

4. GEOGRAPHICAL INDICATIONS

NAFTA requires its nations to assure that trademarks do not mislead the public on the origin of the goods. Article 1712(2) forbids a NAFTA nation to register a trademark that misleads the public on the geographical origin of the goods.

V. PATENTS

NAFTA requires that each of its nations bestow patent protection for the nationals of the other nations for a term of either:

1. 20 years from the date of the patent filing, or
2. 17 years from the grant of the patent.

Article 1709(1) reads as follows:

> "Subject to paragraph 2 and 3, each party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For purposes of this Article, a party may deem the terms "inventive step" and "capable of industrial

> application" to be synonymous with the terms "nonobvious" and "useful" respectively."

Under U. S. patent law, the duration of a patent is 17 years for utility patents and 14 years for design patents. If a NAFTA nation limits patent protection to 20 years from the date of filing, the term of protection is reduced by the period of time the patent is prosecuted. To address this concern NAFTA Article 1709 (2) permits, but does not require, its nations to extend the patent period to compensate for the delays in the regulatory process of obtaining patent approval, Article 1709(12).

Article 1709(3) permits NAFTA nations to exclude plants and animals from being patented:

> "A party may also exclude from patentability:
>
> (a) Diagnostic, therapeutic and surgical methods for the treatment of humans and animals,
>
> (b) Plants and animals other than microorganisms, and
>
> (c) Essentially biological processes for the production of plants or animals other than the nonbiological and microbiological processes for such production."

In addition, NAFTA also permits its nations to deny patents on microorganisms and biological processes.

1. COMPULSIVE LICENSING

There may be situations where a NAFTA nation would require a holder of a patent to give a license to a person or entity. NAFTA permits compulsory licensing if the granting of a patent on reasonable commercial terms and conditions was denied by the patent

holder and the NAFTA nations finds it to its benefit to compel the licensing.

2. INFRINGEMENT SUIT

NAFTA establishes a specific burden of proof for each member to apply in an infringement suit. NAFTA requires a defendant to prove that any alleged infringement actually occurred from a process other than the patented process on which the infringement is alleged. To do that, the defendant must either prove that the process used was a new patented process or show that the patentee cannot reasonably prove that the process used was the patented one in question.

VI. CIRCUIT TOPOGRAPHY

Article 1710 protects against unauthorized copying of semiconductor circuit boards and layouts. Article 1710 reads in pertinent part:

> "Each party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:
>
> (a) A protected layout design,
>
> (b) An integrated circuit in which a protected layout design is incorporated, or
>
> (c) An article incorporating such integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design."

NAFTA nations are required to permit an infringer to sell any inventory acquired before any notice of infringement provided a

reasonable royalty is paid to the right holder.

VII. TRADE SECRETS

Trade secrets are accorded specific protection under Article 1711 that extends protection to information of relative secrecy (absolute secrecy for the information is not required). NAFTA even extends protection to information that is publicly available and is not generally known. Trade information is protected under NAFTA as long as it has the potential of business value to the owner or has not become generally known to the trade or the public.

NAFTA permits its member nations to restrict trade secret protection to information maintained on documents, electronic or magnetic means, optical discs, microfilms, films or other permanent means. Under this provision, information not reduced to writing (such as generally acquired know-how) may not be accorded protection in a NAFTA country if the nation does not wish to do so.

VIII. GOVERNMENTAL CONFIDENTIAL DATA

NAFTA nations are required to treat as confidential all trade secrets that are brought to them by NAFTA citizens attempting to obtain government licensing or product approval. This article requires the NAFTA government entities to keep the trade information secret unless its disclosure is necessary to protect the public from unfair commercial use.

Article 1711(6) protects proprietary information submitted to a NAFTA government entity for a reasonable time after submission.

This article defines "reasonable" as being at least five years after the date of the granting of government approval. The period is determined by the nature of the date, the degree of confidentiality involved and the amount of money and time spent compiling the information.

IX. INDUSTRIAL DESIGNS

In addition to patent and copyright protection, NAFTA extends specific protection to industrial designs. This protection was directed to, but not limited to, textiles and other manufactured products that might not otherwise be protected by other intellectual provisions (such as furniture, boats, etc.). Protection for industrial designs may be denied by a NAFTA nation if the designs are not new. To be considered new, the designs must have significant differences from known designs or combinations of such known designs. Protection for industrial designs extends for a minimum of 10 years. This protection of industrial design includes what is known as "knocking off" (copying) a product that is not otherwise protected.

X. ENFORCEMENT

NAFTA Articles 1714 to 1718 set in place a detailed procedure for the enforcement of the protection of intellectual rights. Each NAFTA nation must establish procedures for the enforcement of NAFTA's intellectual property rights provisions. All proceedings are to be enforced without delay, and decisions with justification

must be in writing. Administrative decisions must be reviewed by a court. A judicial review must cover the areas of law if not the actual facts of the case.

CHAPTER 12

HOUSEHOLD GOODS AND FURNITURE

I. INTRODUCTION

NAFTA will expand opportunities for U.S. exporters of household goods in Canada and Mexico. In the area of household appliances, Canada and Mexico account for more than half of total U.S. exports ($727 million in Canada and $384 million in Mexico for 1992). The United State's household audio and equipment trade with Mexico was $702 million and with Canada was $561 million in 1992. Such trade with Mexico and Canada accounted for 51% of total U. S. export of audio and video equipment. The household glassware industry in the United States exported $36 million of product to Canada and $18.3 million of product to Mexico in 1992. Exports to Canada and Mexico accounted for 36% of total U.S. exports of household glassware. Exports to Mexico, although relatively small, rose 208% between 1991 and 1992.

The household appliance industry consists of any equipment used in the home: stoves, refrigerators, fans, vacuum cleaners and dishwashers. The industry employs 104,000 workers, primarily in Arkansas, Indiana, Illinois, Kentucky, Michigan, Ohio, Tennessee and Wisconsin. In 1991, the appliance industry produced goods

valued at $16.1 billion. Exports to Canada and Mexico represented 5.9% of total production. U.S. exports to Canada increased 36.1% and increased 37.9% to Mexico between 1990 and 1992.

In the United States the market for audio and video equipment may have peaked. Between 1990 and 1992, sales of audio and video equipment in the United States leveled at $7.1 billion. The production of television sets and their parts are a major part of the U. S. household audio and video industry. As sales stall or begin to peak, the demand for such products decreases. A decrease in demand is translated immediately into a reduction of employed U.S. workers manufacturing those goods. Color TV sets and VCR's appear to have peaked in the United States, while there has been a slight increase in audio sales. Big screen TV's and other big-ticket electronics experienced great growth but were an exception to the overall malaise in the industry.

The U.S. household glassware industry employed 26,000 workers in 1991. Most of the industry is located in Pennsylvania, West Virginia, Ohio and Indiana. U.S. exports for 1991 totaled $1.5 billion dollars, and the exports to Canada and Mexico accounted for 3.1%. U. S. exports to Mexico increased 158% from 1990 to 1992, but for Canada the trade increase during that same period was just 1%. By comparison, the United States imported $21.8 million of goods from Mexico in 1992, which was an increase of 17.2% over 1991 levels. The Mexican demand for glassware has been steadily

increasing from $38.1 million in 1989 to $53.8 million in 1990. Glassware production represents 15% of Mexico's giftware industry and is expected to increase as a result of NAFTA. The largest glass producer in Mexico is Vitro, S.A. which has formed a joint venture with Corning Glass of the U. S. for each company to distribute the other company's product lines. The existence of this arrangement highlights the demand for U.S. products in Mexico. The NAFTA elimination of Mexico's 20% tariff on glassware will make U.S. glassware more competitive. Even before the enactment of NAFTA, the United States was the largest foreign exporter of glassware to Canada. In 1991, Canada imported 31% of its glassware from the United States. The largest segment of U.S. glassware exported to Canada was table and kitchenware. The Canada-U.S. Free Trade Agreement requires Canada to eliminate all tariffs on U. S. imported glassware by 1999. U.S. glassware exports to Canada will increase significantly as the tariff is eliminated and U.S. goods become more competitive.

The United States exported 60% of its total export of household and office furniture to Canada and Mexico in 1992. Canada imported $728 million and Mexico imported $198 million. The U.S. home furniture industry employs 258,500 workers, most of whom are located in North Carolina, Virginia, California and New York. The U.S. office furniture industry employs 66,100 workers of which 40% are employed in Michigan and California. In 1991, total exports of

U. S. furniture production were $26 billion; Mexico and Canada accounted for 3%. Furniture trade with Canada and Mexico has been steadily increasing. Between 1987 and 1991, furniture trade with Mexico increased 71% and with Canada the trade increased 175%. In comparison, for the same period, U.S. imports of Mexican furniture products increased 39% and Canadian products increased 14%. The significance of such trade with Canada and Mexico is shown by comparison with U.S. trade to the European Community, consisting of 12 nations. In 1992, the United States sold $126 million of household furniture to Mexico, while it only sold $108 million to the 12 members of the European Community. Mexico alone purchased more U.S. household goods than 12 European nations.

NAFTA does not change the Mexican law requiring all consumer goods sold in Mexico to have a label written in the Spanish language.

II. TARIFFS

A. HOUSEHOLD APPLIANCES

Upon the enactment of NAFTA, Mexico eliminated its tariffs on 17% of U. S. imported appliances. By 1999, Mexico will eliminate tariffs on another 17% of U.S. appliances. By 2004, Mexico will eliminate the remaining tariffs on all U.S. appliances. NAFTA prevents Mexico from raising those tariffs that are still permitted above their pre-NAFTA rates: 10% on appliance parts and 20% on completed appliances. In addition, NAFTA forbids Mexico to raise

its tariffs on U.S. goods to "GATT bound" levels, which can be as high as 50% ad valorem. Without NAFTA, Mexico, as a signatory to GATT, could raise its tariffs on U.S. goods to 50% of their value.

Following the enactment of NAFTA, the United States eliminated its tariffs on 85% of all Mexican exports of household appliances. The U. S. tariff on Mexican vacuum cleaner parts, which was seven percent (7%), will end by 1999. The U.S. tariff on Mexican nonelectric storage water heaters, which accounted for 8% of all U.S. household appliance imports, will be eliminated by 2004. U.S. tariffs are reduced more quickly than Mexican tariffs, but that will not markedly help Mexican exports. Even prior to NAFTA, U.S. tariffs on Mexican appliances were low, ranging from 2.2% to 4.4% ad valorem. Prior to NAFTA, most Mexican appliances were eligible to tariff-free entry under the Generalized System of Preference (GSP). The United States reserved in NAFTA a means to protect itself from any immediate surge of Mexican imports. The United States is permitted to reinstitute its tariffs of 2.8% to 5.7% on Mexican household appliances for a period of three years if Mexican imports seriously threaten to injure U. S. producers. This safeguard provision can only be used once for a particular good.

Canada imposes tariffs on U.S. household appliances from a sliding rate of zero to 14.1%. Under the Canada-U.S. Free Trade Agreement (CFTA) the tariffs will end by 1998. By 1992, Canada had eliminated its tariffs on 37.9% of all U.S. imports of household

appliances.

B. HOUSEHOLD AUDIO AND VIDEO EQUIPMENT

Upon the enactment of NAFTA, Mexico stopped its tariffs on 47% of U.S. imported audio and video equipment on the enactment of NAFTA. By 1999, Mexico will eliminate tariffs on another 51% of U.S. audio and video equipment, including color television sets. By 2004, Mexico will eliminate the remaining tariffs on all U.S. audio and video equipment. Mexico is prevented from raising those tariffs on goods that are still permitted above their pre-NAFTA rates. In addition, NAFTA forbids Mexico from raising its tariffs on U.S. goods to "GATT bound" levels, which can be 50% ad valorem. Without NAFTA, Mexico, as a signatory to the GATT agreement, could raise its tariffs on U.S. goods to 50% of their value.

The United States on the enactment of NAFTA eliminated its tariffs on all Mexico exports of household audio and video equipment. The American tariffs are eliminated immediately rather than being gradually reduced like the Mexican tariffs, but that will not markedly help Mexican exports. Even prior to NAFTA U.S. tariffs on Mexican audio and video equipment were low if not duty-free. The United States reserved in NAFTA a means to protect itself from any immediate surge of Mexican imports. The United States is permitted to reinstitute its Most Favored Nation tariffs of 3.9% to 8% on Mexican household audio and video equipment for three years if Mexican imports seriously threaten U. S. producers.

This safeguard provision can only be used once for a particular good.

Under the Canada-U.S. Free Trade Agreement (CFTA) the tariffs for household audio and video equipment will terminate in each country by 1998.

C. HOUSEHOLD GLASSWARE

NAFTA requires that Mexico eliminate the tariffs on 72% of imported U.S. glassware by 2004 as determined by Mexico's 1990 import data. This group includes the major imports of glass ceramic and lead crystal glassware. The remaining 28% of export categories will be reduced and eliminated in either a five year or 10 year period, depending on a product's unit value. Goods valued at over $5 each will have their tariffs eliminated over five years. Goods with a value of less than $5 each will have their tariffs eliminated over 10 years. The 10 year period will generally apply to drinking glasses except those made of glass-ceramic and lead crystal. Mexico is prevented from raising its tariffs on U.S. goods to "GATT bound" levels, which can be as high as 50% ad valorem. Without NAFTA, Mexico as a signatory to GATT could raise its tariffs on U.S. goods as high as 50% of their value.

Prior to NAFTA most Mexican glassware was imported duty free to the U.S. and continues duty free now. The United States will eliminate all existing Mexican glassware tariffs on a product basis over a 15 year period. Such tariffs range from 7.2% to 38% and

protect lower priced drinking glasses and decorative glassware. The United States reserves in NAFTA a means of protecting itself from any immediate surge of Mexican imports. The United States reserves in NAFTA a means of protecting itself from any immediate surge of Mexican imports. The United States is permitted to reinstitute its Most Favored Nation Tariffs of 7.2% to 38% on Mexican household glassware for three years if Mexican imports seriously threaten to injure U. S. producers. This safeguard provision can only be used once for a particular good.

Upon enactment of the Canada-U. S. Free Trade Agreement (CFTA), Canadian tariffs on U. S. kitchen, table and novelty glassware was reduced 50% and completely eliminated on most other items. The average Canadian tariff on U.S. glassware through 1992 was 6.3%. All Canadian tariffs on U.S. glassware will be eliminated by 1998.

D. FURNITURE

Upon the enactment of NAFTA, Mexico categorized U.S. exports. Mexico based its tariff reduction on the furniture category. Mexico immediately eliminated its tariffs on 18% of the U. S. imported furniture. By 1999, Mexico will eliminate tariffs on another 8% of U.S. furniture. By 2004, Mexico will eliminate the tariffs on another 24% of all U.S. furniture. The remaining 50% of tariffs on U.S. furniture is governed by a modified schedule:

1. 40% of the tariffs were eliminated in 1994,

2. 20% of the tariffs by 1998, and

3. The remaining tariffs are eliminated by 2003.

Mexico is prevented under the terms of NAFTA from raising those tariffs that are still permitted above their pre-NAFTA rates. NAFTA forbids Mexico from raising its tariffs on U.S. goods to "GATT bound" levels, which can be as high as 50% as valorem. Without NAFTA, Mexico as a signatory to GATT could raise its tariffs on U.S. goods as high as 50% of their value.

The United States eliminated its tariffs on all Mexican furniture on the enactment of NAFTA. U.S. tariffs are eliminated immediately rather than being gradually reduced like the Mexican tariffs, but that will not markedly help Mexican exports. Even prior to NAFTA, U.S. tariffs on Mexican furniture were low if not duty-free. The United States reserves in NAFTA a means to protect itself from any immediate surge of Mexican imports. The United States is permitted to reinstitute its Most Favored Nation tariffs of 2.5% to 6% on Mexican household furniture for three years if Mexican imports seriously threaten to injure U. S. producers. This safeguard provision can only be used once for a particular good.

Prior to the Canada-U.S. Free Trade Agreement (CFTA), Canada imposed tariffs on U.S. furniture of 12.6% on metal furniture and 15% on other furniture. Canadian tariffs on U.S. furniture were eliminated under CFTA in 1993.

III. INVESTMENTS

All foreign investment restrictions and local presence requirements in Canada and the United States for all value added, enhanced and packet-switched services are eliminated for NAFTA nations (January 1994). In Mexico, the foreign investment restrictions of local presence requirements will remain in force until July 1995. NAFTA forbids any nation from adopting or continuing to enforce certain trade-distorting performance requirements, technology transfer requirements and specific product mandates. Mexico is required by 2001, to eliminate all maquiladora performance requirements and export targets. In addition, Mexico is required to increase to 100% by 2001, the amount of maquiladora production that can be sold in Mexico.

NAFTA permits, for the first time, investors from Canada and the United States to own 100% of newly formed business to produce household goods in Mexico. No government approval is needed for such investment, as opposed to the pre-NAFTA law that limited ownership to 49%. There are limitations on foreign investments in existing businesses. Canada reserves the right to approve investments by U.S. and Mexican investors in existing enterprises exceeding $150 million Canadian dollars. Mexico reserves the right to approve investments by Canadian and U.S. investors in existing businesses exceeding $25 million increasing to $150 million in 2003.

Foreign investors from a NAFTA country have the right to take

profits out of the country. For the first time, investors from a NAFTA country are permitted to take their profits, dividends, interest capital, royalties and other investments from another NAFTA country. For Mexico, in particular, the fear of currency restrictions has long impeded foreign investment. Now, U.S. and Canadian investors can invest with more confidence and assurance that they can readily get their profits and investments out of the country on demand.

One of the most important aspects of NAFTA is that it permits U.S. and Canadian investors in Mexico to seek binding arbitration on disputes involving the alleged violation of NAFTA obligations. This is important because Mexico has long had a law (that still applies to non-NAFTA investors) that punishes a foreign investor for complaining about his treatment in Mexico by confiscating the investment.

IV. TECHNICAL STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their industries. NAFTA nations, however, are not permitted to adopt technical standards merely for the purpose of restricting access to their markets. Technical standards are to be adopted only to prevent damage to a public network or to assure safety and access. NAFTA requires that standards cannot be adopted that have no relationship to safety but have the effect of keeping out foreign competition. Each NAFTA country is required to comport

nondiscriminatory treatment on an exporter of a fellow NAFTA country. This means that the exporter from a fellow NAFTA country must be treated at least the same as a domestic supplier of the goods or as exporters of non-NAFTA countries. This is free trade in its simplest form. Each NAFTA country must treat the exports of a fellow NAFTA country as though they were manufactured in that country. By treating all such goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across borders with the net effect that capitalism functions according to market operations and not by artificial government regulation.

In the area of television broadcasting, Canada, Mexico and the United States agreed to continue broadcasting with the same 525 scanning lines per inch system. The electrical standards for the three nations will continue to be 110/120 volts and 60 HERTZ. Each NAFTA nation is required to give fellow nations advance notification of any proposed changes in its telecommunications standards. This is a major improvement over the GATT process; it allows discussion by members before any such changes are implemented. If a NAFTA country permits participation in the change-making process by its citizens or companies, it must also permit participation by affected citizens and companies of fellow NAFTA countries. GATT has no set response time frame for taking comments on proposed changes in standards. In comparison, NAFTA

requires that a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for an even longer comment period than required under NAFTA: 90 days.

NAFTA eventually envisions a time that a single lab will be able to certify that a product meets the technical standards of all three countries. Labs in Canada and the United States will eventually apply for accreditation in Mexico in the same manner as Mexican labs. Once that goal is accomplished the U.S. labs will be able to certify a product for sale in Canada, Mexico and the United States. The costs of products will be significantly reduced. Canada and the United States implemented this provision immediately on enactment of NAFTA, but Mexico has until 1999.

Special rules apply for audio and video equipment. In Mexico, many electrical products (such as record players and tape decks) are regulated by Normas Officiales Mexicanas (NOM) and are required to obtain certification. U.S. companies wishing to export such products to Mexico must obtain a NOM certificate from the Mexican Secretariat of Commerce and Industrial Development. A trilateral standards subcommittee was established by the NAFTA countries. This subcommittee harmonizes and correlates standards with the view of making them uniform. Ultimately, the subcommittee will establish a single set of standards and a uniform test for products to correlate and harmonize standards for goods throughout North

America.

V. RULES OF ORIGIN

NAFTA only applies to goods manufactured in Canada, Mexico or the United States. Only goods that are considered to have North American origin are covered by the free trade provisions of NAFTA. The NAFTA rules of origin that are used to determine North American manufacturing content are easier to use than those under the Canada-United States Free Trade Agreement. In addition, NAFTA has a de minimis rule that permits 7% of the goods sold to not be of North American manufacture; some products with only 93% North American content are still covered by NAFTA.

The NAFTA rules of origin require household goods to be wholly of North American origin. Any household product that is not wholly of North American origin may be treated as if it had undergone significant processing in Mexico, Canada or the United States. NAFTA has adopted the Harmonized System of tariff classification for determining if significant processing of the goods has occurred.

For household audio and video equipment there is a supplemental "regional value content" test for use with microphones, loudspeakers, headphones, and amplifiers. In the situation where a product does not meet the Harmonized System requirement for NAFTA treatment, the manufacturer can use this test. Under this test, NAFTA treatment will be accorded the

product if:

1. Using a transaction method of determining value, the price paid or payable for the goods by the manufacturer reflects at least a 60% regional content, or
2. Using a net cost method of determining value, at least 50% of the value of the goods must reflect regional content. Such is calculated by the total cost of the item minus the cost of royalties, sales promotion, packing and shipping.

While a manufacturer may use either method for the test, only the net cost method may be used in situations where the transaction method is not permitted for a product under the Customs Valuation Code.

CHAPTER 13

TEXTILE AND APPAREL INDUSTRY

I. INTRODUCTION

The textile industry produces the yard thread and fabric used by the apparel industry to produce garments and clothing. The two industries are interconnected and in most instances are thought to be one. The U.S. textile and apparel industries are among the largest employers; although their number of employees has fluctuated in recent years. In 1973 employment in the textile industry was a little over one million. The apparel industry employed 1.4 million. By 1991, as a result of cheap foreign labor and subsidies, employment had been reduced to 672,000 in textiles and one million in apparel. Canada and Mexico through their importing of U.S. textiles and apparel directly account for 72,000 jobs. In the United States, there are nearly 30,000 plants producing textile and apparel products. The average textile worker earns $8.60 per hour and the average apparel worker earns $7.00 per hour. The U.S. textile industry is primarily located in the states of Alabama, North and South Carolina, Georgia and Virginia. Over a quarter of the apparel industry is located in California and New York. In 1992, the U.S. textile and apparel industry produced $137 billion of product of which $12 billion was exported. Another $36

billion of product was imported.

Over 40% of the apparel sold in the United States is of foreign origin. To help preserve its textile and apparel industry, the United States is a signatory to the Multifiber Arrangement (MFA), an international agreement whereby the nations may impose quotas on textile products to protect their domestic industries from low-cost foreign competition. The foreign market for U.S. textiles and apparel is highly dependent on the foreign exchange market. A high U.S. dollar results in reduced trade. U.S. textile exports have been steadily increasing: $1.96 billion in 1987 to $4.1 billion in 1991. The U.S. exported $435 million of textiles to Mexico while importing $137 million in 1991. In Canada, the trade surplus was even higher: $1 billion exported with $347 million imported.

The U.S. apparel industry had a trade deficit with both Canada and Mexico. In 1991, the U.S. exported $698 million to Mexico while importing $1.67 billion. The U.S. exported $414 million to Canada while importing $417 million. Mexican trade in the textile and apparel industries is more important to Mexico's economy than it is to the U.S. economy. Nearly 91% of all Mexican textile and apparel imports went to the United States. In contrast, only 61% of Mexico's imported textiles and apparels came from the United States. From 1986, U.S. exports of textiles and apparel to Mexico have increased at a rate of 25% annually to a combined value of

$1.5 billion in 1992. U.S. exports of textiles and apparel to Canada have increased 22% per year from 1986 to a combined value in 1992 of $1.9 billion. Together, Canada and Mexico represent 28% of the total United States export of textiles and apparel.

In 1991, Mexico by exporting 1.7% of all textiles to the United States was its 15th largest textile exporter. In contrast, Mexico imported 10.6% of U.S. textile exports to make it the second largest importer of U.S. textiles. For the 1991 apparel industry, Mexico was the fifth largest exporter of apparel to the United States while being the largest importer of U.S. apparel exports at 18.8%. Factored into these figures are the maquiladoras that receive unfinished apparel from U.S. firms (which count as U.S. exports) for finishing and returning (which count as Mexican exports). From 1985 through 1989, the maquiladora program averaged a 17% annual growth in the apparel industry. Mexico's textile and apparel industry employs over 170,000 persons. Mexico estimates it will need to invest $1.5 billion by 1998 to keep pace with the projected increase in demand resulting from the enactment of NAFTA. The Mexican apparel industry employs 650,000 people in nearly 11,000 plants. Nearly 90% of all Mexican apparel imports are produced in the maquiladora program and are exported to the United States.

The Canadian textile and apparel industry employs nearly 160,000 persons. Nearly 2,000 plants are maintained in Canada

primarily in the provinces of Ontario and Quebec. The total production is about $12 billion dollars of which 10% is exported. Nearly half of Canada's production is from the 12% of its industry that has 100 or more employees. CFTA has accelerated the restructuring of the Canadian textile and apparel industries. Canadian firms compete with low cost foreign competitors by filling small runs and special requirements for U.S. clothing manufacturers.

II. TARIFFS

Prior to NAFTA, Mexico imposed tariffs on U.S. and Canadian textile and apparel imports of 12% to 20%. The United States, prior to NAFTA, imposed a far more varied and diverse span of tariffs on Mexican textiles and apparels. In 1988, the United States imposed tariffs of 10.4% on textile imports and 18.4% on clothing and accessories. In 1989 the average U.S. tariff for textiles and apparels was 6%. This low tariff was due primarily to the tariff treatment of maquiladora products that accounted for 90% of the exports. The maquiladora program involves over 300 firms employing over 50,000 workers. Mexico does not impose tariffs on maquiladora parts if the finished goods are reexported and the United States only imposes a tariff on the value added to the product by the processing in Mexico.

Between Mexico and the United States, NAFTA provides for a 10 year phaseout of all tariffs, ending in January 2004. NAFTA

establishes three categories of textiles and apparel with different phaseout schedules. NAFTA creates a unique rule of origin. The first category is for goods that satisfy the rule of origin, for which Mexico and the United States agreed to waive all tariffs starting January 1994. For the second category, the tariffs will be eliminated by January 2001. The third and final category will have tariffs eliminated by January 2004.

Category One:

a. Mexico. NAFTA tariffs were immediately eliminated on the following U. S. exports:

1. Blue denim.
2. Twills.
3. Textured polyester filament fabrics.
4. Cotton terry towels.
5. T-shirts.
6. Curtains and drapes.
7. Cotton and man-made sewing thread.
8. Nylon and polyester filament yarns.

b. United States. Some of NAFTA tariffs were immediately eliminated on the following Mexican exports:

1. Goods produced under the maquiladora program.
2. Silkworm cocoons.
3. Raw silk.
4. Wool, not carded or combed.
5. Wool carbonized.
6. Fine or coarse animal hair.
7. Cotton, not carded or combed.
8. Cotton waste.
9. Cotton sewing thread.
10. Carpets of wool or fine animal hair.

Category Two:

a. Mexico. Some of the products included in this group are:

1. 93% of all U.S. yarn and thread exports.
2. 89% of all U.S. fabric exports.
3. 60% of U.S. textile made-up exports.
4. 97% of U.S. exported apparel.
5. Cotton waste.
6. Cotton yarn.
7. Woven fabrics of cotton.

b. U.S. Some of the Mexican goods included in this group are:

1. 96% of Mexico's yarn and thread exports.
2. 83% of Mexico's textile made-up exports.
3. 95% of Mexico's fabric exports.
4. 99% of Mexico's apparel exports.
5. Cotton yarn.

Category Three:

a. Mexico. Some of the U.S. products covered in this group are:

1. The remaining exports not covered in categories one or two.
2. Wool, fine or coarse animal hair in horsehair and woven fabric.
3. Cotton not carded or combed.

b. United States. Some of Mexico's goods covered by this group are:

1. The remaining exports not covered in categories one or two, including by not limited to the following:
   (i) Rayon filaments.
   (ii) Woven fabrics.
   (iii) Wool and man-made fiber blend fabrics, and
   (iv) Most women's wool apparel.

2. Carpets not of wool or fine animal hair.

3. Other vegetable textile fibers, paper yarn and woven fabrics of paper yarn.

Throughout the phaseout period neither nation will be allowed to impose a tariff higher than 20%. In addition, Mexico is prevented from raising tariffs on U.S. made products above their

pre-NAFTA rates (that were generally 10% for fibers, 15% for yarns and 20% for fabrics). Mexico is prevented from raising its tariffs to the "GATT bound" levels which are usually 50% ad valorem. On the enactment of NAFTA, the United States abolished all tariffs on apparel products from the maquiladora companies. The United States has agreed not to impose any tariffs on hand-loomed fabrics and traditional handicraft goods. The United States has also agreed to eliminate all of its pre-NAFTA quotas on Mexican textiles and apparel that meet the NAFTA rules of origin. Quotas for nonconforming textiles and apparel will be gradually removed over a 10 year period.

NAFTA has two safeguard provisions to protect the textile and apparel industries of both the United States and Mexico from unexpected serious damage or actual threat caused by the elimination of the tariffs. During the 10 year phaseout period of tariffs, either nation may reimpose a "tariff snap-back" that permits temporary quotas or a higher tariff (not to exceed the Most Favored Nation rate) for a three year period. The standard for implementing the safeguard of "serious damage or actual threat thereof" is a lesser standard than the "serious injury or threat thereof" that is used in other NAFTA sections. If a country imposes a safeguard action on conforming goods, that country must compensate the exporting country for the harm caused by the "tariff snapback." The compensation will usually be a negotiated reduction

of tariffs on other items being imported into the country. This safeguard action is only permitted once during the 10 year phaseout period for any particular item. The second safeguard applies to those imported goods that do not meet NAFTA rules of origin. Such goods may also have a temporary quota or an increased tariff for one time for a period of three years or less. There is no requirement for compensation to the exporting country for implementing the safeguard. After the end of the 10 year phaseout period, no safeguard action can be undertaken by either country without the consent of the other country.

The estimate is that NAFTA should increase Mexican imports of U.S. apparel by 10% per year through 1995. Exports of women's apparel to Mexico has increased 94% between 1990 and 1992 ($106 million to $205 million); more than half were U.S. exports. This trend portends a projected increase in U.S. exports of women's apparel of 15% per year. Imported fabric sales to Mexico were $1.3 billion in 1992. These sales should increase to $1.8 billion in 1998 with the bulk coming from Canadian and U.S. firms.

NAFTA's textile and apparel provisions apply only between Mexico and the United States and between Mexico and Canada. Textile and apparel trade between Canada and the United States is governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). CFTA tariffs on textiles and apparel between Canada and the United States will continue to be reduced and eliminated in accord with

its original 10 year schedule. In January 1993, the tariffs were reduced to one-half their pre-CFTA rates and will be completely eliminated by 1998. The reduction of tariffs under CFTA spurred a monumental growth in trade between the countries: U.S. exports to Canada increased by 236% from 1988 to 1992. NAFTA requires Canada to remove all existing quantitative restrictions and nontariff measures and to not impose any new trade restraints on either the U.S. or Mexico.

II. RULES OF ORIGIN

NAFTA's rules of origin only apply to goods manufactured in Canada, Mexico or the United States. Canada and the United States have agreed to use NAFTA's rules of origin rather than CFTA's rules of origin for textiles and apparels. Only goods which are considered to have North American origin are covered by the free trade provisions of NAFTA. The NAFTA rules of origin for textiles and apparels are different from those for other products.

For textiles and apparels, NAFTA created a "Yarn-forward rule of origin." Under this yarn-forward rule of origin, only the raw fiber of the yarn used to make the fabric can come from a non-NAFTA nation. In order for a textile or apparel to be given NAFTA coverage, the fabric in the product must have been made in Canada, Mexico or the United States. This NAFTA rule of origin is much tougher than the CFTA textile and apparel rule of origin. The NAFTA rule is a double transformation rule that requires yarn to

fabric and fabric to apparel to be entirely North American in production. In contrast, the CFTA rule of origin merely permits the yarn used to make the fabric to come from a country other than Canada or the United States.

NAFTA imposes an even more onerous "fiber forward rule of origin" for certain other textiles and apparels. The fiber forward rule requires that even the raw material used to make the yarn must originate in North America. This fiber forward rule applies to knit fabrics made of either cotton or man-made fibers and all carpets made with man-made fibers.

A de minimis provision permits the producer to use 7% by weight of non-NAFTA material without losing NAFTA coverage.

NAFTA sets a tariff preference level (TPL) that allows a NAFTA country to export tariff free to the others a certain amount of nonconforming goods. The TPL's apply only to the following items:

1. Apparel made of cotton or man-made fibers.
2. Woolen apparel.
3. Maquiladora products.
4. Fabric and made-up goods.
5. Yarn spun from cotton or man-made fiber.

Goods being exported in the amount in excess of the TPL limits will be subject to the importing country's Most Favored Nation rate of tariff. TPL's will not apply between Mexico and the United States for the following products:

1. Man-made fiber sweaters.
2. Apparel made with oxford cloth.
3. Apparel made with blue denim.
4. T-shirts.
5. Men's and women's underwear made from cotton or man-made fiber circular knit fabric under 100 metric count.

The TPL's set by NAFTA between Canada and the United States are higher than those permitted under CFTA. The purpose is to offset the more restrictive NAFTA rules of origin.

The yarn-forward rule will probably result in nearly all Mexican apparel being made with U.S.-made yarn and textiles because Mexican producers of yarn and textiles are not currently competitive with U.S. producers. Since the textile industry is not labor intensive (as opposed to the apparel industry), Mexico's cheap available labor will not give its textile industry a significant cost advantage.

IV. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their individual textile and apparel industries. The NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment to a textile or apparel exporter of a fellow NAFTA country. This means that the exporter must be treated at least the same as a domestic

supplier of the goods, or an exporter from a non-NAFTA country is treated. This is free trade in its simplest form. Each NAFTA country must treat the exports of a fellow NAFTA country as though they were manufactured domestically. By treating all such goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the net effect that capitalism functions according to market operations and not according to artificial government regulation.

Each NAFTA nation is required to give fellow nations advance notification of any proposed changes in textile or apparel standards. This is a major improvement over the GATT process because it allows discussion by the nations before any such changes are implemented. Moreover, if a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in the fellow NAFTA countries.

GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for longer comment period than NAFTA: 90 days.

NAFTA eventually envisions a time when a single lab will certify that a product meets the technical standards of all three

countries. It is the intention of NAFTA members that labs in Canada and the United States will be accredited in Mexico the same as Mexican labs. Then U.S. labs will be able to certify a product for sale in Canada, Mexico or the United States. This should reduce the costs of the products significantly. Canada and the United States have implemented this provision, and Mexico will before 1999.

Goods exported to Mexico are still required to have a label containing all of the information required by Mexican law. This label must be affixed prior to export to Mexico. The information which must be included on the label varies from product to product. Such information can be obtained by contacting the Officer of Mexico Flash Facts system.

V. CUSTOMS INFORMATION

In order to provide assistance to textile and apparel exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300
2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464
3. Office of Canada (202) 482-3103
4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101

5. Office of Textile and Apparel, Martin Walsh (202) 482-3400

6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK" Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. FAXLINE (011-525) 256-4737

CHAPTER 14

MISCELLANEOUS CONSUMER INDUSTRIES

I. INTRODUCTION

Miscellaneous consumer goods are day-to-day goods that an average person may buy during the year. Such goods include glassware, pottery, crockery, cutlery, watches, clocks, batteries, jewelry, leather, pens, pencils, and virtually any other commonplace consumer item. The industries that manufacture these items employed 256,000 persons in the United States in 1991. The combined production of this industry in 1991 was $25 billion, and 16% was exported; more than 4% went to Canada and Mexico.

NAFTA will cause significant growth in the general consumer goods industries of Canada, Mexico and the United States. Even prior to NAFTA, Canada and Mexico were the largest customers of these U.S. goods. In 1992, Canada imported $813.5 million and Mexico imported $561.2 million. Together, Canadian and Mexican imports accounted for 29% of all U.S. consumer goods exported.

Trade in miscellaneous consumer goods between Canada and the United States is regulated by the 1988 Canada-United States Free Trade Agreement (CFTA). CFTA tariffs between the two nations are to be eliminated by 1998. As a result of CFTA, miscellaneous

consumer goods to Canada increased by 33% to a record $814 million.

Even before NAFTA, Mexico's demand for U.S. goods was steadily increasing. Mexico had reduced its tariffs in the early 1990's on U.S. consumer goods by 10% to 20%. Even with these tariffs, U.S. exports grew by 34% to a record $561 million in 1992. If such growth could occur with tariffs of 10% to 20%, the growth will accelerate with their elimination. Tariff elimination can reduce the cost of these U. S. goods by 10% to 20%.

Since 1992 nearly all (97%) of Mexico's miscellaneous consumer goods entered the United States duty free. Except for a few products with tariffs (which are now being eliminated), there is no major influx of Mexican goods into the United States anticipated.

II. TARIFFS

Mexico eliminated tariffs on 45% of all U.S. exports of miscellaneous consumer goods on the enactment of NAFTA. The major goods for which the tariffs were eliminated immediately:

1. Brooms and brushes.
2. 76% of pens and pencil products with the remaining tariffs being removed over 10 years.
3. 41% of toys and games with another 10% having their tariffs removed over five years and the remaining goods having their tariffs removed by the year 2004.
4. Most musical instruments.
5. Silverware and steelware imports (43%) were eliminated immediately, and an additional 14% will end over five years and the remaining tariffs on these goods are terminating over 10 years.

6. Jewelry materials.

7. Medical, surgical, dental and veterinary furniture, barber's chairs and similar chairs.

8. Mattress supports, articles of bedding and similar furnishings.

Tariffs on 76% of U. S. pottery products were eliminated immediately upon enactment of NAFTA. The remaining pottery products will have their tariffs removed by 1999. Some of the products that still have tariffs:

1. Jewelry (89%). Only 11% of U.S. jewelry had its tariff eliminated immediately.

2. Most arcade and parlor games.

3. Festive, carnival and other entertainment articles.

4. Articles and equipment for general physical exercise.

5. Worked vegetable or mineral carving material and articles of these materials, molded or carved articles of wax or stearin or gums, modeling plastics.

The tariffs on all remaining U.S. exports of miscellaneous consumer goods are to be eliminated by 2004. Specifically, the following exports will have their tariffs removed over a 10 year period:

1. Hotel and restaurant tableware and kitchenware.

2. Tariffs on china tableware and kitchenware primarily for use by individuals (rather than hotels and restaurants) were eliminated on the enactment of NAFTA. In contrast, earthenware tableware and kitchenware primarily for individual use will have their tariffs eliminated by 1999.

3. Primary batteries. Prior to NAFTA, Mexican tariffs on U. S. exports of primary batteries were 10% to 20%.

4. Fasteners, buttons, needles and pins.

5. Lamps and light fittings.

All U.S. tariffs on Mexican goods are to be eliminated by 2003. The U. S. 5.3% tariff on Mexican primary batteries (less than 1% of such U.S. imports) was eliminated completely at the enactment of NAFTA. The elimination of U.S. tariffs will not markedly affect Mexican exporters because, even prior to NAFTA, 97% of all Mexican miscellaneous consumer exports to the United States were tariff free. The primary goods with tariffs still to be eliminated are:

1. Chinaware and earthenware imports for individual use. Tariffs discharged by 1999.

2. Chinaware and earthenware imports for hotel and restaurant use. Tariffs removed by 2004.

3. Scissors and shears from Mexico. Tariffs end by 2004.

4. Mexican watch bands valued over $5 per dozen. Tariffs erased by 1999.

The U. S. has a special 12-year elimination period for its tariffs on corn brooms even though the tariffs on 99% of all other Mexican imported brooms and brushes were eliminated on the enactment of NAFTA.

Tariffs on Mexican exports of the following were eliminated on the enactment of NAFTA:

1. Costume jewelry, fasteners, buttons, needles and pins.

2. Pencils and pencil products and pins.

3. 98% of musical instruments are tariff free with the tariffs on the remaining 2% ending by 1999.

4. 97% of watch and clock imports. Tariffs on the remaining 3% end by 2009.

Throughout the elimination period neither nation will be allowed to impose a tariff higher than 20%. In addition, Mexico is prevented from raising tariffs on U. S. made products above their pre-NAFTA rates, which were generally between 10% and 20%. Furthermore, Mexico is prevented from raising its tariffs to the "GATT bound" levels, which are usually 50% ad valorem. On the enactment of NAFTA, the United States abolished all tariffs on apparel products from the maquiladora companies.

NAFTA has two safeguard provisions to protect the textile and apparel industries of both the United States and Mexico from unexpected serious damage or actual threat thereof caused by the elimination of the tariffs. During the 10 year phaseout period of tariffs, either nation may reimpose a "tariff snap-back" that permits temporary quotas or a higher tariff (not to exceed the Most Favored Nation rate) for a three year period. The standard for implementing the safeguard that of "serious damage or actual threat thereof" is a lesser standard than the "serious injury or threat thereof" that is used in other NAFTA sections. If a country imposes a safeguard action on conforming goods, that country must compensate the exporting country for the harm caused by the "tariff

snapback." The compensation will usually be a negotiated reduction of tariffs on other items being imported into the country. This safeguard action is only permitted once during the 10 year phaseout period for any particular item. The second safeguard applies to those imported goods that do not meet NAFTA rules of origin. Such goods may also have a temporary quota or an increased tariff for one time for a period of three years or less. There is no requirement for compensation to the exporting country for implementing the safeguard. After the end of the 10 year phaseout period, no safeguard action can be undertaken by either country without the consent of the other country.

NAFTA's provisions apply only between Mexico and the United States and between Mexico and Canada. Trade between Canada and the United States is governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). CFTA tariffs on miscellaneous consumer goods between Canada and the United States will continue to be reduced and eliminated in accord with its original 10 year schedule. In January 1993, the tariffs were reduced to one-half their pre-CFTA rates and will be completely eliminated by 1998. The reduction of tariffs under CFTA spurred a monumental growth in trade between the countries: U.S. exports to Canada increased by 34% from 1990 to 1992. NAFTA requires Canada to remove all existing quantitative restrictions and nontariff measures and not to impose any new trade restraints on either the U.S. or Mexico.

III. RULES OF ORIGIN

Goods exported from one NAFTA country to another NAFTA country will be covered by the NAFTA tariff elimination schedule if:

1. The goods are completely manufactured or produced in a NAFTA country from materials that derive entirely from a NAFTA country, or
2. The goods contain non-NAFTA derived parts that are significantly changed as a result of production in a NAFTA country, or
3. The goods contain non-NAFTA parts, and the assembly of the final product accounts for 60% of the value of the finished product, or
4. The goods contain non-NAFTA parts or materials and their costs do not exceed 7% of the value of the finished products.

NAFTA only applies to goods manufactured in Canada, Mexico or the United States. Only goods considered to have North American origin are covered by the free trade provisions of NAFTA. The NAFTA rules of origin, used to determine, North American manufacturing content, are easier to use than those of the Canada-United States Free Trade Agreement. NAFTA has a de minimis rule that permits 7% of the goods to be of other than North American manufacture.

The NAFTA rules of origin require telecommunications equipment to be wholly of North American origin. Any telecommunications

equipment that is not wholly of North American origin will be treated as such if it has undergone significant processing in Mexico, Canada or the United States. NAFTA does permit producers of line-telecommunications equipment to use one nonoriginating printed circuit for every nine North American printed circuits.

IV. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their individual consumer goods industries. The NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment to a consumer goods exporter of a fellow NAFTA country as though they were manufactured in that country. By treating all such goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the new effect that capitalism functions according to market operations and not according to artificial government regulation.

Each NAFTA nation is required to give fellow members advance notification of any proposed changes in its consumer foods standards. This is a major improvement over the GATT process because it allows earlier discussion by the nations before any such changes are implemented. Moreover, if a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens

and companies in the fellow NAFTA countries.

GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required under NAFTA: 90 days.

Some consumer goods exported to Mexico, such as toys, must comply with Mexico's Normas Oficiales Mexicanas (NOM) certification requirements. Before such goods can be exported, the exporter must obtain from the Mexican Secretariat of Commerce and Industrial Development (SECOFI) a NOM certificate. Information for obtaining a NOM certificate can be obtained from the U. S. Department of Commerce using the Flash Facts system or through the Mexican government using either its Hotline or Faxline (see the chapter on Customs).

NAFTA envisions a time when a single lab will certify that a product meets the technical standards of all three countries. It is the intention of NAFTA members that labs in Canada and the United States will be accredited in Mexico the same as Mexican labs. Then U.S. labs will be able to certify a product for sale in Canada, Mexico or the United States. This should reduce the costs of the products significantly. Canada and the United States have implemented this provision, and Mexico will before 1999.

Goods exported to Mexico are still required to have a label containing all of the information required by Mexican law. This label must be affixed prior to export to Mexico. The information which must be included on the label varies from product to product. Such information can be obtained by contacting the Officer of Mexico Flash Facts system (see Chapter 4). Canada also has its own labeling requirements. These requirements can be obtained from the U. S. Department of Commerce by calling its Office of Canada (202) 482-1178.

V. CUSTOMS INFORMATION

In order to provide assistance to textile and apparel exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300
2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464
3. Office of Canada (202) 482-3103
4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101
5. Office of Textile and Apparel, Martin Walsh (202) 482-3400

6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK"

Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. FAXLINE (011-525) 256-4737

CHAPTER 15

LUMBER, WOOD AND PAPER PRODUCTS

I. INTRODUCTION

Nearly a quarter of America's exported solid wood products go to Canada and Mexico. In 1992, these exports were valued at $807 million from Canada, $416 million from Mexico. The U. S. lumber and wood products industry is composed of 15 subindustries with the major ones being logs, lumber, millwork, veneer, plywood and reconstituted panel products. The U.S. industry employed 370,000 persons and produced $44.3 billion in products in 1991. In 1992, exports of lumber and wood products were valued at $6 billion. U.S. exports increased 5% in 1992 over 1991 values.

In wood products, the United States enjoys a distinct advantage over Mexico. The United States has significantly more forest land than Mexico. Because of limited forest land, Mexico has been forced to become an importer. The elimination of Mexican tariffs and trade barriers will be beneficial to both Canadian and U.S. exporters of wood products. The U. S. International Trade Commission estimates that NAFTA will increase U.S. exports of wood products to Mexico by a healthy 18% per year through the year 2004.

U.S. lumber trade with Canada is governed in large part by the

Canada-United States Free Trade Agreement (CFTA). CFTA tariffs on lumber products were eliminated in 1993. In 1992, U.S. lumber exports to Canada increased 6% to $807 million. At the same time, the United States imported $3.7 billion in lumber products from Canada.

Another industry closely related to the lumber industry is the paper industry. Paper is a major product of the lumber industry. As a demand for paper increases, so will the demand for lumber products used to make the paper. Nearly 30% of U.S. exported paper products go to Canada and Mexico. In 1992, such exports were valued at $1.8 billion from Canada and $1.3 billion from Mexico. The United States paper industry accounts for 28.5% of the total world production of paper and paper boards. The U.S. paper industry makes nearly one-third of the entire world's production of paper pulp. The success of the U.S. paper industry derives both from its natural advantages and its high technology. The United States possesses abundant supplies of forests that are harvested and replanted using the most modern concepts and facilities. The industry has invested over $100 billion since 1980 to increase productivity and efficiency. The U.S. paper industry and its wood pulp is concentrated primarily in the South. In 1991, the paper industry employed 621,000 people and produced $125 billion of products that was an increase of 3.6% over 1991.

U.S. exports of paper, paperboard and other paper products in

1992 were over $10 billion dollars. Export was the fastest growing segment of the U.S. paper industry between 1988 and 1992, increasing nearly 60%. U.S. exports to Canada increased 107% from 1987 to 1992 to a record $1.8 billion. U.S. paper exports to Mexico increased over the same period by 62% to a record $1.3 billion. The elimination of Mexican tariffs on U.S. and Canadian exports of paper and lumber products will spur an accelerated growth in the U.S. and Canadian industries.

Canada has the third largest paper industry in the world behind only the United States and Japan. In 1992, the United States imported paper from Canada at a cost of $7.9 billion. In contrast, U. S. paper exports to Canada increased in 1992 by 8% to a record $1.8 billion. Since enactment of CFTA, paper exports to Canada have increased nearly 150% from the 1988 level of $723 million. NAFTA will have the same effect on U.S. exports to Mexico.

Mexican demand for paper products had increased 30% by 1991 from 1988 levels. The market again increased 6% in 1992 to over $3 billion and is expected to grow at an average rate of 4.5% through 1998. It is projected that the best parts of the U.S. paper goods market will be wood pulp, recycled paper, printing and writing paper, paper board products, boxes and cartons. The Mexican paper industry is privately owned, unlike the many Mexican industries that are owned by the government. It is an industry that is wide

open for U.S. investment and development.

II. TARIFFS

Under NAFTA, tariffs between the United States and Mexico are to be eliminated on lumber and paper products over a period of years. The products are divided among different classes, each of which will have its own different tariff reduction and elimination schedule. Throughout the elimination period for a particular good, neither nation will be allowed to impose a tariff higher than 20%. Mexico is prevented from raising tariffs on U.S. made products above their pre-NAFTA rates, which were a maximum 8.5% for lumber and paper products. Furthermore, Mexico is prevented from raising its tariffs to the "GATT bound" levels, which are usually 50% ad valorem. At the enactment of NAFTA, the United States abolished all tariffs on apparel products from the maquiladora companies.

NAFTA's provisions apply only between Mexico and the United States and between Mexico and Canada. Trade between Canada and the United States is governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). CFTA tariffs on lumber and paper goods between Canada and the United States will continue to be reduced and eliminated in accord with its original 10 year schedule. In January 1993, the tariffs were reduced to one-half their pre-CFTA rates and will be completely eliminated by 1998. The reduction of tariffs under CFTA spurred a monumental growth in trade between the countries: U.S. exports to Canada increased by 34% from 1990 to

1992. NAFTA requires Canada to remove all existing quantitative restrictions and nontariff measures and to not impose any new trade restraints on either the U.S. or Mexico.

A. LUMBER AND WOOD PRODUCTS

NAFTA immediately eliminated Mexican tariffs on 14.7% of all U.S. lumber products. Products with tariffs eliminated include:

1. Softwood products that meet the U.S. and Canadian lumber standards used in construction.
2. Tropical woods such as dark red meranti, light red meranti and meranti bakau.
3. Tropical woods of white lauan, white meranti, white seraya, yellow meranti and alan.
4. Tropical woods of keruing, ramin, kapur, teak, jongjong, merbau, jelutong, and kempas.
5. Veneer sheets and sheets of plywood and other wood sawn lengthwise.
6. Densified wood in blocks, plates, strips or profile shapes.

Another 3.9% of U.S. exports will have their tariffs eliminated by 1999. Among such exports are:

1. Fuel wood in logs, billets, twigs and faggots.
2. Fiberboard of wood or other ligneous materials.
3. Wooden frames for paintings, photographs, mirrors.
4. Packing cases, boxes, crates, drums and similar packings of wood, cable drums of wood, pallets, box pallets and other load boards.
5. Casks, barrels, vats, tubs and other cooper's products.
6. Builders' joinery and carpentry of wood.

The remaining U.S. lumber exports will have their tariffs eliminated by 2004. This category contains certain exports Mexico permits to enter the country duty free each year in a limited amount. Among such products are:

1. Wood charcoal.
2. Coniferous hoopwood, split poles, pickets and stakes.

3. Wood sawn or chipped lengthwise.
4. Particle board and similar boards of wood.
5. Plywood, veneered panels and similar laminated wood.
6. Clothes hangers.
7. Wood dowel pins.

The United States under NAFTA has eliminated tariffs on 98.7% of all Mexican lumber products imported to the United States. Among such goods are the following:

1. Fuel wood in logs, billets, twigs and faggots.
2. Wood charcoal.
3. Hopwood split poles.
4. Wood wool.
5. Railway and tramway sleepers.
6. Wood sawn or chipped lengthwise.
7. Veneer sheets and sheets for plywood.
8. Wood including strips and friezes for parquet flooring.
9. Particle board and similar material.
10. Fiberboard of wood.
11. Plywood, veneered panels and laminated wood.
12. Densified wood.
13. Wooden frames.
14. Casks, barrels, vats, tubs and other cooper's products.
15. Wood marquetry and inlaid wood.

The United States will end all tariffs on the remaining 1.3% of Mexican imported lumber products by 2004. Among such goods are the following:

1. Clothes hangars.
2. Certain types of wood blinds.
3. Clothes pins.
4. Canoe paddles.
5. Excelsior wood wool.
6. Wood flour.

B. PAPER PRODUCTS

At enactment NAFTA eliminated Mexican tariffs on 42% of U. S. paper products, including the following:

1. Ship boxes and containers for use in maquiladora operations.
2. Newsprint.
3. Handmade paper and paperboard.
4. Wallpaper base (hanging paper).
5. Composite paper and paperboard.
6. Paper, paperboard, cellulose wadding and webs of cellulose fibers.
7. Filter blocks, slabs and plates of paper pulp.
8. Cigarette paper.
9. Wallpaper and similar wall coverings.
10. Floor coverings on a base of paper or of paperboard.

Tariffs on another 29% of U.S. exports are to be eliminated by 1999. These goods include the following:

1. Major primary paper.
2. Paperboards exports.
3. Cut-to-size printing paper.
4. Writing paper.
5. Paper and paperboard, corrugated, creped or crinkled.

Mexico has a special 7 year tariff elimination schedule for corrugated boxes and paperboard shipping containers until 2001.

The remaining tariffs are to be eliminated by 2004. Among such goods are:

1. All remaining paper products.
2. Paperboards not covered above.
3. Converted products.
4. Registers, account books, notebooks, order books,

receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders, file covers, manifold business forms, albums.

5. Sacks, bags and cones.
6. Bobbins, spools, cops and similar supports of paper pulp.
7. Trays, dishes, plates, cups and the like of paperboard.
8. Toilet paper.
9. Cleaning tissues.
10. Table napkins.
11. Envelopes.
12. Letter cards.

Prior to NAFTA, virtually all of Mexico's exports of paper and paper products were duty free under the Most Favored Nation rate of duty of the Generalized System of Preferences. Only Mexican clothing and paper accessories were subject to tariffs. Under NAFTA all such tariffs on paper and paper products from Mexico were eliminated at the enactment of NAFTA (January 1994).

II. RULES OF ORIGIN

Goods exported from NAFTA country to another NAFTA country are covered by the tariff elimination schedule of NAFTA if:

1. The goods are completely manufactured or produced in a NAFTA country from materials that derived entirely from a NAFTA country, or
2. The goods contain non-NAFTA derived parts that are significantly changed as a result of production in a NAFTA country, or
3. The goods contain non-NAFTA parts, and their assembly into the final product accounts for 60% of the value of the finished product, or

4. The goods contain non-NAFTA parts or materials costing less than 7% of the value of the finished products.

NAFTA only applies to goods manufactured in Canada, Mexico or the United States. Only goods considered to have North American origin are covered by the free trade provisions of NAFTA. The NAFTA rules of origin that determine North American manufacturing content are easier to use than those of the Canada-United States Free Trade Agreement. NAFTA has a de minimis rule that permits, up to 7% of the goods to be of other than North American manufacture.

The rules of origin under NAFTA require telecommunications equipment to be wholly of North American origin. Any telecommunications equipment that is not wholly of Northern American origin may be treated as such if it has undergone significant processing in Mexico, Canada or the United States. NAFTA has adopted the Harmonized System of tariff classification for determining if significant processing of equipment has occurred. In addition to the significant processing rule, NAFTA permits producers of line-telecommunications equipment to use one nonoriginating printed circuit for every nine North American printed circuits.

IV. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their individual lumber, wood and paper goods industries. NAFTA nations are not permitted to adopt technical

standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment on a lumber, wood or paper goods exporter of a NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporter of a non-NAFTA country. This is free trade in its simplest form. Each NAFTA country must treat the exports of a fellow NAFTA country as though they were manufactured domestically. By treating all such goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow nations advance notification of any proposed change to its lumber wood or paper products standards. This is a major improvement over the GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in fellow NAFTA countries. GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for longer comment period

than required under NAFTA: 90 days.

Some lumber, wood and paper goods exported to Mexico, such as toys, must comply with Mexico's Normas Oficiales Mexicanas (NOM) certification requirements. Before goods can be exported, the exporter must obtain a NOM certificate from the Mexican Secretariat of Commerce and Industrial Development (SECOFI). Information for obtaining a NOM certificate can be obtained from the U. S. Department of Commerce using the Flash Facts system or from the Mexican government using its Hotline or Faxline (see chapter 4).

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect labs in Canada and the United States will apply for accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and the United States. The costs for products will be significantly reduced. Canada and the United States implemented this provision immediately upon enactment of NAFTA whereas Mexico has until 1999 to do so.

CFTA requires Canada and the United States to harmonize their technical standards on lumber products. In 1993, Canada and the United States incorporated compatible plywood standards into their model building codes, permitting uniform sales in both countries.

Goods exported to Mexico are still required to have a label containing all information required by Mexican law. This label must be affixed prior to export to Mexico. The information

included on the label varies from product to product. Such information can be obtained by contacting the Officer of Mexico Flash Facts system (see chapter 4). Canada also has its own labeling requirements. These requirements can be obtained from the U. S. Department of Commerce by calling its Office of Canada (202) 482-1178.

V. CUSTOMS INFORMATION

In order to provide assistance to lumber and paper exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1.	Office of Mexico	(202) 482-0300
2.	Office of Mexico, "FLASH FACTS" Information Line	(202) 482-4464
3.	Office of Canada	(202) 482-3103
4.	Office of Canada, "FLASH FACTS" Information Line	(202) 482-3101
5.	Office of Forest Products, Building Materials and Industrial Machinery - Gary Stanley	(202) 482-0375
6.	Industrial Trade Staff	(202) 482-3703
7.	Basic Industries, Office of Materials Machinery and Chemicals - Barbara Wise	(202) 482-0378

UNITED STATES CUSTOMS SERVICE

1.	NAFTA HELP DESK	(202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK"
   Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545
2. FAXLINE (011-525) 256-4737

CHAPTER 16

CONSTRUCTION INDUSTRIES

I. INTRODUCTION

The construction machinery industry and building material industry are heavily intertwined. Both industries are directly related to building and construction. An increase in demand for the product or services of one usually has a direct and favorable increase in the demand for the product of the other. Because of the interrelationship of the two industries, they are discussed together in this chapter. There has been a steady increase of 12% per year in U.S. exports of building materials from 1990 through 1992. Certain U.S. products have experienced a higher growth in exports than others. Since 1990 concrete and gypsum product exports have increased 35%, and ceramic tile exports of building materials remained relatively flat at $875 million. The only area of measured and sustained growth of U.S. exports of building materials was with Canada and Mexico.

A. BUILDING MATERIALS

Building materials are generally defined for industry purposes as including flat glass, ceramic tile, plumbing fixtures, electrical supplies and concrete products. The segment of the industry that includes concrete products includes concrete blocks,

bricks, preformed concrete building elements and concrete mix. The companies that manufacture these items employed 206,000 persons in the United States in 1991. The combined production of this industry in 1991 was $24 billion. In 1992, building materials exported to Canada were $332 million and to Mexico $42 million. Together these exports were over one-half of all U.S. exports.

NAFTA will bring significant growth in the building materials industries of Canada, Mexico and the United States. Even prior to NAFTA, Canada and Mexico were largest customers for these U.S. goods. U.S. exports to Mexico have increased 40% since 1990. In 1992, Canada and Mexico were the largest exporter to the United States of building materials. Both Mexico and Canada each supplied the U.S. with 20% of its imports of flat glass, ceramic tile, concrete and gypsum. Canadian exports in these areas, however, have decreased 11% from its 1990 high; while Mexico exports to the United States increased 16%.

Trade in building materials between Canada and the United States is regulated by the 1988 Canada-United States Free Trade Agreement (CFTA). CFTA tariffs between the two nations will be ended by 1998. As a result of CFTA, building material trade between the two countries has expanded. Between 1990 and 1992, U. S. exports of building materials to Canada increased overall by 5% to a record $332 million. Canada's building supply market was $16 billion in 1992. The United States supplied nearly 60% of the

Canadian demand for imported building materials.

Even before NAFTA, Mexico's demand for U.S. building materials was increasing. The Mexican government estimates the country has a shortage of 6 million homes with an increasing demand of nearly 600,000 more homes per year. The increasing demand for affordable housing is spurring a review of Mexican construction and home financing policies. There will be a building boom in Mexico's residential sector. Additionally, Mexico has pledged to spend several billions annually for the improvement of its roads and highways starting with $7.6 billion in 1993: Mexico needs another 40 electrical generation plants by 2005 to keep pace with growing demand. The Mexican market for building materials increased from $304 million in 1990 to $852 million in 1992. Mexican demand for building materials will increase 8% per year until 2004. The United States supplies nearly 70% of all the building materials exported to Mexico.

B. CONSTRUCTION MACHINERY

The combined production of construction machinery in the United States in 1991 was $13.4 billion; 36% ($4.38 billion) was export. In 1992, construction machinery exports to Canada were $802 million and to Mexico were $408 million, representing 19% and 10% respectively of total U.S. exports of construction machinery.

Mexico is a net importer of construction machinery. The increasing Mexican population will require a yearly increase of

nearly 600,000 homes, and Mexico currently has a shortage of 6 million residential homes. To meet this need, Mexico must build 40 new electrical generation plants and invest heavily in modernizing its economic infrastructures such as roads, highways, dams, and schools. Mexico's present construction machinery industry is ill-equipped to handle these projected demands. Mexico intends to pay for part of the necessary construction by issuing private concessions to suppliers of services or builders of the required facilities. For instance, Mexico might offer toll road concessions for 20 years or concessions to builders of hotels and other tourist facilities. Mexico hopes to obtain private investments of between $4 billion and $6 billion through the use of concessions. The World Bank has pledged $700 million in loans for the conversion of 1,250 miles of two lane highway into four lane highways.

Trade in construction machinery between Canada and the United States is regulated by the 1988 Canada-United States Free Trade Agreement (CFTA). CFTA tariffs between the two nations will end by 1998. As a result of CFTA, construction machinery trade between the two countries has expanded. The Canadian market for construction machinery in 1992 was over $2 billion; Canada imported $1.9 billion. Nearly 50% of this trade came from the United States. Prior to CFTA, the Canadian tariffs on U.S. exports of construction machinery was 9.2%. These tariffs have nearly all been eliminated and will be completely terminated by 1998. Between

1990 and 1992, U. S. exports of construction machinery to Canada increased by 5% to a record $332 million. Canada's building supply market was $16 billion in 1992; the United States supplied nearly 60% of the Canadian demand for imported construction machinery.

II. TARIFFS

A. BUILDING MATERIALS

Mexico eliminated its tariffs on 6% of all U.S. exports of building materials on the enactment of NAFTA. Tariffs were eliminated immediately on:

1. Flat glass.
2. Paving blocks, slabs, bricks, squares and tiles of pressed or molten glass.
3. Marble, travertine and alabaster stone.
4. Articles of asbestos cement.
5. Articles of cement, concrete or artificial stone.

Tariffs on 28% of U.S. building materials are to be gradually removed by 1999. This group includes the following:

1. Granules, fragments and powder of artificially colored stone.
2. Millstones and grindstones.
3. Asphalt products in rolls.
4. Slag wool, rock wool and similar mineral wools, exfoliated vermiculite, expanded clays, articles of heat-insulating, sound-insulating or sound-absorbing material.
5. Friction materials and articles thereof.
6. Panels, boards, tiles, blocks, and similar articles of vegetable fiber, of straw, or of shavings, chips particles, sawdust or of other waste.
7. Cast and rolled glass.

Tariffs on the remaining 66% of U. S. products will be terminated by 2009. Some tariffs remain. The products are:

1. Natural or artificial abrasive powder on a base of

textile material, paper, pasteboard or other materials.

2. Articles of plaster or of composition based on plaster, boards, sheets, panels, tiles and squares.
3. Refractory bricks, block tiles and similar ceramic construction goods.
4. Safety glass.
5. Multiple-walled insulating glass.

The United States eliminated tariffs on the enactment of NAFTA on 46% of all Mexican building materials exports. Tariffs were eliminated on:

1. Cast and rolled glass.
2. Flat glass.
3. Multiple-walled insulating glass.
4. Paving blocks, slabs, bricks, squares and tiles of pressed or molten glass.
5. Sets, curbstones, and flagstones or natural stone.
6. Worked building stone.
7. Worked and articles of slate.
8. Millstones and grindstones.
9. Articles of asphalt, bitumen or coal tar pitch.
10. Panels, boards, tiles, blocks of vegetable fiber, straw or shavings, chips, particles, sawdust or other waste.
11. Articles of cement, concrete or artificial stone.
12. Articles of plaster, boards, sheets, panels and tiles.
13. Articles of asbestos cement.
14. Worked mica.
15. Natural or artificial abrasive powder.

U. S. tariffs on 11.5% of Mexican exports will be ended by 2002. For 22.5% of Mexican exports, the tariffs will be ended by 2004. Ceramic tile, which accounts for 30% of all Mexican exports to the United States, will have their tariffs removed by 2009. The phaseout schedule for ceramic tiles is 20% in 1994, no reduction for 1995 and 1996 and then a yearly reduction of 6.7% until the year 2004, when the tariff becomes zero. Tariffs on most building supplies traded between Canada and the United States were reduced

to zero in 1993 under CFTA with all remaining duties to end by 1998.

B. CONSTRUCTION MACHINERY

Mexico eliminated its tariffs on 32% of all U.S. exports of construction machinery on the enactment of NAFTA. The major goods affected are:

1. Mechanical appliances for dispersing, projecting or spraying liquids or powders, steam and or blasting machines and parts thereof.
2. Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping loaders and roll loaders.
3. Other moving, grading, leveling, scraping, excavating, tamping, compacting extracting or boring machinery for earth, minerals or ores, pile-drivers, snowplows and snowblowers.

Tariffs on 30% of U.S. construction machinery are gradually reduced to zero by 1999. The tariffs on parts for machinery were eliminated at enactment of NAFTA.

Tariffs on the remaining 38% of U. S. products will have their tariffs terminated by 2004. The products with tariffs remaining include:

1. Pulley tackles and hoists.
2. Ships' derricks, cranes, mobile lifting frames, straddle carriers and work trucks fitted with cranes.
3. Fork-lift trucks and other work trucks fitted with lifting or handling equipment.
4. Other equipment for lifting, handling, loading or unloading (including elevators, escalators, conveyors, teleferics).
5. Off-shore oil and gas drilling platforms and equipment.

NAFTA affects licensing requirements for Mexico. Prior to NAFTA, Canadian or U.S. exporters of construction machinery had to

post a bond for equipment temporarily entering Mexico to ensure that it was removed when the purpose for using it was completed. NAFTA eliminates the bond requirement for the temporary entry of equipment of North American origin into Mexico. Mexico's import licensing requirement for used equipment will end by 2004.

The United States eliminated its tariffs on nearly all Mexican exports of construction machinery at the enactment of NAFTA. The U.S. tariffs that remain for a few specialized items are to end by 1999.

Throughout NAFTA's tariff reduction period no nation will be allowed to impose a tariff higher than 20%. Mexico is prevented from raising tariffs on U.S. made products above their pre-NAFTA rates, which were generally between 10% and 20%. Furthermore, Mexico is prevented from raising its tariffs to the "GATT bound" levels, which are usually 50% ad valorem.

NAFTA's provisions apply only between Mexico and the United States and between Mexico and Canada. Trade between Canada and the United States is governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Under CFTA, tariffs on miscellaneous construction machinery between Canada and the United States will continue to be eliminated in accord with its original 10 year schedule. In January 1993, tariffs were reduced to one-half their pre-CFTA rates and will be eliminated by 1998. The reduction of tariffs under CFTA spurred a monumental growth in trade between the

countries. U.S. exports to Canada increased from 1990 to 1992 by 34%. Canada is required under NAFTA to remove all existing quantitative restrictions and nontariff measures and not impose any new trade restraints against either the U.S. or Mexico.

III. RULES OF ORIGIN

Goods exported from NAFTA country to another NAFTA country are covered by the tariff elimination schedule of NAFTA if:

1. The goods are completely manufactured or produced in a NAFTA country from materials that derived entirely from a NAFTA country, or
2. The goods contain non-NAFTA derived parts that are significantly changed as a result of production in a NAFTA country, or
3. The goods contain non-NAFTA parts, and their assembly into the final product accounts for 60% value of the finished product, or
4. The goods contain non-NAFTA parts or materials costing less than 7% of the value of the finished products.

NAFTA only applies to goods manufactured in Canada, Mexico or the United States. Only goods considered to have North American origin are covered by the free trade provisions of NAFTA. The NAFTA rules of origin that determine North American manufacturing content are easier to use than those of the Canada-United States Free Trade Agreement. NAFTA has a de minimis rule that permits up to 7% of

the goods to be of other than North American manufacture.

The rules of origin under NAFTA require building materials and construction machinery to be wholly of North American origin. Any building materials and construction machinery that is not wholly of Northern American origin may be treated as such if it has undergone significant processing in Mexico, Canada or the United States. NAFTA has adopted the Harmonized System of tariff classification for determining if significant processing of building materials and construction machinery has occurred.

IV. STANDARDS

NAFTA members retained the right to maintain their own technical standards for their individual building materials and construction machinery industries. NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow non-discriminatory treatment on a building materials and construction machinery exporter of a NAFTA country. By treating all goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow members advance notification of any proposed change to its building materials and construction machinery standards. This is a major improvement over

the GATT process. It allows earlier discussion by the nations before any such changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in fellow NAFTA countries. GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required under NAFTA: 90 days.

Some building materials and construction machinery exported to Mexico, such as toys, must comply with Mexico's Normas Oficiales Mexicanas (NOM) certification requirements. The exporter must obtain from the Mexican Secretariat of Commerce and Industrial Development (SECOFI) a NOM certificate before goods can be exported. Information for obtaining NOM certificate can be obtained from the U. S. Department of Commerce using the Flash Facts system or through the Mexican government using either its Hotline or Faxline (see chapter 4).

NAFTA envisions a single lab to certify that a product meets the technical standards of all three countries. It is the intention of NAFTA that labs in Canada and the United States will eventually be able to apply for accreditation in Mexico in the same

manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico or the United States. The costs for products will be significantly reduced. Canada and the United States implemented this provision immediately at enactment of NAFTA. Mexico will in 1999.

Goods exported to Mexico are still required to have a label containing all information required by Mexican law. This label must be affixed prior to export to Mexico. The information that must be included on the label varies from product to product. Information can be obtained by contacting the Officer of Mexico Flash Facts system (see Chapter 4). Canada also has its own labeling requirements. These requirements can be obtained from the U. S. Department of Commerce by calling its Office of Canada (202) 482-1178.

V. CUSTOMS INFORMATION

In order to provide assistance to building materials and construction machinery exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for the dispersement of information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1.	Office of Mexico	(202) 482-0300
2.	Office of Mexico, "FLASH FACTS" Information Line	(202) 482-4464
3.	Office of Canada	(202) 482-3103

4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101

5. Basic Industries, Office of Materials (202) 482-0132 Machinery and Chemicals - Charles Pitcher

6. Basic Industries, Office of Energy (202) 482-0680 Environment and Infrastructure - Edward McDonald

7. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK" Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. FAXLINE (011-525) 256-4737

CHAPTER 17

AGRICULTURE

I. INTRODUCTION

Agriculture is the most important industry of any nation. NAFTA eliminates trade barriers between NAFTA nations; their agricultural products can be freely traded. NAFTA stated goals:

1. The elimination of nontariff agricultural barriers,
2. The establishment of a schedule for the elimination of all agricultural tariffs over a 15 year period,
3. The establishment of uniform standards for the classification, grading and marketing of agricultural products, and
4. The elimination of trade barriers arising from sanitary or phytosanitary standards that are not necessary to maintain or achieve a country's targeted level of health and safety protection.

Prior to NAFTA, the United States exported to Mexico less than 1% of U.S. production of grains, oilseeds and dry edible beans. Only 8% of U.S. production of corn was exported to Mexico. Changes in Mexico's domestic agricultural policies will significantly increase the Mexican demand for U.S. produce. Currently, Mexican law prohibits the feeding of corn to animals, but an estimated 12% of Mexican corn production feeds animals. Mexico is a net importer of

dairy products and faces a steadily growing demand for such products with a shortage of production capacity. NAFTA eliminates Mexican requirements for import licenses on U. S. poultry and replaces them with a tariff schedule that reduces and ends tariffs by 2009. The United States dairy restrictions on Mexican goods under Section 22 of the Agriculture Adjustment Act were replaced by a tariff schedule that ends tariffs by 2004. U. S. tariffs and U. S. Meat Import Act quotas were eliminated at passage of NAFTA on Mexican exports to the U.S. of livestock (including cattle, meat products). There has been an immediate increase in Mexican exports of feeder cattle to the United States and an increase in U.S. exports of beef products to Mexico.

The NAFTA agricultural provisions are written in two bilateral agreements: United States - Mexico and Canada - Mexico. Agricultural trade between the United States and Canada is still essentially covered by the Canada-United States Free Trade Agreement (CFTA). NAFTA and CFTA together include special safeguards for a limited number of import-sensitive products for each country. There are also special rules of origin for certain farm products along with provisions dealing with domestic farm supports.

NAFTA's approach to market access is unique. NAFTA calls for separate agreements among the NAFTA nations. The agricultural provisions of the Canada-United States Free Trade Agreement of 1988

are incorporated by reference into NAFTA. Canada and Mexico negotiate their own trade agreement; so do Mexico and the United States.

II. TARIFF AND NONTARIFF BARRIERS

The United States and Mexico agreed that all nontariff barriers between the countries would be eliminated at implementation of NAFTA. In 1991, there were $1.6 billion of farm imports from Mexico and $1.5 billion dollars of farm exports from the U. S. to Mexico. The United States and Mexico agreed that all nontariffs would either:

1. Be converted to ordinary tariffs, or
2. Be subject to a tariff-rate quota system. Under this system, a tariff would be applied to an import only if the total imports for that item exceed an established quota for the year of the import.

NAFTA establishes a different system for the elimination of tariff barriers on agricultural trade. Between the U. S. and Mexico, effective January 1, 1994, tariffs were eliminated on nearly one-half of all agricultural trade. The remaining tariffs are subject to a gradual phaseout. Most of the tariffs will end over a 10 year period: such as for barley, malt, rice, soybeans and wheat. Tariffs on special agricultural products such as corn and dry edible beans from Mexico and orange juice from the U. S. will end over a 15 year period.

Between the United States and Mexico, tariff rate quotas ("TRQ's", which include converted nontariff barriers) also will end over the same 10 or 15 year periods of tariff elimination. Mexico and the United States also agreed that the special protection given U.S. produce under section 22 of the U. S. Agricultural Adjustment Act of 1933 is waived for Mexican agricultural goods. U. S. imports of cotton and peanuts prior to NAFTA were subject to import restrictions under the above section 22, but these restrictions are nonbinding on Mexico.

Mexico and the United States have agreed that sugar and sugar products should be treated separately from other NAFTA provisions. The countries have agreed to establish a separate schedule of quotas and tariffs based on which country is a net surplus producer of sugar. All sugar restrictions and tariffs will be eliminated after 15 years. In 1990, Mexico exported 8,000 metric tons of sugar to the U. S. and purchased 250,000 metric tons of refined sugar from the U.S. In 1989, Mexico eliminated its requirement for import licenses for sugar, Mexico instead maintains a variable system of levies on the imports.

NAFTA specifies two types of tariff-and-rate quota plans (TRO's) based on whether or not the commodity had a pre-NAFTA nontariff barrier on it. NAFTA permits a fixed amount of the commodity to be imported duty free and imported goods over the duty-free quota amount will be subject to a tariff; this plan

applies to commodities that had a pre-NAFTA quota tariff. The within-quota amounts for each commodity are determined from the average level of trade for the goods over recent years and increased by 3% per year compounded. The over-quota tariffs are set to match the country's current level of nontariff protection and will be ended over a 10 or 15 year period. Mexican exports formerly subject to section 22 of the U. S. Agricultural Act are now governed by this tariff- and-quota plan (TRO) for nontariff goods. U.S. farm goods exported to Mexico that previously required import licenses are also covered by this NAFTA tariff-and-quota plan for nontariff barrier goods (such as quotas).

Mexico and the United States have each designated a small number of farm goods on which tariffs and quotas are eliminated over a period of 15 years. In the United States, these farm goods are asparagus, sprouting broccoli, cantaloupes, some types of melons, cucumbers, dried garlic, dried onions, orange juice, peanuts and sugar. In Mexico, the farm goods are dry edible beans, corn, milk powder, orange juice and sugar. The NAFTA TRQ's now replace quotas and other nontariff barriers on U.S. imported peanuts and sugar and Mexican imported dry edible beans, corn and milk powder.

In addition to the normal provisions of NAFTA, Mexico and the United States have provisions that provide special safeguards for a limited number of import sensitive farm goods. The safeguards

prevent rapid surges of imports of these products during the initial years following the adoption of NAFTA. The safeguards are set as TRQ's to last for a period of 10 years. The quotas are to be increased by 3% each year compounded, and are subject to a preferential rate of duty established under NAFTA. The over-quota tariff for the goods is set no greater than the lowest of the nation's most favored nation rate as of July 1, 1991, or its current most favored nation's rate. The United States has these special safeguards on seven items. Mexico has special safeguards on 17 items including swine for slaughter, fresh apples, some types of pork, potato products and coffee products.

III. DOMESTIC SUPPORT AND EXPORT SUBSIDIES

Domestic support in the form of subsidies distorts the true cost and price of a product. NAFTA requires that each NAFTA nation adopt domestic support policies with minimal trade distortion effect. NAFTA does not require a participant to adopt trade policies in areas that are exempt from subsidy (or other domestic support reduction) commitment under GATT. NAFTA participants agree to retain the right to change any domestic support mechanism provided such change does not violate that nation's obligations under GATT. Even so, the nations have agreed in principle to implement measures that do not distort trade or affect production (Article 704).

Export subsidies are the most contentious areas of an

international agricultural trade agreement. Export subsidies are a contradiction in terms in a free trade zone. Each NAFTA nation has agreed that, "it is inappropriate for a party to provide an export subsidy for an agricultural good exported to the territory of another party where there are no other subsidized imports of that good into the territory of the other party," (Article 705). NAFTA generally bans or regulates export subsidies on agricultural products between the participants except when they are used to counter subsidized imports from a non-NAFTA country. Specifically:

1. Before a NAFTA country can grant an export subsidy on agricultural exports to a NAFTA nation, the exporting nation must give three days notice to the importing nation. If the importing nation wishes the exporting nation to reconsider its decision to grant an export subsidy, a meeting can be requested. If a request for a meeting is made, trade representatives of the exporting nation must meet with those trade representatives of the importing nation prior to granting the subsidy.
2. If a non-NAFTA country exports subsidized agricultural products to a NAFTA nation, any of the other NAFTA participants may request consultations with the importing nation to determine how to counter the unfair effects of the non-NAFTA export subsidy.

3. If a NAFTA nation adopts a program, tariff or subsidy to counter a subsidy on agricultural products by a non-NAFTA exporter, the other NAFTA participants will not grant subsidies on their exports to that NAFTA nation.

NAFTA does not take away or limit a NAFTA participant from applying countervailing duties on subsidized imports from any source, including other NAFTA nations.

IV. AGRICULTURAL GRADING AND MARKETING STANDARDS

NAFTA requires the participants adopt a common and standard procedure for the classification, grading and marketing of agricultural goods. Goods and produce imported from a NAFTA nation are to be treated in the same manner for all purposes as the same goods and produce that are grown or processed in the importing NAFTA nation. NAFTA nations must apply the same marketing and grading treatment for domestic and imported products destined for processing.

V. SANITARY AND PHYTOSANITARY MEASURE

NAFTA recognizes that every country owes a duty to its citizens to provide for the health, safety and welfare of its citizens. NAFTA also recognizes that there is no international standard for a country's health. NAFTA does not limit or restrict a participant's plan for providing for the health and safety of its citizens. NAFTA does require that every participant's agricultural trade plan:

1. Must be based on recognized scientific principles and risk assessment.
2. Must be implemented in a nondiscriminatory manner of goods imported from a NAFTA nation and goods grown or processed in the NAFTA importing nation.

Such measures may not be or act as a disguised restriction on trade (Article 712).

VI. RULES OF ORIGIN

NAFTA requires that bulk commodities be 100% of NAFTA origin in order to be covered under its provisions. The NAFTA rules of origin apply to processed agricultural products; although there are special rules of origin for the following processed goods:

1. Dairy products: No non-NAFTA milk or milk products may be used to make milk, cream, cheese, yogurt, ice cream or any milk-based drinks.
2. Citrus products: All single-strength drinks must be made from 100% NAFTA fresh citrus juice. Reconcentrating or fortifying juices does not confer NAFTA origin.
3. Coffee products: 93% of the coffee beans must be grown in a NAFTA country. Processing the coffee beans is not counted or considered in determining the origin rules under NAFTA.
4. Bulk chocolate: There is no requirement that NAFTA cocoa beans, paste, butter or unsweetened powder be used to

make bulk chocolate. 100% non-NAFTA goods can be used to make it.100% non-NAFTA goods can be used to make the bulk chocolate without loss of NAFTA treatment.

5. Cocoa powder: 65% of the cocoa and 65% of the sugar must be of NAFTA origin.
6. Cigars and cigarettes: 91% of the value of the shipment must derive from a NAFTA country.
7. Peanut products: Only products made entirely from peanuts harvested in Mexico are protected under NAFTA for imports from Mexico to the United States. Peanut butter made with non-NAFTA peanuts is given NAFTA coverage for imports from Canada to the United States.
8. Crude vegetable oil and their products: Coverage under NAFTA will only apply if the crude oil was 93% derived from a NAFTA country.
9. Sugar products, refined sugar or molasses made with imported sugar does not qualify for NAFTA protection. Sugar confectionery made with imported sugar will be covered by NAFTA.

Mexico is a net importer of dairy products, primarily from the European community, New Zealand, Canada and the United States. Mexico faces a shortage of productive capacity in the dairy industry because of a shortage of technology and a stalled

infrastructure. By providing more access to the U.S. market, NAFTA encourages development of and foreign investment into the Mexican dairy industry.

VII. PROCESSED FOODS AND BEVERAGES

Canada and Mexico are major markets for U.S. exports of processed food and beverages. In 1992, Canada imported $3 billion dollars and Mexico imported $1.9 billion dollars worth of processed food and beverage products. Canada and Mexico accounted for 23% of total U.S. exports of products in 1992. This trade represents $387 billion in products and employs 1.7 million persons in the U. S. In 10 U.S. states, more than half of the employment is in the processed food and beverage industry, and almost 63% of their product is exported to Mexico. California and Texas together accounted for 17.8% of all food and beverage manufacturing jobs in 1991 and 52% of all the total processed food and beverage exports to Mexico in 1991. Another eight states (Pennsylvania, Illinois, New York, Ohio, Wisconsin, Georgia, Florida and North Carolina) produced 32.9% of all food and beverage processing jobs in 1991, and 10.2% of the 1991 total processed food and beverage exports to Mexico. Under the Canada-United States Free Trade Agreement, most of the tariffs imposed on U.S. exports of processed foods and beverages to Canada have been eliminated. The remaining tariffs will end entirely by 1998.

By eliminating many trade impediments on processed food and

beverages, NAFTA will create a surge in U.S. industry. Over time NAFTA eliminates Mexican tariffs on U.S. exports; they range to a high of 20%. Mexico also eliminates import licenses previously required for powdered milk. Mexican tariffs on 12% of all U. S. exports such as meat products, butter and malts to Mexico remain duty free. NAFTA eliminated (January 1994) an additional 2.5% of tariffs on U.S. exports in processed foods and beverages and another 3.5% is to be eliminated over a five year period. NAFTA requires that Mexico reduce and end 46% of all Mexican tariffs on processed foods and beverages by 2004.

Mexican tariffs on the remaining 36% of processed food and beverage imports from the United States are to be gradually eliminated through a combination of tariff rate quotas (TRQ's) and extended tariff phaseouts under NAFTA. These imports include frozen orange juice, powdered milk, sugar and cocoa containing sugar. Mexico will permit a specified amount (tariff rate quota) of powdered milk, sugar and cocoa containing sugar to be imported duty free. Any imports over the duty-free quota will be subject to a tariff that will be reduced gradually over a period of 15 years. Frozen orange juice will also have a quota amount but will be subject to a much lower tariff than the other products, and this tariff will be eliminated over a period of 15 years ending in 2009.

The U. S. processed meat industry experienced an immediate boom as a result of NAFTA. In January 1994 Mexico eliminated

tariffs on more than 44% of total meat imports from the United States, including egg albumin, boneless and frozen pork and veal. By 1999 Mexico will eliminate tariffs on another 5.5% of its meat imports from the United States. Mexican imports of all processed meat products become duty free in January 2004.

Alcoholic and soft drink exports to Mexico will increase as a result of NAFTA. The Mexican beverage industry is estimated to be worth $3.5 billion dollars annually. Soft drink sales account for an estimated $1.4 billion dollars annually. Mexico is the second largest consumer of soft drinks (the United States is first: 125 liters annually per person). Prior to NAFTA, 4% of U.S. exports of alcoholic beverages and soft drinks entered Mexico duty free. After NAFTA, Mexico removed tariffs on bourbon and Tennessee whiskey. Mexican tariffs on all U.S. distilled spirits, including gin, liqueurs, rum and vodka, will be eliminated by 1999. Mexico's tariff on the importing of U.S. beer will be eliminated by the year 2001.

A significant advantage of NAFTA to the U.S. exports is that NAFTA prevents Mexico increasing tariffs on U.S. exported produce. Tariffs are gradually being removed, tariffs that ranged from 10% to 20%. Under NAFTA, Mexico is specifically forbidden from raising tariffs to the levels permitted by GATT; they are as high as 50%. This cap on the maximum amount of tariff that Mexico can apply on their import products is of great benefit to U.S. exporters.

Just as NAFTA helps the U.S. processed food and beverage industry, it also helps the Mexican processed food and beverage industry. Prior to NAFTA, 28% of all U.S. imports of Mexican processed foods and beverages were duty free. After NAFTA, 30% more of all Mexican import tariffs on U.S. goods will end by the year 1999. The tariffs on the remaining 26% of such goods are to be phased out by the year 2004.

NAFTA recognizes there are certain goods for which special rules should apply to safeguard the national interest of a country. On goods that are extremely sensitive to the effects of imports, NAFTA provides a 15 year tariff elimination schedule. Such goods belong to a limited number of products, primarily frozen orange juice, sugar and canned tuna in oil. Mexico under NAFTA is allowed to export duty free 7,259 tons of refined sugar to the United States. Above this amount, the U. S. will impose a tariff equal to its pre-NAFTA tariff, but that tariff will end in 15 years.

The elimination of import licenses for imported processed food and beverages was a major concession by Mexico. These licenses had been used to restrict foreign trade into Mexico. The effect of the licenses and tariffs on imported goods to Mexico raised their cost to the consumer by huge amounts. The combined effect of import licenses and tariffs on U.S. powdered milk raised the cost of the milk to the Mexican consumer by a full 50%.

Processed food and beverages will be eligible for NAFTA

coverage if they are totally North American in origin. If the products contain non-North American material, they must have undergone significant processing in a NAFTA country to be covered by NAFTA.

CHAPTER 18

COAL AND LIGNITE MINING AND MINING EQUIPMENT INDUSTRIES

I. INTRODUCTION

The mining of coal and lignite and the mining equipment industry are so closely connected that they are often thought to be the same. An increase in one industry often spurs a collateral increase or development in the other. An increase in the demand for coal and lignite stimulates a demand for mining equipment for the mining of those minerals. For this reason, the two industries are discussed together. One of the key advantages of NAFTA is that for the first time U.S. exporters of coal and lignite will be able to bid on Mexican and Canadian procurement contracts. In Mexico this was a major advance because the government is a major participant in the mining industry as both a regulator and an operator. NAFTA also permitted Canadians and U.S. citizens to bid on mining service contracts in Mexico, something that was either prohibited or extremely regulated prior to NAFTA.

Mexico has vast deposits of recoverable coal and lignite (estimated to be 65 million metric tons) but lacks the financial resources to develop them. NAFTA is beneficial to Mexico because it opens Mexican industry to foreign investment and development. Most of Mexico's coal industry is in the State of Coahuila.

Mexico's coal production has stagnated at nearly 10 million metric tons per year because of the lack of financial resources to expand operations.

Canada is known to possess proven coal reserves of 6 billion tons. Canada is thought to contain as much as another 30 billion tons in deposits not yet discovered or developed. These reserves are enough to handle Canada's demand for coal at current rates for the next 500 years. Most of Canada's coal production (85%) is used for the generation of electricity, with the remainder used in the steel industry. Despite its huge reserves, Canada is not yet a major exporter of coal. In 1992 Canada only produced $1.6 billion of coal. The reason for the relatively low production when compared to reserves is the huge investment needed to expand operations. The 1988 Canada-U.S. Free Trade Agreement opened the Canadian coal mining industry to U.S. investors and NAFTA further expands these opportunities.

A. COAL AND LIGNITE MINING

Worldwide U.S. coal and lignite exports in 1992 were $4.2 billion. U.S. exports in 1992 to Canada were $486.7 million and to Mexico $1.8 million. U.S. productivity in the industry has steadily increased in each of the last 10 years. The U.S. industry is highly competitive on the world market when price at the mine is compared. The disadvantage facing the U.S. industry is the transportation cost of shipping coal great distances. U.S. coal

exports are generally of high quality with low sulfur content. Coal exports are in demand for electrical generation plants because of their lower air pollution factors.

In 1992 Mexico only purchased $1.8 million of coal from the United States. Mexico is the smallest U.S. customer for coal. Canada purchased $487 million of coal and lignite exports in 1992, accounting for nearly 12% of all U.S. coal and lignite exports. Canada produced $1.6 billion of coal in 1992; so its imports accounted for 27% of its market.

Trade in the coal industry between Canada and the United States is regulated by the 1988 Canada-United States Free Trade Agreement (CFTA). Canada has one of the largest proven reserves of coal in the world but still needs to import nearly 27% of its coal. Canada's coal industry is open to U.S. and Mexican investment under both CFTA and NAFTA, a benefit to both Canada and NAFTA investors.

B. MINING EQUIPMENT

The 1991 combined U.S. production of mining equipment for both domestic consumption and export was $1.6 billion. Nearly 48% ($811 million) of all U.S. produced mining equipment was exported. In 1992 mining equipment exports were $118 million to Canada and another $89 million to Mexico, representing a total of 26% of all U.S. mining equipment exports. Mexico is the second largest market in the world for mining equipment. The Mexican market for mining

equipment has grown from $130 million in 1992. The Mexican demand for mining equipment is expected to increase at the rate of 12% per year for the next 10 years. As much as 20% of Mexico's mining equipment is obsolete or without spare parts.

Trade in mining equipment between Canada and the United States is regulated by the 1988 Canada-United States Free Trade Agreement (CFTA). Under CFTA tariffs between the two nations will end by 1998. As a result of CFTA, mining equipment trade between the two countries has expanded. The United States supplied 70% of Canada's import market of $398 million in 1991. Canada is only able to meet 30% of its domestic needs for mining equipment from domestic sources. Canada has been and remains the largest customer for U.S. mining equipment.

II. TARIFFS

A. COAL AND LIGNITE

Mexico eliminated its tariffs on all Canadian and U.S. coal and lignite imports under the tariff elimination provisions of NAFTA. The United States eliminated tariffs on all Mexican coal and lignite exports at enactment of NAFTA.

Under CFTA Canada and the United States have previously eliminated all tariffs on each other's coal and lignite exports; this zero tariff policy was not changed by NAFTA.

B. MINING EQUIPMENT

Under NAFTA all U.S. tariffs on imports of mining equipment

and machinery from Mexico were eliminated in January 1994.

Mexico eliminated its tariffs on 18.2% of all U.S. exports of mining equipment under the tariff elimination provisions of NAFTA. The major goods for which the tariffs were eliminated immediately are:

1. Mechanical appliances for projecting, dispersing or spraying liquids and powders.
2. Steam and sand blasting machines.
3. Cranes.
4. Piledrivers.

Tariffs on 40.5% of U.S. mining equipment are to be gradually eliminated by the year 1998. This group includes parts for the items on which tariffs were immediately eliminated.

Tariffs on the remaining 41.3% of U. S. products will end by the year 2004. Included in the products still protected by tariffs are:

1. Pulley tackles and hoists.
2. Derricks, cable cranes, mobile lifting frames, straddle carriers.
3. Forklift trucks.
4. Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.

NAFTA affects licensing requirements for Mexico. Prior to NAFTA, Canadian and U.S. exporters of mining equipment had to post a temporary bond for equipment entering Mexico to ensure it was removed when its specific purpose was accomplished. NAFTA eliminates the bond requirement for temporary entry of equipment of North American origin into Mexico. Mexico's import licensing

requirement for used equipment will end by the year 2004.

Trade between Canada and the United States for mining equipment will still be governed by the appropriate provisions of CFTA. Tariffs on designated mining equipment (such as orthopedic equipment) that have not yet been reduced to zero will be ended by 1998.

As a safeguard feature, Mexico is prevented from raising tariffs on U. S. made mining equipment above their pre-NAFTA rates, which were generally between 10% and 20%. Mexico is prevented from raising its tariffs to the "GATT bound" levels, usually 50% ad valorem.

NAFTA has additional safeguard provisions to protect the mining and equipment industries of both the United States and Mexico from unexpected serious damage or actual threat thereof caused by the elimination of the tariffs. During the 10 year phaseout period of tariffs, either nation may reimpose a "tariff snapback" that permits temporary quotas or a higher tariff (not to exceed the Most Favored Nation rate) for a three year period. The standard for implementing the safeguard of "serious damage or actual threat thereof" is a lesser standard than the "serious injury or threat thereof" used in other NAFTA sections. If a country imposes a safeguard action on conforming goods, that country must compensate the exporting country for the harm caused by the "tariff snapback." The compensation will usually be a

negotiated reduction of tariffs on other items being imported into the country. This safeguard action is only permitted once during the 10 year phaseout period for any particular item.

The second safeguard applies to those imported goods that do not meet NAFTA rules of origin. Such goods may also have a temporary quota or an increased tariff for one time for a period to three years or less. There is no requirement for compensation to the exporting country for implementing the safeguard. After the end of the 10 year phaseout period, no safeguard action can be undertaken by either country without the consent of the other country.

NAFTA's provisions apply only between Mexico and the United States and between Mexico and Canada. Trade between Canada and the United States is governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). CFTA tariffs on miscellaneous mining equipment between Canada and the United States will continue to be reduced and eliminated in accord with its original 10 year schedule. In January 1993, the tariffs were reduced to one-half their pre-CFTA rates and will be completely eliminated by 1998. The reduction of tariffs under CFTA spurred a monumental growth in trade between the countries: U.S. exports to Canada increased by 34% from 1990 to 1992. NAFTA requires Canada to remove all existing quantitative restrictions and nontariff measures and to not impose any new trade restraints on either the U.S. or Mexico.

III. RULES OF ORIGIN

Goods exported from one NAFTA country to another NAFTA country are covered by the tariff elimination schedule of NAFTA if:

1. The goods are completely manufactured or produced in a NAFTA country from materials that derived entirely from a NAFTA country, or
2. The goods contain non-NAFTA derived parts that are significantly changed as a result of production in a NAFTA country, or
3. The goods contain non-NAFTA parts, and their assembly into the final product accounts for 60% of the value of the finished product, or
4. The goods contain non-NAFTA parts or materials costing less than 7% of the value of the finished products.

NAFTA only applies to goods manufactured in Canada, Mexico or the United States. Only goods considered to have North American origin are covered by the free trade provisions of NAFTA. The NAFTA rules of origin that determine North American manufacturing content are easier to use than those of the Canada-United States Free Trade Agreement. NAFTA has a de minimis rule that permits 7% of the goods to be of other than North American manufacture.

The rules of origin under NAFTA require mining equipment and machinery to be wholly of North American origin. Any mining equipment and machinery that is not wholly of Northern American

origin may be treated as if it has undergone significant processing in Mexico, Canada or the United States. NAFTA has adopted the Harmonized System of tariff classification for determining whether significant processing of the mining equipment and machinery has occurred.

IV. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their individual mining equipment and mining equipment industries. NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment on mining equipment and mining equipment exporters of a fellow NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporter of a non-NAFTA country. This is free trade in its simplest form. Each NAFTA country must treat the exports of a fellow NAFTA country as though they were manufactured domestically. By treating all such goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow nations advance notification of any proposed changes to its mining equipment and mining equipment standards. This is a major improvement over the

GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in fellow NAFTA countries. GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required under NAFTA: 90 days.

Some mining equipment exported to Mexico must comply with Mexico's Normas Oficiales Mexicanas (NOM) certification requirements. Before goods can be exported, the exporter must obtain a NOM certificate from the Mexican Secretariat of Commerce and Industrial Development (SECOFI). Information for obtaining a NOM certificate can be obtained from the U. S. Department of Commerce using the Flash Facts system or from the Mexican government using its Hotline or Faxline (see chapter 4).

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect that labs in Canada and the United States will apply for accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and United States. The costs for products will be significantly reduced.

Canada and the United States implemented this provision at the enactment of NAFTA. Mexico will implement in 1999.

Goods exported to Mexico are still required to have a label containing all information required by Mexican law. This label must be affixed prior to export to Mexico. The information included on the label varies from product to product. Such information can be obtained by contacting the Officer of Mexico Flash Facts system (see chapter 4). Canada also has its own labeling requirements. These requirements can be obtained from the U. S. Department of Commerce by calling its Office of Canada (202) 482-1178.

V. CUSTOMS INFORMATION

In order to provide assistance to coal, lignite and mining equipment exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300
2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464
3. Office of Canada (202) 482-3103
4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101
5. Basic Industries, Office of Energy (202) 482-1466

Environment and Infrastructure - John Rasmussen

6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK" Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. Faxline (011-525) 256-4737

CHAPTER 19

MEDICAL DRUGS AND EQUIPMENT

I. INTRODUCTION

The medical drug and medical equipment industries are so closely connected they often are thought to be the same. An increase in one industry often spurs a collateral increase or development in the other. For this reason, the two industries are discussed together. In the United States, the drug industry employs over 185,000 persons, primarily in the states along the east coast. One of the main reasons for the increase in U.S. medical drug and equipment trade with Canada is its large percentage of citizens over the age of 65 years. In Canada, the number of senior citizens is 10% of the general population and projected to grow to 20% by the year 2030. Conversely, U.S. trade with Mexico is expected to increase because of its booming population of young people.

A. MEDICAL DRUGS

Medical drugs are also called "pharmaceuticals." The United States is acknowledged as the world leader in discovering and developing new drugs and medicines. While the United States leads the world in the development of new drugs that does not always translate into a lead in marketing. Many nations, especially in

Europe, surpass the United States in their ability to conduct product testing of new drugs. These nations are able to license a drug for production and sale years sooner than the U.S. Food and Drug Agency.

The combined U.S. production of this industry in 1991 was $52 billion of which $6.8 billion was exported. In 1992, medical drug exports to Canada were $845 million and to Mexico, $142 million. Together these exports were over 15% of all U.S. medical drug exports. Canadian and Mexican drug exports to the United States accounted for only 5% of all U.S. imports.

At a yearly rate of $2.1 billion, Mexico represents the 11th largest market in the world for medical drugs. The Mexican drug market represents over 7,000 legal drugs (with or without a prescription). While most drugs are purchased for distribution by the Mexican government, private hospitals account for 20% of sales. All medical drugs sold in Mexico must be registered with the Director General de Control Sanitario, Secretaria de Salud. All foreign exporters of medical drugs are required to maintain a business relationship with a laboratory in Mexico to assure quality control. The United States has a trade surplus with Mexico for medical drugs of nearly $90 million.

Trade in medical drugs between Canada and the United States is regulated by the 1988 Canada-United States Free Trade Agreement (CFTA). Canada represents the seventh largest market and the

United States supplied 27% of those imports. In 1993, the United States exported nearly $900 million of drugs to Canada while importing from Canada nearly $200 million for a net surplus of $700 million. CFTA tariffs between the two nations will end by 1998. As a result of CFTA, medical drug trade between the two countries has expanded.

B. MEDICAL EQUIPMENT

The United States in 1991 manufactured 48% of the world's total production of medical equipment. In 1991, worldwide demand for medical equipment was $71 billion of which $34 billion was supplied by the United States. Medical equipment is a generic term intended to cover any equipment used for medical treatment including X-ray machines, catscans, magnetic imagers, surgical instruments and dental equipment. In 1992 U.S. medical equipment exports were $897 million to Canada and $422 million to Mexico representing a total of 17% of all U.S. medical equipment exports. Mexico is the 15th largest market in the world for medical equipment ($545 million in 1992). The Mexican market for medical equipment has grown from $488 million in 1989 to $545 million in 1992, a growth of 12%. U.S. exports to Canada increased 8% in 1991. Canada has consistently placed in the top five nations importing U.S. medical equipment. In 1992, the United States had a trade surplus of $3 billion from its medical equipment trade. The U.S. trade surplus with Canada was $740 million. The medical

equipment trade with Mexico has doubled from $63 million in 1989 to $130 million in 1992. Prior to NAFTA, Mexican importers of U.S. medical equipment annually paid $100 million in tariffs that raised the cost and lessened the demand for U.S. products. It is estimated that as much as 20% of Mexico's medical equipment is obsolete or without spare parts.

Trade in medical equipment between Canada and the United States is regulated by the 1988 Canada-United States Free Trade Agreement (CFTA). Under CFTA, tariffs between the two nations will end by 1998. As a result of CFTA, medical equipment trade between the two countries has expanded. The Canadian market for medical equipment in 1992 was over $2 billion, Canada imported $1.9 billion. Nearly 50% came from the United States. Prior to CFTA, the Canadian tariffs on U.S. exports of medical equipment was 9.2%. These tariffs have nearly all been eliminated and will end completely by the year 1998. The Canadian demand for disposable medical and surgical supplies, partly as a response to AIDS, has increased steadily by 5% per year from $158 million in 1989 to $200 million in 1994.

II. TARIFFS

A. MEDICAL DRUGS

Under NAFTA, Mexico eliminated its tariffs on 92.9% of all U.S. medical drug exports. The major goods on which the tariffs were eliminated immediately:

1. Provitamins unmixed.
2. Vitamin A.
3. Vitamin B1.
4. Vitamin B2.
5. Vitamin B6.
6. Hormones, natural and synthesized.
7. Steroids used as hormones.
8. Vaccines for veterinary medicine.

Tariffs on the remaining 7% of U.S. medical drugs will end by the year 1999. Tariffs on the remaining 1.1% of U.S. medical drugs will end by 2004. This group includes the following:

1. Vitamin B12.
2. Vitamin C.
3. Vitamin E.
4. Most antibiotics.
5. Human blood, animal blood prepared for therapeutic, prophylactic or diagnostic uses.
6. Medicaments of mixed or unmixed products for therapeutic or prophylactic use not packaged in measured doses or in forms or packings for retail sale.
7. Medicaments containing other antibiotics.
8. Medicaments containing hormones.
9. Medicaments containing insulin.
10. Medicaments of mixed or unmixed products for therapeutic

of prophylactic use packages in measured doses or in forms or packings for retail sale.

11. Vaccines for humans.

The United States eliminated on the enactment of NAFTA its tariffs on 54.3% of imported Mexican medical drugs and pharmaceutical products. Included in this category are:

1. Glands and other organs for organotherapeutic uses.
2. Human blood.
3. Medicaments containing penicillins or derivatives thereof.
4. Medicaments containing antibiotics.
5. Medicaments containing hormones.
6. Medicaments containing alkaloids.
7. Medicaments containing antigens or hyaluronic acid.
8. Cough drops.
9. Wadding, gauze, bandages.
10. Sterile surgical catgut, suture materials, tissue adhesives.
11. Blood grouping reagents.
12. Dental cement, filings and reconstructive cements.
13. Medicaments containing teicoplanin.
14. Medicaments containing insulin.
15. Protovitamins, vitamins and hormones.

The United States will remove its tariffs on 1.5% of imported Mexican medical drugs and pharmaceutical products by January 2004. Included in this category are:

1. Medicaments synthesized wholly or in part from aromatic or modified aromatic industrial organic compounds with vitamin B2, B12 or E.
2. Medicaments containing penicillins or derivatives thereof with a penicillinic acid structure.
3. Vitamin B12 and its derivatives.

Canadian and U. S. trade concerning medical drugs is regulated by CFTA. Under CFTA, all tariffs on medical drugs will end by the year 1998. Prior to NAFTA, Canada imposed tariffs on U.S. drugs as high as 12.5%. As of 1994, these tariffs were reduced by half or less or eliminated.

B. MEDICAL EQUIPMENT

Under NAFTA, Mexico eliminated its tariffs on 50.3% of all U.S. exports of medical equipment. Major goods on which tariffs were eliminated immediately are:

1. Electrocardiographs.
2. Mechano-therapy appliances, massage apparatus, psychological aptitude testing apparatus.
3. Orthopedic appliances.
4. Hydrometers, thermometers, pyrometers, barometers, hygrometers and psychrometers.
5. Lens, prisms, mirrors and other optic elements.
6. Breathing appliances.
7. Instruments for demonstration purposes.
8. Instruments for physical or chemical analysis.

Tariffs on 36.2% of U.S. medical equipment will end by the year 1999. This group includes:

1. Syringes, needles, catheters, cannulae.
2. Gas meters.
3. Microscopes.
4. Ultraviolet and infrared apparatus.

Tariffs on the remaining 13.5% of U. S. products will end by 2004. Tariffs remain on:

1. Apparatus for the use of x-rays, or of alpha, beta or gamma rays.
2. Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gasses.

3. Artificial joints and parts.

A major effect of NAFTA is licensing requirements by Mexico. Prior to NAFTA, Canadian or U.S. exporters of medical equipment had to post a bond for equipment temporarily entering Mexico to ensure its removal when its purpose was completed. NAFTA eliminates the temporary bond requirement for the temporary entry of equipment of North American origin into Mexico. Mexico's import licensing requirement for used equipment will end by the year 2004.

The United States eliminated, at the enactment of NAFTA, tariffs on 74% of all Mexican exports of medical equipment including the following:

1. Respiratory apparatus.
2. Dialysis machines.
3. Apparatus for the use of x-rays or of alpha, beta or gamma radiations.
4. Electrocardiographs.
5. Apparatus for functional exploratory examinations.
6. Syringes, needles, catheters, cannulae.
7. Ophthalmic instruments.
8. Optical instruments.
9. Instruments used in medical, surgical, dental or veterinary sciences.
10. Orthopedic appliances.

U.S. tariffs remaining in effect for a few designated items will end by the year 1999. Medical equipment trade between Canada and the United States will still be governed by the appropriate provisions of CFTA. Tariffs on designated medical equipment, such as orthopedic equipment that have not yet been reduced to zero will end by 1998.

Throughout the phaseout period no NAFTA nation will be allowed to impose a tariff higher than 15%. Mexico is prevented from raising tariffs on U. S. made products above their pre-NAFTA rates (which were between 10% and 20%). Furthermore, Mexico is prevented from raising its tariffs to the "GATT bound" levels, which are 50% ad valorem.

NAFTA has two safeguard provisions to protect the medical drug and equipment industries of both the United States and Mexico from unexpected serious damage or actual threat caused by the elimination of the tariffs. During the 10 year phaseout period of the tariffs, either nation may reimpose a "tariff snapback" that permits temporary quotas or a higher tariff (not to exceed the Most Favored Nation rate) for a three year period. The standard for implementing the safeguard of "serious damage or actual threat thereof" is a lesser standard than the "serious injury or threat thereof" used in other NAFTA sections. If a country imposes a safeguard action on conforming goods, that country must compensate the exporting country for the harm caused by the "tariff snapback." The compensation will usually be a negotiated reduction of tariffs on other items being imported into the country. This safeguard action is only permitted once during the 10 year phaseout period for any particular item. The second safeguard applies to those imported goods that do not meet NAFTA rules of origin. Such goods may also have a temporary quota or an increased tariff for one time

for a period of three years. There is no requirement for compensation to the exporting country for implementing the safeguard. After the end of the 10 year phaseout period, no safeguard action can be undertaken by either country without the consent of the other country.

NAFTA's provisions apply only between Mexico and the United States and between Mexico and Canada. Trade between Canada and the United States is governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). CFTA tariffs on medical equipment between Canada and the United States will continue to be reduced and eliminated in accord with its original 10 year schedule. In January 1993, the tariffs were reduced to one-half their pre-CFTA rates and will be completely eliminated by 1998. The reduction of tariffs under CFTA spurred a monumental growth in trade between the countries: U.S. exports to Canada increased by 34% from 1990 to 1992. NAFTA requires Canada to remove all existing quantitative restrictions and nontariff measures and to not impose any new trade restraints on either the U.S. or Mexico.

III. RULES OF ORIGIN

Goods exported from one NAFTA country to another NAFTA country are covered by the tariff elimination schedule of NAFTA if:

1. The goods are completely manufactured or produced in a NAFTA country from materials that derived entirely from a NAFTA country, or

2. The goods contain non-NAFTA derived parts that are significantly changed as a result of production in a NAFTA country, or
3. The goods contain non-NAFTA parts and their assembly into the final product accounts for 60% of the value of the finished product, or
4. The goods contain non-NAFTA parts or materials costing less than 7% of the value of the finished products.

NAFTA only applies to goods manufactured in Canada, Mexico or the United States. Only goods considered to have North American origin are covered by the free trade provisions of NAFTA. The NAFTA rules of origin that determine North American manufacturing content are easier to use than those of the Canada-United States Free Trade Agreement. NAFTA has a de minimis rule that permits 7% of the goods to be of other than North American manufacture.

The rules of origin under NAFTA require medical drugs and equipment and to be wholly of North American origin. Any medical drugs and medical equipment that is not wholly of Northern American origin may be treated as such if it has undergone significant processing in Mexico, Canada or the United States. NAFTA has adopted the Harmonized System of tariff classification for determining if significant processing of medical drugs and medical equipment has occurred.

IV. STANDARDS

NAFTA nations retained the right to maintain their own technical standards for their individual medical drugs and medical equipment industries. NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment on a medical drugs and medical equipment exporter of a NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporters of a non-NAFTA countries. This is free trade in its simplest form. Each NAFTA country must treat the exports of fellow NAFTA country as though they were manufactured domestically. By treating all goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow nations advance notification of any proposed change to its medical drugs and medical equipment standards. This is a major improvement over the GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in fellow NAFTA countries. GATT has no set time period to allow comment on proposed changes in standards before implementation. By

comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required by NAFTA: 90 days.

Before foreign medical drugs can be exported to Mexico, the exporter must register the drugs with the Mexican Ministry of Health. To register such drugs, the exporter must obtain a Ministry of Health registration number prior to exporting the drugs. In addition to the registration, medical drugs must comply with special labeling requirements. Information concerning Mexico's labeling and registration requirements can be obtained by calling the Office of Mexico Flash Facts at the number at the end of this chapter.

Some medical drugs and medical equipment exported to Mexico must comply with Mexico's Normas Oficiales Mexicanas (NOM) certification requirements. Before such goods can be exported, the exporter must obtain a NOM certificate from the Mexican Secretariat of Commerce and Industrial Development (SECOFI). Information for obtaining a NOM certificate can be obtained from the U. S. Department of Commerce using the Flash Facts system or from the Mexican government using its Hotline or Faxline (see Chapter 4).

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect that labs in Canada and the United States will apply for

accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and the United States. The cost for products will be significantly reduced, Canada and the United States implemented this provision immediately at enactment of NAFTA whereas Mexico has until 1999 to implement this provision.

Goods exported to Mexico are still required to have a label containing all information required by Mexican law. This label must be affixed prior to export to Mexico. The information included on the label varies from product to product. Such information can be obtained by contacting the Officer of Mexico Flash Facts system (see chapter 4). Canada also has its own labeling requirements. These requirements can be obtained from the U. S. Department of Commerce by calling its Office of Canada (202) 482-1178.

V. CUSTOMS INFORMATION

In order to provide assistance to medical equipment and medical drugs exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300

2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464

3. Office of Canada (202) 482-3103

4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101

5. Technology and Aerospace Industries Office of Microelectronics, Medical Equipment and Instrumentation - Ann Ngo (202) 482-3411

6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK" Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. Faxline (011-525) 256-4737

CHAPTER 20

ENVIRONMENTAL REGULATION

I. INTRODUCTION

The United States and Mexico have agreed under NAFTA to coordinate and fund environmental infrastructure projects for water treatment, water pollution, municipal solid waste and related border problems. Border environmental institutions will be created under NAFTA to provide technical and financial assistance to:

1. Coordinate environmental infrastructure projects.
2. Review and approve environmental infrastructure projects.
3. Assess the technical and financial feasibility of environmental infrastructure projects.
4. Oversee the financing, construction and operation of environmental infrastructure projects; and
5. Ensure a transport process incorporates the views of affected states, local communities, and nongovernment organizations.

A border institution will have the authority and ability to mobilize sources to finance environmental infrastructure projects by border environmental financing facilities, direct government support, the private sector and by capital raised directly through

the institution. A border financial facility must be established under NAFTA that will be capitalized and managed by Mexico and the United States. The financing facility will explore the possibility of a future link with the Inter-American Development Bank.

NAFTA ensures the right of each member to establish its own levels of protection, policies and priorities. Each member's laws must provide the highest levels of environmental protection and each nation must improve those laws. NAFTA also protects the rights of states and provinces to set high levels of environmental protection. Each member has agreed to enforce its environmental laws through the creation of an inspection and regulatory agency that seeks voluntary compliance agreements and establishes legal sanctions. NAFTA does not permit one member to engage in environmental law enforcement within the territory of another nation.

NAFTA requires each member to make an annual report on the state of its environment with assessments on the impact of activities being undertaken within its territory. NAFTA nations are also required to develop a program for environmental emergency response measures. Programs must also be created to promote and foster the use of economic instruments for the efficient achievement of environmental goals.

Under the environmental provisions of NAFTA, each NAFTA nation must notify the others of any decision to ban or severely limit the

use of a pesticide or chemical. Furthermore, each member is required to consider banning the export of a product to another nation if the use of that product is banned within its own border. To implement the environmental provisions of NAFTA, each member has agreed to ensure that its procedures for the enforcement of environmental laws are fair, open and equitable. Each member has agreed to create procedures to guarantee public access to the enforcement of its environmental law. Specifically included in this are the rights to request action for the enforcement of domestic environmental law and to sue a person or entity under that nation's jurisdiction for damages caused by a violation of environmental laws.

II. ENVIRONMENTAL AGREEMENTS

Article 104 incorporates into NAFTA specific environmental provisions and trade obligations of particular international treaties. The following treaties were specifically incorporated into NAFTA:

1. Convention on International Trade in Endangered Species.
2. Montreal Protocol on Ozone Protection.
3. Canada-United States Bilateral Convention on Transboundary Movement of Hazardous Wastes.
4. United States-Mexican Agreement on Improvement of the Environment in the Border Area.

In the event of any conflict between the provisions of NAFTA and

the provisions of any of these treaties, the provisions contained in the treaty will prevail. If there are different means available to settle a dispute under any of the above treaties, the one to be chosen is the one that is least inconsistent with NAFTA.

III. SANITARY STANDARDS

The NAFTA nations have agreed to establish a framework of rules and disciplines to regulate the development, adoption and enforcement of sanitary and phytosanitary measures. Each nation shall ensure that any nongovernmental entity on which it relies in applying a sanitary or phytosanitary measure acts in a manner consistent with the provisions set forth in NAFTA.

Article 712 reads, in pertinent part:

> 1. Each party may, in accordance with this section, adopt, maintain or supply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard.
>
> 2. Each party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another party, or between goods of another party and like goods of any other country where identical or similar conditions prevail.
>
> 3. No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the parties.

This article makes it clear that every NAFTA member retains the right to adopt or maintain sanitary and phytosanitary standards that are more strict than those used as an international standard.

A NAFTA nation would not be in violation of NAFTA by requiring foreign businesses from other NAFTA members to comply with its sanitary laws even if the standards imposed are higher than those of the other NAFTA members.

IV. RISK ASSESSMENT

Article 712 permits each NAFTA nation to set its own level of protection for the environment and for human, animal and plant life. NAFTA requires that any standards adopted must be based on sound scientific principles. Article 715 covers risk assessment and appropriate levels of protection and reads in pertinent part:

> 3. Each party, in establishing its appropriate level of protection :
>
> (a) Should take into account the objective of minimizing negative trade effects, and
>
> (b) Shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another party or constitute a disguised restriction on trade between the parties.
>
> 4. Where a party is able to achieve its appropriate level of protection through the phased application of a sanitary or phytosanitary measure, it may, on the request of another party and in accordance with this Section, allow for such a phased application, or grant specified exceptions for limited periods from the measure, taking into account the requesting party's export interests.

The scientific principles which form the basis for the adoption of the environmental standards must be based on risk assessment

factors; also taken in account are economic factors and various regional conditions of the area in which the environmental standards will be applied.

V. COMMISSION ON ENVIRONMENTAL COOPERATION

In a supplemental agreement a Commission on Environmental Cooperation was created. The Commission is to be governed by a council composed of the top environmental official for each nation. The council is the governing institution of the Commission. The major purpose of the council is to serve as a forum for discussion of environmental matters, promote and facilitate cooperation, oversee the Secretariat and address questions and disputes that may arise regarding the interpretation and application of NAFTA's environmental provisions. The council must work with the Free Trade Commission to achieve NAFTA's environmental goals. The council is required to consider and develop recommendations on the environmental impact of proposed projects likely to cause significant adverse transboundary effects. The council may develop recommendations on any environmental issue including but not limited to pollution prevention techniques and strategies, transborder environmental issues, protection of threatened species and compliance regulations.

Under the Commission is an independent Secretariat under the direction of an executive director and a Joint Advisory Committee. The Secretariat is the technical arm of the Commission. It provides

the administrative and operational support for the council. The annual budget and proposed program for the council is prepared by the Secretariat. Environmental complaints are submitted to the Secretariat.

The Joint Advisory Committee is composed of five nongovernmental public members from each of the NAFTA countries. The function of the Joint Advisory Committee is to provide environmental advice and recommendations to the council on both its annual budget and its adopted program.

The major purpose of the Commission is to promote and foster environmental cooperation among the members. The Commission will serve as a point of inquiry for public concerns and environmental questions. The Commission has the responsibility of creating dispute settlement panels.

VI. COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

NAFTA nations are required to establish a Committee of Sanitary and Phytosanitary measures. The Committee shall be composed of representatives from each member country who have been given responsibility for handling sanitary and phytosanitary conditions in the territories of the parties. The Committee is required to promote technical cooperation between the nations including the development, application and enforcement of such measures. The Committee also oversees the consultations between nations on specific matters.

To the extent possible, the Committee must seek assistance from relevant international and North U.S. standardization organizations to obtain available scientific and technical advice. The Committee is required to meet once a year and upon any request of a member.

A NAFTA nation may request consultation with another member about sanitary or phytosanitary measures. Once the request is made, the Committee will facilitate the consultation. The Committee may refer the matter to a working group (including an ad hoc working group) or to another forum to obtain nonbinding technical advice or recommendations. Any matter referred to the Committee shall be resolved quickly. Each party involved shall provide a written response to the Committee concerning any technical advice or recommendation within the time limit the Committee sets.

CHAPTER 21

DISPUTE RESOLUTION PROCEDURES

I. INTRODUCTION

NAFTA contains specific requirements for the management and resolution of disputes among its members. NAFTA requires that each of its members publish and make available to the other members all of its laws and regulations used to implement NAFTA. A trilateral Trade Commission is created that is required to review trade relations among the members. The Trade Commission is given the authority to create bilateral or trilateral panels composed of private sector trade experts to resolve disputes involving interpretation of NAFTA provisions. All disputes referred to the Trade Commission must be completed within eight months of their referral. NAFTA members have agreed to comply with panel recommendations or for acceptable compensation. Under NAFTA, if a member refuses to follow a panel recommendation or offer acceptable compensation, the affected member may retaliate by withdrawing "equivalent trade concessions."

Disputes involving environmental and health matters have special provisions. The burden of proof is on the complaining party. The panels appointed to adjudicate such disputes may call on expert scientific advice regarding factual matters. In actions

involving environmental and health issues that are also regulated by GATT, the complaining member has the choice of resolution procedure is to be used: the one in GATT or the one NAFTA.

Investment and commercial disputes also have special provisions. Investors are permitted to take their disputes directly to international arbitration for settlement of disputes that involve monetary damages arising from alleged violations of NAFTA's investment provisions; NAFTA encourages settlements of commercial disputes between private parties through the use of arbitration.

II. INSTITUTIONAL ARRANGEMENTS

NAFTA creates two different agencies for the resolution of disputes among its members. The disputes resolution agencies are the Free Trade Commission and the Secretariat.

The Free Trade Commission is composed of cabinet level trade representatives or trade ministers of each NAFTA member. The Commission is responsible for:

1. Overseeing the implementation of NAFTA,
2. Resolving NAFTA disputes, and
3. Supervising and administrating the work of all committees created under NAFTA.

The Commission may but is not required to establish and assign responsibilities to committees, working groups or expert groups, seek the advice of nongovernmental persons or groups and to take

such action in the exercise of its functions as the parties (nations) may agree. The Commission is required to meet at least once per year in a regular session. The chairmanship is to alternate among the parties successively.

The Secretariat is established and overseen by the Commission and is composed of national sections staffed and supported by NAFTA members. The Secretariat is responsible for:

1. Rendering administrative assistance to the Free Trade Commission,
2. Assisting the panels and committees involved with the Review of Antidumping and Countervailing Duty Matters, and
3. NAFTA dispute resolution panels.

Each NAFTA member is required to establish a permanent office for its section. Each member is responsible for the operation and costs of its Section and the payment of expenses of all panelists and members of the committees and review boards established by the Commission.

III. PROCEDURE FOR REVIEW

NAFTA sets up a three stage procedure for the resolution of disputes. The stages are consultation, Free Trade Commission review and referral to arbitration. The NAFTA members endeavor to reach a uniform interpretation and application of the Agreement. The members agree to cooperate and consultations to arrive at a

satisfactory resolution of all disputes.

A. CONSULTATIONS

NAFTA presumes that most disputes will be settled through consultations at cabinet level of NAFTA members. Any party (nation) may request consultations with any other party regarding disputes or potential disputes that are or may occur from actual or proposed action by the other party. The request for a consultation must be in writing and delivered to each other NAFTA nation and each of their sections of the Secretariat that handles that type of dispute. Consultations involving agricultural matters must be commenced within 15 days after the request for consultation. A third party (nation) that has a substantial interest in a dispute between the other two NAFTA nations has the right to participate in their consultations.

During the consultations each member is required to act in good faith. Towards this end, NAFTA requires each member nation provide the member nations participating in the consultation sufficient information to enable them to understand the problem. Each NAFTA member has agreed to treat any information supplied in a consultation as confidential or proprietary information and to avoid any resolution that adversely affects the interest of any NAFTA nation not participating in the consultation.

B. REVIEW BY THE FREE TRADE COMMISSION

When consultations fail to settle a dispute, a member may

request a meeting of the Free Trade Commission. A member must wait a minimum of 15 days after the initiation of consultation on agricultural disputes and 30 days on other disputes before requesting review by the Free Trade Commission. The Free Trade Commission has broad discretion in the manner of conducting its review. In conducting its review, the Commission may:

1. Establish working groups,
2. Employ experts and advisors, and
3. Engage in mediation of the dispute.

The Commission is permitted to call technical advisers, have recourse to medication procedures and make recommendations to the parties (nations) as it deems appropriate in assisting the parties in reaching a mutually satisfactory resolution of their dispute.

A party nation may also request that a meeting of the Commission be held when the party nation has sought GATT dispute resolution proceedings and has received a request from the other party nation for NAFTA resolution provisions instead. In requesting a review by the Commission, the requesting member must state the purpose of the request, the relevant provisions of NAFTA and the requested relief.

Once a valid request for review is made, the Commission must schedule a meeting on the request within 10 days unless it states reasons why a meeting cannot be held within that time. The Commission must attempt to resolve all disputes promptly. The

Commission is permitted to consolidate two or more proceedings pertaining to the same measure or that the Commission deems appropriate to be joined together.

C. ARBITRATION

If a matter that has been referred to the Commission for review is not resolved in 30 days, anyone of the parties to the review can seek arbitration. A NAFTA nation who was not part of the review may join in the arbitration if that member has a substantial interest in the dispute. Arbitration panels follow the basic arbitration procedure set forth in GATT. The arbitration panel consists of five members (or more with the consent of the parties) chosen from a list of experts for the field under arbitration. The panel issues both an initial and final report of the dispute. It is envisioned that the parties will normally agree to be bound by the decisions rendered by the panel.

A NAFTA nation not involved in the dispute may join in the dispute if it has a substantial interest in resolution of the matter. Notice of the intent to participate must be given to each of the other nations. If the third party nation decides not to join the arbitration, it shall refrain from initiating or continuing a dispute settlement procedure under NAFTA or a dispute settlement proceeding under GATT regarding the same matter unless there is a significant change in economic or commercial circumstances.

IV. GATT DISPUTE SETTLEMENT

It was agreed that in disputes regarding matters arising both under NAFTA and the General Agreement on Tariffs and Trade (GATT), the complaining party nation may settle the dispute by using the disputes resolution procedures of either GATT or NAFTA. Before a NAFTA nation begins a GATT dispute resolution proceeding, it must give notice to all NAFTA members. If a third member wishes to enter a dispute between the other two nations, it may do so. Disputes under Article 104 (Relation to Environmental and Conservation Agreements) can be resolved using the GATT dispute resolution procedures only if both parties agree, otherwise the NAFTA procedures must be used. Any dispute involving sanitary and phytosanitary measures or standards can be resolved using the GATT dispute resolution procedures only if both parties agree, otherwise the NAFTA procedures will be used. Once GATT dispute resolution procedures have been properly instituted, the forum selected shall be used to the exclusion of the other. GATT dispute resolution proceedings are deemed to be initiated by a party nation's request for a panel or a committee investigation.

CHAPTER 22

INDUSTRIAL AND METAL WORKING MACHINERY

I. INTRODUCTION

The industrial machinery and metal working industries are important sectors of the American economy. The industrial machinery industry is itself separately divided into two segments: the general industrial machinery segment and the specialized industrial machinery segment. In the general industrial machinery segment, Canada and Mexico are the United States' largest trading partners. U.S. exports of general industrial machinery to Canada were $987 million in 1992 and to Mexico, $284 million. U.S. exports to Mexico and Canada of general industrial machinery represented 41% of the total U.S. 1992 worldwide exports of all such goods.

Canada and Mexico are also major purchasers of specialized industry machinery from the United States. In 1992, Canada imported $479 million of such machinery from the United States and Mexico imported $275 million. Together these exports represented 26% of total U.S. exports.

Metal working machinery and equipment is a source of substantial trade between the United States and Canada and Mexico. In 1992, Canada purchased $886 million of metal working machinery

from the United States and Mexico purchased $638 million of equipment. Together, Canada and Mexico purchased 36% of all equipment exported by the United States. The market in Mexico has been especially lucrative to U.S. exporters. U.S. exports of metalworking equipment to Mexico increased by 70% between 1990 and 1992. During this same time period, U.S. exports to the rest of the world increased only 14%. The NAFTA tariffs reduction will significantly erode Japan's machine tool imports to Mexico. Such exports from Japan have increased greatly in recent years. Reducing Mexican tariffs on U.S. machine tool exports will make them more attractive to the Mexican consumer than the Japanese product that must pay the Mexican tariff. The U.S. metalworking industry employs 255,000 persons and a total production of $24 billion per year.

II. GENERAL INDUSTRIAL MACHINERY

The general industrial machinery industry covers the major common- place equipment used throughout the industrial sector. Included in this segment are: ball and roller bearings, high speed industrial drives, gears of all types, industrial furnaces, ovens, packaging equipment, pumps and pumping equipment. This segment of the industrial machinery industry employed 133,000 persons in the United States in 1991. This segment produced $14.65 billion in goods in 1991; 8% was exported to Canada and Mexico. During the period between 1990 and 1992, U.S. exports of general industrial

machinery to Mexico grew by nearly 30% as compared to a 2% per year growth in trade with the rest of the world. The two major products shipped to Canada and Mexico by the United States are bearings and packaging machinery.

In 1992, the United States exported more than three times the value of bearings to Canada than the value it imported from Canada: $270 million versus $7 million. The United States exported nearly 7 times the value of bearings to Mexico than the value it imported: $48 million versus $7 million. The United States increased its production of bearings from $4.2 billion to $4.5 billion in 1992. This increase was attributable in part to an increased demand in the automobile industry and the replacement of old plants with new, more efficient ones. As a result of improved production facilities, the United States was able to stem a protracted drop in its export market and maintain sales of $690 million in 1992. With the enactment of NAFTA, U.S. exports to Mexico of U.S. and Canadian bearings will greatly increase. The removal or phaseout of Mexican tariffs will make Canadian and U.S. bearings cheaper than those produced by non-NAFTA countries. The packaging machinery industry accounted for $133 million in exports to Canada and $82 million in exports to Mexico in 1992. These exports were 36% and 8% respectively of the total $601 million of U.S. packaging machinery exports. The U.S. packaging machinery industry produced $2.8 billion in goods in 1992 with exports of 22%. U.S. exports of

packaging machinery have increased each year during the period between 1984 and 1992. The industry employs 23,000 people with most of the plants located in the states of California, Illinois, Ohio and New Jersey. The United States is the major exporter of packaging machinery to both Canada and Mexico and NAFTA will to increase such trade.

III. SPECIALIZED INDUSTRIAL MACHINERY

Specialized industrial machinery includes industrial machinery specifically designed and engineered to perform only designated functions, Specialized industrial machinery is most often associated with food processing equipment, paper making and processing machinery, printing equipment and textile machinery. The industry employed 75,000 people in 1992 with production of $8.5 billion; exports to Mexico and Canada were 8%. Trade with Mexico in specialized industrial machinery grew 20% between the years 1990 and 1992 to a record $261 million. During the same period, U. S. exports of such goods to the rest of the world only increased by 2%

Paper processing machinery is a major source of trade between Mexico and the United States. The U.S. paper machinery industry employs nearly 20,000 people and in 1992 produced $2.38 billion. The United States provided Mexico and Canada with one-third of their import requirements for paper machinery prior to NAFTA. In 1992, Canada imported from the United States $217 million of

specialized paper processing machinery while Mexico imported $80 million.

Specialized food products machinery represents a major source of trade between the United States and Mexico and Canada. The United States food products machinery industry employs 17,000 workers, primarily in California, Illinois, Ohio and Wisconsin. U.S. production in 1992 reached a record $2.2 billion; $787 million was exported, an 11% increase over 1991 levels. Of the exports, 25.6% ($201 million) went to Mexico and Canada. Mexican imports grew by 7.4% to $119.6 million. The Mexican market for food processing machinery has increased 125% since 1987 to $368 million. The economic projection is that the specialized industrial equipment market with Mexico will increase by 8% in U.S. goods throughout 1998. Improved Mexican production facilities and practices are expected to result in Mexico increasing its imports from the U.S. of such products by 40% to $160 million by the year 1998.

IV. METALWORKING INDUSTRY

The United States machine tool industry produced $2.6 billion in goods in 1992. Mexico and Canada purchased 16% of all U.S. exported machine tools. The Mexican market for U.S. machine tools increased by 181% over 1981 figures. Mexico has been the largest purchaser of U.S. machine tools three times during the period between 1982 and 1992. In 1992, Mexico imported $250.6 million in

U.S. machine tools while Canada only imported $163.5 million.

Mexico was the major importer of U.S. metal cutting machinery. In 1992, Mexico imported $153.8 million of metal cutting equipment, representing 24% of all such goods exported by the United States. Metal cutting equipment exported by the United States to Canada was valued at $105 million. Mexico was also the largest importer of U.S. made metal-forming machinery. In 1992, Mexico imported $91 million in metal forming goods while Canada imported another $59 million.

As a result of NAFTA, Mexican demand for U.S. metal working tools and machinery will increase by 12% per year through the year 2000. Mexico has few domestic producers of such goods and will need to import them in order to keep pace with the projected demand. In 1991, the United States supplied 50% of the Mexican market for such goods. In 1992, Japan and Germany made significant inroads into the U.S. share of the Mexican market. The tariff reduction provisions of NAFTA will restore U.S. preeminence in the Mexican market.

V. TARIFFS

1. GENERAL INDUSTRIAL MACHINERY

Mexico eliminated its tariffs on 19% of the general industrial machinery exports of Canada and the United States on the enactment of NAFTA. Mexican tariffs on another 38.5% of such goods will end by 1999. The tariffs on the remaining goods will end by

2004. NAFTA gives special treatment of 10% to 15% to tariffs on bearings. Under NAFTA, the tariffs on many types of bearings were eliminated immediately. For those bearings on which tariffs were not immediately eliminated, NAFTA provides that the tariffs be eliminated equally over 10 years. This means that the tariffs will be reduced by 1/10th for each year until 2003 when the tariff will be zero. Some of the Mexican tariffs in this area are:

1. Steam turbines and parts are duty free.
2. Gas generators are duty free.
3. Nuclear reactors are duty free.
4. Steam boilers are duty free.
5. Piston and rotary engines are duty free.
6. Diesel and semi-diesel engines are duty free.
7. Engine parts usually have a 10% tariff that will be reduced to zero in five equal stages by January 1998.
8. Hydraulic turbines have a tariff of 10% to end by 1998. those with 20% will end by January 2003.
9. Air and vacuum pumps generally have a duty rate between 15% and 20%. Those with 15% will end by 1998, those with 20% will end by January 2000.
10. Compressor parts have a duty rate of either 10%, 15% or 20%. The tariff rates will end either by January 1998 or January 2003 depending on their type.
11. Air conditioning machinery generally has a duty rate of 20% to be reduced to zero in ten stages by January 2003.
12. Furnace burners of liquids have a duty rate of 15% to be reduced to zero in ten stages by January 2003.
13. Refrigerators, heat pumps and freezing equipment generally have a duty rate of 20% to be reduced to zero in ten stages by January 2003.
14. Machinery, plant and laboratory equipment for the treatment of materials by a process involving changing its temperature generally have a duty rate of 15% to be reduced to zero in five stages by January 1998.
15. Weighing machinery generally has a duty rate of 20% to

be reduced to zero in five stages by January 1998.

The United States eliminated its tariffs on 74.6% of its Mexican exports on the enactment of NAFTA. 1.2% of the tariffs will end by 1999, and the remaining 24.2% of the tariffs will end by the year 2003. The following areas involve the affected machinery:

1. Nuclear reactors are duty free.
2. Steam and vapor generating boilers are duty free.
3. Central heating boilers are duty free.
4. Producer gas or water gas generators are duty free.
5. Steam turbines are duty free.
6. Spark-ignition reciprocating or rotary internal combustion piston engines are duty free.
7. Parts for steam turbines are duty free.
8. Airplane engine parts are duty free.
9. Diesel and semi-diesel engines are duty free.
10. Hydraulic turbines and parts are duty free.
11. Turbojets, turbo propellers and parts are duty free.
12. Pneumatic power engines and motors are duty free.
13. Pumps for liquids are duty free.
14. Air and vacuum pumps are duty free.
15. Industrial and laboratory furnaces are duty free.
16. Machinery, plant or laboratory equipment for changing the temperature in materials used in production processes are duty free.
17. Calendaring or rolling machinery is duty free.
18. Most ball or roller bearings having a base duty rate of 11% as of January 1994 are to be reduced to zero in 10 equal stages by January 2003.
19. Bearing housings are duty free if used in civil aircraft; otherwise the duty rate is 5.75% to be reduced to zero in 10 stages by January 2003.
20. Electric motors and generators are duty free.
21. Electromagnets are duty free.

Tariffs on general industrial machinery traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Under CFTA, such tariffs were reduced by

one-half in 1994 and will end in 1998.

Prior to NAFTA, packaging machinery exports from Canada to the United States had to pay tariffs of 10% to 20%. Tariffs on 85% of the packaging machinery exports from Canada to the United States were immediately eliminated under NAFTA. The remaining 15% of these tariffs will end by 1999. Under CFTA, Canadian tariffs on U.S. exports of packaging machinery were 1.8% in 1993 and scheduled to end in 1998.

2. SPECIALIZED INDUSTRIAL MACHINERY

On the enactment of NAFTA Mexico eliminated tariffs on 71% of the specialized industrial machinery exports of Canada and the United States. Mexican tariffs on another 27.1% of such goods will end by the year 1999. The tariffs on the remaining goods will end by 2004.

The United States eliminated its tariffs on all Mexican exports on the enactment of NAFTA.

Tariffs on specialized industrial machinery traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Under CFTA, such tariffs were reduced by one-half in 1994 and will end in 1998.

NAFTA gives special treatment to tariffs on food products machinery. Prior no NAFTA, Mexican tariffs on bearings were 10% to 15%. Under NAFTA, the tariffs on 85% of U.S. and Canadian food processing machinery were eliminated by Mexico immediately. NAFTA

requires tariffs be eliminated by 1999 on machinery for which tariffs were not immediately eliminated.

3. METALWORKING MACHINERY

On the enactment of NAFTA, Mexico eliminated tariffs on 50% of the metalworking equipment and machinery exports of Canada and the United States. Included in this category are machining centers, lathes, drilling, boring and milling machines. Mexican tariffs on another 31% of metalworking goods will end by the year 1999. Included in this category are such machines as pneumatic, hydraulic and power actuated tools. The Mexican tariffs on such goods are 10% to 20%. The tariffs on the remaining 19% of goods will end by 2004.

The United States eliminated its tariffs on all Mexican exports on the enactment of NAFTA.

Tariffs on metalworking equipment and machinery traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Prior to CFTA, two-thirds of the U.S. metalworking equipment and machinery were tariff free and the remaining goods that had tariffs were to have those tariffs eliminated by 1998. As of 1994, Canadian tariffs on goods had been reduced by one-half, on their way to zero in 1999.

VI. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their industrial and metal working industries. NAFTA

nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment on an industrial or metal working machinery exporter of a fellow NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporter of a non-NAFTA country. This is free trade in its simplest form. Each NAFTA country must treat the exports of fellow NAFTA country as though they were manufactured domestically. By treating all goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow members advance notification of any proposed change to its industrial or metal working machinery standards. This is a major improvement over the GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in fellow NAFTA countries. GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted.

Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required under NAFTA: 90 days.

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect labs in Canada and the United States will apply for accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and the United States. The cost for products will be significantly reduced, Canada and the United States implemented this provision immediately at enactment of NAFTA. Mexico will in 1999.

VII. CUSTOMS INFORMATION

In order to provide assistance to exporters of industrial or metal working machinery, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300
2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464
3. Office of Canada (202) 482-3103
4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101
5. Basic Industries, Office of Energy Infrastructure - Edward Abrahams (202) 482-0312

6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK"
Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. Faxline (011-525) 256-4737

CHAPTER 23

ELECTRONICS INDUSTRY

I. INTRODUCTION

The electronics industry is important to the U.S. economy. The electronics industry is itself separately divided into three major segments: computer equipment including computer software, electronic components and semiconductors. In the computer equipment segment, Canada and Mexico are the United States' largest trading partners. U.S. exports of computer hardware to Canada were $3.5 billion in 1992, making it the United States' largest customer of computer goods. Mexico ranked eighth in such trade with the United States by purchasing $970 million in goods. Mexico's demand for such computer hardware has been increasing by 20% per year from 1988 through 1992 (pre-NAFTA years). The United States in 1992 maintained a trade surplus of $1.6 billion with Canada and Mexico despite an overall world-wide deficit for such trade.

As with computer equipment and software segments, Canada and Mexico are major purchasers of electronic components from the United States. In 1992, Canada imported $1.3 billion of electronic goods from the United States while Mexico imported $1.7 billion. The Mexican market grew 23% between the years 1990 and 1992 at a time when the world wide market remained flat.

The semiconductor industry is a source of substantial trade

between the United States and Canada and Mexico. In 1992, Canada purchased $1.5 billion in semiconductors from the United States, and Mexico purchased $450 million of semiconductors exported by the United States. The market in Mexico has been especially lucrative for U.S. exporters. U.S. exports to the rest of the world only increased 14%. The U.S. semiconductor industry employs 175,000 people primarily in the states of California, Massachusetts, New York and Texas.

II. COMPUTER EQUIPMENT AND SOFTWARE

The U.S. computer and software segment of the electronics industry is the world leader in such technology. The United States is also the largest market for such goods. In 1992, the U.S. consumed 35% of the world's production of computer equipment and software. In 1992, world production of computer equipment and software reached $216 billion. U.S. production increased between the years 1976 and 1992 from $10 billion to $54 billion, which was an 11% per year increase. This segment of the electronics industry employed 227,000 workers in the United States in 1991. Most of the employment was concentrated in plants located in California, Massachusetts, New York and Texas. U.S. software companies produce over 70% of the world's computerized software. These companies employ nearly 400,000 persons with a production in 1991 of $40 billion.

Mexico is a major market for computer equipment and software

from both the United States and Canada. In 1992, Mexican demand for such products was .6% of Mexico's gross domestic product. Mexican demand for computer equipment is projected to increase by 20% per year while software demand is projected to increase by 30% per year to the year 2000. Mexico is the second largest market for computer exports. Brazil is first. Mexico's computer equipment market in 1992 was $1.5 billion with a software market of $270 million. Mexico has a small domestic computer manufacturing industry. In 1993, this industry employed 10,000 people, which does not include employment in the maquiladora companies. Domestic production accounts for only 30% of the computer hardware and equipment sold in Mexico. The United States supplied Mexico in 1992 with 81% of its computer equipment and over 90% of its software. The United States is also the largest customer of Mexican manufactured computerized equipment. In 1992, the United States purchased 70% of all Mexican exports of computerized equipment and hardware.

Canada is the largest U.S. customer for computer equipment and software. The Canadian electronics industry is on a par with the United States in technological knowledge. Canada's computer industry is not large enough to handle all of Canada's demand for such products. In 1992, Canada's demand was $4.8 billion of computer equipment and $1.2 billion of software. Canada purchased 8% of the entire U.S. production in 1992 of these products.

Canadian demand for software is expected to increase by 12% per year to the year 2000 while the demand for computer equipment is expected to stay flat. The United States supplies Canada with 80% of its import demands for computer equipment and software. 72 of the top Canadian suppliers of computer equipment and software are U. S. owned and account for 65% of the computer goods and software in Canada. In Canada, a tax of 7% is imposed on all computer software. This tax is the Canadian Goods and Services Tax and is based on the value of the software program, not its intended use.

III. ELECTRONIC COMPONENTS

The major exported electronic components are electron tubes, capacitors, coils, connectors, electronic transformers, printed circuit boards, resistors. The U.S. electronics industry employed 347,000 people in 1992, mainly in the states of California, Indiana, Massachusetts and Texas. In 1992, industry production was $36.3 billion.

The Mexican market has only recently opened to foreign exports. NAFTA removes from Canadian and U.S. exporters the burdensome restrictions and requirements that still bind exporters from other non-NAFTA countries. The Mexican electronics industry accounted for 3% of its gross domestic product in 1991. The domestic demand for electronic products will continue to increase at a rate of 10% per year to the year 2000. The Mexican computer industry is quite small, employing only 7,000 in 1992. The Mexican

electronics industry cannot keep pace with the projected demand for products. Mexico has a growing demand for Canadian and U.S. goods to fill the void.

Canada has an electronic component industry only slightly larger than Mexico's. In 1992, the Canadian electronic industry employed 10,000 people in about 250 companies. Canada's market for electronic components in 1992 was $2.7 billion and is expected to increase by 4% per year to the year 2000. The United States supplies Canada with two-thirds of its imports of electronic components. Much of the electronic components exported to Canada are reprocessed and placed in other equipment that is exported, primarily to the United States. The leading U.S. imports to Canada are printed circuit boards, ceramic capacitors, coils and transformers.

IV. SEMICONDUCTOR INDUSTRY

Mexican production of semiconductors is primarily through foreign companies doing business in the maquiladora program. In Mexico, semiconductors are usually imported to the maquiladora company; it assembles the semiconductors into a product for reexportation, usually to the United States. The semiconductors used in the maquiladora plants account for over two-thirds of all semiconductors exported to Mexico by the United States. As a result of NAFTA, Mexican demand for U.S. semiconductors will increase by 5% per year through the year 2000. Mexico has very few

domestic producers of such goods and will need to import them in order to keep pace with the projected demand.

The Canadian market for U.S. semiconductors has been steadily growing. In 1992, Canada imported $1.5 billion of U.S. semiconductors, up 11% over 1991 levels. Canada has a few domestic semiconductor producers. Most of Canada's semiconductor industry is similar to Mexico, wherein semiconductors are imported primarily from the United States and are incorporated into electronic components or products. These products are either sold or exported again to the United States.

V. TARIFFS

A. COMPUTER EQUIPMENT AND SOFTWARE

To reduce barriers to trade, NAFTA nations have agreed to lower their duty rates on computer equipment to a common level. This creates a common market for computer equipment. The countries have agreed to establish a uniform tariff on computer goods being imported into their territory from non-NAFTA countries. Existing NAFTA tariff rates on computer equipment, not including computer parts and the "local area network" (LANS) will be reduced in five equal, annual stages commencing in 1999. When a common external tariff is achieved, the products imported from each NAFTA country will be accorded North U.S. status regardless of their actual country of origin. Once the uniform tariff is paid on non-NAFTA computer equipment imported into a NAFTA country, it can then be

exported to another NAFTA country and be accorded NAFTA coverage.

Mexico eliminated tariffs on 70% of computer equipment and software imports from Canada and the United States on the enactment of NAFTA. Mexican tariffs on the remaining 30% of goods, including central processing units, impact printers and peripheral devices will end by 1998. Insulated wire cable and other insulated electrical conductors that have a duty rate of 20% will be reduced to zero in 10 equal stages by January 2003.

The United States eliminated its tariffs on all Mexican exports of computer equipment and software on the enactment of NAFTA.

Tariffs on computer equipment and software traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Under CFTA, tariffs on most software were eliminated in 1994 and all will be entirely ended in 1998.

NAFTA also requires that Mexico, Canada and the United States in 1999 begin to set a common external duty rate. In 1999, each country will begin reducing its external duty rate over a five year period to the agreed percentage. In 2004, all three countries will have the same external duty rate. After 2004, all computer products imported from a NAFTA country will automatically be given North U.S. origin regardless of the country (NAFTA or non-NAFTA) in which they originated if any required external duty rate was paid on them in any NAFTA country.

NAFTA also requires each member country to cease granting new tariff waivers to companies based upon performance requirements. Mexico has until the year 2001 to eliminate current tariff waivers it granted prior to NAFTA based upon investment, research and development or export conditions.

B. ELECTRONIC COMPONENTS

Mexico eliminated tariffs on 48.9% of electronic components exports of Canada and the United States (including capacitors, BV connectors, switchers, piezoelectric crystals and certain tubes and resistors) on the enactment of NAFTA. Mexican tariffs on another 28.9% of such goods will end by the year 1999. The tariffs on the remaining 22.2% of goods will end by the year 2004.

The United States eliminated tariffs on 97.1% of Mexican exports on the enactment of NAFTA. The remaining 2.9% of Mexican exports will have their tariffs eliminated by the year 2004.

Tariffs on electronic components traded between Canada and the United States were eliminated as a result of the 1988 Canada-U.S. Free Trade Agreement (CFTA). Prior to CFTA, Canada charged tariffs of around 9.2% on semiconductors exported from the United States. Partly as a result of CFTA, semiconductor trade between the United States and Canada has expanded. Based on the Canadian experience, NAFTA will result in a similar growth of trade with Mexico.

VI. STANDARDS

NAFTA nations retain the right to maintain their own

technical standards for their computer and software industries. NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment on a computer and software exporter of a NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporter of a non-NAFTA country. This is free trade in its simplest form. Each NAFTA country must treat the exports of fellow NAFTA country as though they were manufactured domestically. By treating all goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow members advance notification of any proposed change to its industrial or metal working machinery standards. This is a major improvement over the GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in NAFTA countries. GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted.

Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required under NAFTA: 90 days.

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect labs in Canada and the United States will apply for accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and United States. The cost for such products will be significantly reduced, Canada and the United States implemented this provision immediately at enactment of NAFTA. Mexico will implement in 1999.

VII. CUSTOMS INFORMATION

In order to provide assistance to computer equipment and software exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300

2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464

3. Office of Canada (202) 482-3103

4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101

5. Technology and Aerospace Industries (202) 482-3013
R. Clay Woods

6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK" Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545
2. Faxline (011-525) 256-4737

CHAPTER 24

METALS AND MISCELLANEOUS METAL FABRICATING INDUSTRY

I. INTRODUCTION

The metals and miscellaneous metal fabricating industries are important sectors of the U.S. economy. The metals industry is itself separately divided into two segments: the ferrous metals segment and the nonferrous metals segment. In the ferrous metals segment Canada and Mexico are the United States' largest trading partners. U.S. exports of ferrous metals to Canada was $1.21 billion in 1992 and to Mexico $912 million. U.S. exports to Mexico and Canada of nonferrous metals in 1992 were 61% of the total U.S. exports of such goods. The miscellaneous metal fabricating industry is so closely connected with the metals industry that any discussion of one would be incomplete without discussing the other as well.

As with ferrous metals, Canada and Mexico are major purchasers of nonferrous metals from the United States. In 1992, such purchases were $2.85 billion, which were 30% of the total U.S. nonferrous metals exports.

The miscellaneous metal fabricating industry is a source of substantial trade between the United States, Canada and Mexico. Generally, miscellaneous fabricated metals cover such specialized

products as industrial valves, steel springs, pipe fittings, wire springs and valve fittings. The demand for such products is so intense and yet specialized that for trade purposes these products are addressed separately for both ferrous and nonferrous metals. In 1992, Canada purchased $676 million in fabricated metals from the United States while Mexico purchased another $263 million. Together, Canada and Mexico purchased 46% of all miscellaneous fabricated metals exported by the United States. Major exports of fabricated metals are valves and pipe fittings for use in the Mexican oil industry. In 1993, the value of such exported valves and pipe fittings to Mexico from the U.S. exceeded $150 million.

II. FERROUS METALS

The ferrous metals industry is the entire steel manufacturing sector of the United States. Nearly 60% of all U.S. steel production is what is called to as "flat rolled" products: sheet, strip or plate steel. In addition to flat rolled products are long steel products: primarily rods, bar and steel structurals. The other major segments of the steel industry are ferroalloy producers, pipes, tube and fabricated wire. The steel producing industry employed 246,000 workers in 1991 in the United States primarily in the states of Illinois, Indiana, Michigan, Ohio, Pennsylvania and Texas. U.S. steel exports have been increasing despite a worldwide drop in demand. In 1991, the United States exported 5.7 million tons of steel products, its second largest

amount ever when their worldwide demand for steel products dropped 5% due to a worldwide recession and an international price decrease.

U.S. steel exports to Mexico increased by 29% from $844 million in 1991 to $912 million in 1992 while worldwide demand for such goods was falling. Mexican demand for imported steel products doubled between the years 1988 and 1992 to 1.8 million metric tons. The Mexican Investment Board projects that domestic steel producers can satisfy only 80% of Mexico's needs for heavy forgings and castings. In 1991 Mexico consumed 7.9 million metric tons of steel products, an increase of 32% over 1988 levels. The United States exported to Mexico 1.3 million metric tons in 1992 for a value of $879 million. In contrast the United States imported $215 million of steel products from Mexico for a net trade surplus of $655 million. Mexico lacks sufficient capital to modernize its aging steel plants. Opportunities will continue to exist and develop further for Canadian and U.S. exporters of steel products, particularly tubular goods, line pipe, cold-rolled steel for the expanding automobile industry in Mexico, structural steel and reinforcing bar for Mexico's expanding construction industry.

The Canadian steel market reached $881 million (Canadian) in 1990. Canada imported 2.6 million tons of steel products in 1991, which was 8.6% of its total demand. U.S. producers supplied two-thirds of Canada's imported steel needs in 1991: double the pre-

CFTA level. Canadian demand for U.S. steel will increase at a rate of 4% per year through the year 2000 as both countries recover from the recession.

III. NONFERROUS METALS

The most important nonferrous metals include aluminum, copper, lead and zinc. The nonferrous metals industries primarily produce aluminum and copper in three forms:

1. Primary, which is normally used as input for the production of later products.
2. Semifabricated, which are products that have been rolled or molded into bars, tubes, plates and sheets.
3. Fabricated, which includes further processing into a finished or nearly finished form.

The industry employed 151,800 people in 1991, of which 103,000 workers engaged in semifabricating nonferrous metals. The nonferrous metals industry had production of $44.3 billion in 1991.

Mexico has significant reserves of untapped mineral wealth, particularly in gold, silver, copper, lead, tin and zinc. Mexico lacks the capital needed to develop these resources by itself. NAFTA has opened significant opportunities for Canadian and U.S. companies to participate in full development of these resources. In 1991, Mexico produced a record 284,000 metric tons of copper that was used almost entirely in Mexico. The semifabricated nonferrous metals industry in Mexico is virtually non-existent.

Canadian and U.S. companies have a significant opportunity not only for exporting nonferrous metals to Mexico but to assist in the actual development of that industry in Mexico.

Canada's mining industry has long played a vital role in its economy. The search for gold helped to settle Canada. Canada produces more than 60 nonferrous metals and is in the top five of exporters of nickel, zinc, copper, lead, gold and silver. Canada meets all of its domestic needs for nonferrous metals except for bauxite, chromium, manganese and phosphate. Canada exports nearly 80% of its mineral production, primarily to the United States, Japan and Europe. CFTA has already opened the Canada and U.S. markets for free trade in nonferrous metals. NAFTA will do the same between Canada and Mexico.

IV. MISCELLANEOUS METAL FABRICATING INDUSTRY

Springs, valves and pipes and their fittings are the prime products of the miscellaneous fabricated metals industry. U.S. exports of such goods increased by 60% during the years between 1989 and 1992 to a record of $2 billion. Mexico purchased 12% of U.S. exports in 1992 whereas Canada purchased three times as much: 36%. U.S. exports to Mexico increased 15% in 1992 over 1991 figures. The Mexican construction industry is the fastest growing segment of the Mexican economy. The impetus behind this growth is the Mexican government seeking to improve the country's infrastructure and bring the country to full modern status. Mexico

spent $1.1 billion in 1992 on environmental equipment and is projected to spend an average of $250 million per year on environmental equipment through the year 2000. The Mexican valve industry is virtually nonexistent and otherwise noncompetitive with Canadian and U.S. companies. Under the tariff elimination schedules of NAFTA, U.S. and Canadian companies will have a significant advantage over other foreign exporters seeking to fill the Mexican demand for miscellaneous fabricated metal products.

Canada remains the largest export market for U.S. miscellaneous fabricated metal products. Valve and pipe fittings are a reflection of capital development. As plants are built and refurbished, the demand for such products increases. Canada is predicted to remain a major customer for such products as its economy continues to improve and expand.

V. TARIFFS

A. FERROUS METALS

Mexico eliminated tariffs on 35% of the ferrous metals exports of Canada and the United States at the enactment of NAFTA. Mexican tariffs on another 2% of such goods will end by the year 1999. Tariffs on the remaining 63% of exported goods will end by the year 2004.

The United States eliminated tariffs on 5.8% of Mexican exports on the enactment of NAFTA, including:

1. Pig iron in all forms.

2. Ferroalloys containing less than 1% of carbon.
3. Ferrosilicon.
4. Ferromanganese.
5. Ferrous waste and scrap.
6. Flat rolled products of stainless steel of a width over 600 mm.
7. Flat rolled products of other alloy steel with a width of less than 600 mm.

The United States will eliminate the remaining 94.2% of its tariffs on Mexican goods by the year 2003 and in a few cases by the year 2008. Some of the goods for which these tariffs apply are:

1. Ferrochrominum alloys.
2. Iron and nonalloy steel ingots.
3. Semifinished products of iron and nonalloy steel.
4. Flat rolled products of alloy steel with a width over 600 mm.
5. Bars and rods.
6. Angles, shapes and sections of iron or nonalloy steel.
7. Stainless steel in ingots or other primary forms.
8. Flat rolled products of stainless steel with a width of less than 600 mm.

Tariffs on ferrous metals traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Under CFTA, tariffs on 80% of all foundry products traded between the countries were eliminated. Automotive equipment parts are duty free as long as they satisfy the CFTA origin rules. Agricultural machinery and defense equipment are duty free. Canadian tariffs on U.S. foundry metals not used in automotive equipment was 10.2% prior to CFTA. As of 1994, these tariffs were reduced by one-half and are scheduled to end in 1998.

B. NONFERROUS METALS

Upon the enactment of NAFTA, Mexico eliminated tariffs on

55.5% of the nonferrous metals exports to Canada and the United States. Mexican tariffs on another 5.8% of such goods will end by 1999. Tariffs on the remaining 39% of goods will end by 2004.

The United States eliminated its tariffs on 64% of Mexican exports on the enactment of NAFTA, including:

1. Copper mattes.
2. Refined copper and copper alloys.
3. Copper waste and scrap.
4. Copper bars and rods.
5. Copper wire.
6. Copper plates.
7. Copper tubing.
8. Nickel mattes.
9. Unwrought nickel.
10. Nickel bars, plates, rods and wire.
11. Germanium.
12. Vanadium.
13. Beryllium.
14. Zinc 99.99% pure.
15. Tin.
16. Aluminum waste and scrap, flakes, rods and bars.
17. Lead.

The United States will eliminate tariffs on another 4% by 1998, including:

1. Unrefined copper.
2. Unwrought magnesium less than 99.8% pure.

The remaining U.S. tariffs on nonferrous metal products will end by 2003, including:

1. Zinc less than 99.8% pure.
2. Unwrought aluminum.
3. Aluminum bars, hollow profiles.

Tariffs on nonferrous metals and products traded between

Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Prior to CFTA, such tariffs ranged between 3.9% and 10%. Under CFTA, such tariffs were reduced by one-half in 1994 and will end in 1998.

C. MISCELLANEOUS METAL FABRICATING

Mexico eliminated tariffs on 6.21% of all miscellaneous fabricated metal exports of Canada and the United States on the enactment of NAFTA. Mexican tariffs on another 23% of such goods will end by 1999. Mexican tariffs on fabricated metals run 10% to 20%. Tariffs on the remaining 71% of goods will end by 2004.

The United States eliminated its tariffs on virtually all (99.9%) of Mexican miscellaneous fabricated metal exports on the enactment of NAFTA.

Tariffs on miscellaneous fabricated metals traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Prior to CFTA, Canada charged tariffs as high as 17.5% on miscellaneous fabricated metal products exported from the United States. Under CFTA, Canadian tariffs on such goods were reduced by one-half, while on their way to zero by 1998.

VI. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their metal and metal fabricating industries. NAFTA nations are not permitted to adopt technical standards merely for

the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment on a metal and metal fabricating exporter of a NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporter of a non-NAFTA country. This is free trade in its simplest form. Each NAFTA country must treat the exports of fellow NAFTA country as though they were manufactured domestically. By treating all goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow members advance notification of any proposed change to its standards for both metals and metal fabricating equipment. This is a major improvement over the GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in fellow NAFTA countries. GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides

for a longer comment period than required by NAFTA: 90 days.

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect labs in Canada and the United States will apply for accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and United States. The cost for products will be significantly reduced, Canada and the United States implemented this provision immediately at enactment of NAFTA. Mexico will in 1999.

VII. CUSTOMS INFORMATION

In order to provide assistance to metals and fabricated metal exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300
2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464
3. Office of Canada (202) 482-3103
4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101
5. Basic Industries, Office of Materials Machinery and Chemicals - David Cammarota (202) 482-5157
6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK"
   Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545
2. Faxline (011-525) 256-4737

CHAPTER 25

CHEMICAL, PLASTICS AND RUBBER INDUSTRIES

I. INTRODUCTION

The chemical, plastics and rubber industries are some of the most important sectors of the U.S. economy. The United States is dependent on these industries for domestic consumption of their products for foreign trade exports. The industries themselves are so interconnected and related that this chapter covers them together rather than separately. NAFTA has also considered the products from these industries similar and treats them in nearly the same manner. Canada and Mexico are the United States' largest trading partners for chemicals, plastics, and rubber products. Trade with Canada accounted for sales of $5.77 billion in 1992 and similar sales to Mexico were an additional $3.02 billion. Together, Canada and Mexico purchased over 25% of the chemical, plastics and rubber exports of the United States.

The United States chemical industry is the largest in the world with over 170 domestic companies affiliated with more than 2,800 foreign companies. United States chemical companies have invested over $40 billion abroad in plants and facilities. This investment represents nearly a quarter of all U.S. foreign investment. The U.S. exports more chemicals than any other

product. In 1992, the United States exports of plastic and rubber products to Canada and Mexico totaled $2.6 billion, 48% of total global U. S. exports. These exports to Canada and Mexico in 1992 grew by 12% over 1991 levels and resulted in a U.S. trade surplus of $1.2 billion.

II. CHEMICAL INDUSTRY

The U.S. chemical industry produced nearly $190 billion of product in 1991. Petrochemical production accounted for nearly one third of all chemical production in 1991 at $66 billion. The 1992 value of U.S. petrochemical exports was $6.7 billion. Reduced tariffs on both U.S. and Canadian petrochemicals promulgated under NAFTA will increase U.S. and Canadian exports to Mexico. Tariffs in petrochemicals traded between Canada and the United States are already reduced and being eliminated under the Canada-United States Free Trade Agreement, so NAFTA will not increase that trade. Canada is a major exporter of petrochemicals. The United States imports nearly 55% of all Canadian petrochemical exports while at the same time supplying Canada with 74% of its petrochemical imports. The Canadian petrochemical market in 1990 was $6.7 billion. The best petrochemical exports to Canada are primary petrochemicals such as olefins and intermediate petrochemicals such as styrene and synthetic resins.

U.S. production of agricultural chemical products reached $17.1 billion in 1991. The U.S. sold 17% of its agricultural

exports to Canada and Mexico. Mexican sales in 1992 rose by 35% over 1991 sales. The Mexican market for agricultural chemicals was $605 million in 1992. Most of Mexico's fertilizer production, once handled by the Mexican state-owned fertilizer producer Fertimex has been privatized. Foreign investors can enter the Mexican market and sell their products freely for the first time. The General Directorate for Vegetable Sanitation of the Secretariat of Agriculture and Water Resources publishes a list of permitted and prohibited agricultural chemicals. This list can be obtained from the Secretaria de Agricultura y Recursos Hidraulicos (SARH), Direccion General de Sanidad Vegetal, Guillermo Perez Valensuela 127, 04000 Mexico, D.F. Phone (011-525) 658-4319.

The final segment of the chemical industry is in inorganic chemical products. The major inorganic products are acids, bases, chloroalkalies, industrial gases, rare earths. Inorganic chemicals accounted for $20 billion in products for 1991. The inorganic chemical industry employs nearly 100,000 persons and exported $5 billion of product in 1991. Canada imported $900 million of such products in 1991 while Mexico imported $350 million for a total share of 25% of all U.S. exports.

III. PLASTICS INDUSTRY

Mexico is an excellent market for plastic products. The Mexican plastic industry is small and does not produce a wide variety of products. The most common types of plastic used in

Mexico are polyethylene, both high and low density, PVC, polypropylene and polystyrene. There is a significant and rising demand in Mexico for engineered resins. Such resins are usually produced in low volumes and at a higher cost than commodity resins. Mexican demand for engineered resins is satisfied almost entirely from imports. Mexico lacks both the facilities to satisfy the demand for such products and the capital to build the facilities to satisfy that demand. The main engineered resins used in Mexico are ABS, PBT, polycarbonate, polyacetal resins, nylon, fluoropolymers, polyamide, polyesters, polyurethanes, epoxy resins and urea resins. The market for plastic products in Mexico will continue to rise as the Mexican economy improves. The opportunity for Canadian and Mexican exporters of plastic products in Mexico will also increase. The reduced tariffs on their products as a result of NAFTA will give Canadian and U.S. exporters a competitive advantage over those from non-NAFTA countries.

IV. RUBBER INDUSTRY

Canada's annual production of industrial rubber products exceeds $1.5 billion, Canadian. Canada has an annual market of over $1.8 billion Canadian for such products. To fill the demand, Canada imports nearly 40% of its needs of which 90% comes from the United States. Canada has no domestic sources of rubber, so it must import all of the natural rubber it uses. With its huge domestic oil production, Canada is able to manufacture nearly all

of the synthetic rubber products it needs. Commodity rubber products are 65% of Canada's production, custom molded products account for an additional 30% of the market and the final 5% of the market is in miscellaneous products. The best market for exporters of rubber products to Canada are predicted to be in basic synthetics such as polysulfide and ethylene propylene, commodity rubber products such as hoses, belts, rubber sheets and mats, and custom made rubber products of most types.

Mexico is similar to Canada in many ways when discussing its rubber industry. As with Canada, Mexico lacks any domestic source of natural rubber and must import any that it needs. Mexico, like Canada has a huge oil industry run by the state agency PEMEX. From its oil industry, Mexico has the capability to draw the petrochemicals it needs to manufacture enough synthetic rubber to satisfy its needs. Unfortunately, Mexico lacks both the facilities and capital to build the facilities to meet its synthetic rubber needs. For that reason, Mexico is opening its petrochemical industry to a limited extent, hoping to spur foreign investment in its rubber industry. In the meanwhile, Mexico will still remain a good customer of Canadian and U.S. rubber products. In fact, as a result of the tariff phaseouts under NAFTA, Canadian and U.S. exporters of rubber products to Mexico will find they possess a competitive price advantage over exporters from non-NAFTA countries.

V. TARIFFS

Mexico immediately eliminated tariffs on 58.1% of the chemical, plastic and rubber exports of Canada and the United States on the enactment of NAFTA. Included are:

1. Methanol.
2. Propane.
3. Ethers.
4. Aldehydes.

Mexican tariffs on another 8.6% of goods such as polyacetates and polyesters will end by 1998. The tariffs on the remaining 33.3% of imported goods will end by the year 2003. Among such goods are:

1. Phenols.
2. Benzene.
3. Acids.
4. Acetate polymers.
5. Acrylic polymers.
6. Polyurethanes.
7. Monofilaments.

The United States eliminated its tariffs on 93% of Mexican exports of chemicals, plastics and rubber products on the enactment of NAFTA. A designated three percent of such Mexican exports will have their tariffs end by 1998 with the remaining 4% of the tariffs to terminate by 2003. Among the 7% of Mexican goods on which

tariffs will end are:

1. Waterbed mattresses.
2. Machine belts.
3. Clip fasteners.
4. Document binders.
5. Plastic plates and sheets.
6. Rare earth metals.
7. Uranium compounds.
8. Titanium hydrides.
9. Acrylic hydrocarbons.
10. Anthracene.
11. Alcoholic ethers.
12. Cinnamic acid.

Tariffs on chemical, plastics and rubber products traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Under CFTA, tariffs on petrochemicals have been eliminated and the remaining tariffs on chemicals, rubber and plastics were reduced by one-half as of 1994 and will be eliminated by 1998.

VI. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their chemical, plastics and rubber industries. NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA

country is required to bestow nondiscriminatory treatment on a chemical, rubber or plastics exporter of a NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporters of a non-NAFTA country. This is free trade in its simplest form. Each NAFTA country must treat the exports of fellow NAFTA country as though they were manufactured domestically. By treating all goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow members advance notification of any proposed change to its plastics, chemical or rubber standards. This is a major improvement over the GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also permit participation by affected citizens and companies in fellow NAFTA countries, GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required by NAFTA: 90 days.

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect labs in Canada and the United States will apply for accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and United States. The cost for products will be significantly reduced. Canada and the United States implemented this provision immediately at enactment of NAFTA. Mexico will implement in 1999.

VII. CUSTOMS INFORMATION

In order to provide assistance to plastic, rubber or chemical exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300
2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464
3. Office of Canada (202) 482-3103
4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101
5. Basic Industries, Office of Materials Machinery and Chemicals - Frederick Seissenger (202) 482-0128
6. Industrial Trade Staff (202) 482-3703

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK" Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. Faxline (011-525) 256-4737

CHAPTER 26

PUBLISHING, PRINTING AND PHOTOGRAPHIC INDUSTRIES

I. INTRODUCTION

The publishing, printing and photographic industries are highly specialized and represent a significant source of trade by the United States with both Canada and Mexico. Because of their similarities and connecting infrastructure, the printing and publishing industries are treated together under NAFTA. The photographic industry is covered under NAFTA and is included in this chapter because of its close relationship to the printing and publishing industry. Canada and Mexico are the United States' largest trading customers for printing and publishing exports, representing one-half of all such products. In 1992, Canada imported $1.7 billion of publishing and printing exports, while Mexico purchased another $220 million. U.S. exports to Canada increased by 96% between the years 1990 and 1992. During the same period, U.S. exports to Mexico increased by 14%. The difference in the growth of this U.S. trade with Canada and Mexico is attributed to the Canada-United States Free Trade Agreement opening Canadian publishing and printing markets. NAFTA will have the same effect on the Mexican publishing and printing markets and greatly increase LU.S. and Canadian sales.

The photography industry is another source of substantial trade between the United States and Canada and Mexico. The major products of this industry are in equipment such as cameras, photocopiers, micrographic machines, x-ray machines, and in sensitized materials such as film, video tapes, z-ray films, photographic paper, plates and development chemicals. In 1992, Canada purchased $616 million in photographic exports from the United States while Mexico purchased $281 million. Together, Canada and Mexico purchased a quarter of all photographic products exported by the United States. The market in Mexico has been especially lucrative to U.S. exporters. The U.S. photographic industry employs 78,000 workers primarily in the states of California, New Jersey and New York. The United States consumes domestically nearly all of the production from its photographic industry. In 1991, the U.S. industry produced $19 billion of products. Exports to Canada and Mexico, while they represent 25% of the total U.S. exports are only 4% of total U.S. production.

U.S. exports to Canada increased by 58% during the years between 1990 and 1992. U.S. exports to Mexico increased only 23% during the same period of time. The difference between the Mexican and Canadian rates of trade growth is attributed to the Canada-United States Free Trade Agreement. Under CFTA, a free trade zone was created between Canada and the United States with no tariffs on photographic exports. The demand for U.S. products in Canada over

other foreign imports has grown. NAFTA will do the same and increase the Mexican demand for U.S. products over those of other foreign exporters sold in Mexico.

II. PUBLISHING AND PRINTING INDUSTRY

The U.S. publishing and printing industries are among the world leaders. The United States' publishing and printing industries produced $151.2 billion of product in 1991. The major products produced by these industries are: newspapers, magazines, books, catalogs, labels and decals and other types of commercial materials. Despite its huge production, the United States is also the major consumer of such products. In 1991, the United States only exported about $4 billion of printed products. These industries employ 1.5 million workers in the United States throughout the country with most of the employment located in California, Florida, Illinois, New York and Texas.

Mexico represents a major market for published and printed exports from both the United States and Canada. In 1992, Mexican demand for such products was $2 billion. Mexican demand for published and printed products is projected to increase by 5% per year through the year 2000. Mexico has a small publishing and printing industry, especially in the area of graphic arts. The United States supplied Mexico with 71% of its imported printed products in 1992, a 32% increase over 1991 trade. The United States is also the largest customer of Mexican published products.

In 1992, the United States purchased $85 million of Mexican exports of published products.

Canada is the largest U.S. customer for published and printed products. The total Canadian market for such goods was $11 billion of which $5.7 billion was in books and periodicals. U.S. exports to Canada accounted for 10% of the Canadian market. The Canadian publishing industry technologically is on par with the United States. Canada's publishing industry is not large enough to handle all of Canada's demand for published and printed products. Canada purchased 45% of the total $4 billion U.S. exports of these products. Canadian demand for such products is expected to increase by 4% per year through the year 2000.

III. PHOTOGRAPHIC INDUSTRY

The Mexican photographic market is the second largest in Latin America at $225 million. Only 15% of Mexico's 86 million citizens own cameras. In 1991, camera sales reached 34 million of which 17 million were 35 millimeter cameras and 25% were 110 cartridge cameras. The United States supplies Mexico with 50% of its photographic imports. The Mexican market for photocopiers and micrographics is estimated to increase by 23% per year through the year 2000. The United States supplied Mexico with 80% of its photocopiers and micrographic equipment in 1990. The removal of Mexican tariffs on U.S. and Canadian photographic products will increase the demand for such products in Mexico. As a result of

NAFTA, Mexican demand for U.S. photographic products will increase by 5% per year through the year 2000. Mexico lacks the production capacity and the capital needed to expand with the projected demand.

The Canadian market for U.S. photographic products has been steadily growing. Since the implementation of the Canada-United States Free Trade Agreement, U.S. photographic exports to Canada have increased at an annual rate of 14% for a cumulative increase in 1992 of 68% over 1988 figures. As of January 1993, photographic supplies, including film, paper and chemicals, had their tariffs completely eliminated. The greatest market growth in U.S. exports was in the sale of 35 millimeter cameras and film. Such sales increased by 7% during 1991 while all other sales dropped. Such film accounted for 88% of all film sold in Canada. The Canadian photographic market is estimated to be nearly $1.5 billion.

IV. TARIFFS

A. PUBLISHING AND PRINTING INDUSTRIES

Mexico eliminated tariffs on 63% of publishing and printing exports of Canada and the United States on the enactment of NAFTA. The following are 20 of the most important items now tariff free under NAFTA:

1. Albums.
2. Books.
3. Business and legal printing.

4. Calendars.
5. Catalogs.
6. Children's picture books.
7. Color separations.
8. Directories.
9. Globes.
10. Greeting cards.
11. Maps.
12. Metal fittings for binders.
13. Newspapers.
14. Periodicals.
15. Playing cards.
16. Postcards.
17. Posters.
18. Printed music.
19. Printing plates.
20. Trade advertising.

Mexican tariffs ranging from 10% to 20% will end by the year 1999 on 8.4% of Canadian and U.S. exports. Included in this segment are the following products, book covers and binders.

The remaining 28.6% will be eliminated by 2004. The tariffs on such goods prior to NAFTA were between 10% and 20%. Included in this segment are the following products:

1. Business forms.

2. Decals.

3. Diaries.

4. Exercise books.

5. Labels.

6. Notebooks.

The United States eliminated 89.8% of its tariffs on all Mexican exports on the enactment of NAFTA. The remaining U.S. tariffs on Mexican exports will end by 2004.

Tariffs on publishing and printing exports traded between Canada and the United States are governed by the 1988 Canada-U.S. Free Trade Agreement (CFTA). Under CFTA, tariffs on photographic exports have already been eliminated except for Canada's tariff of 1.8¢ per pack on U.S. playing cards.

NAFTA also requires each member country to cease granting new tariff waivers to companies based on performance requirements. Mexico has until 2001 to eliminate those current tariff waivers it granted prior to NAFTA to meet investment, research and development and export conditions.

B. PHOTOGRAPHIC INDUSTRY

On the enactment of NAFTA, Mexico eliminated 85% of its tariffs on all photographic exports. Included in this category are the following important products:

1. Film.

2. Flat pictorial paper.
3. Line reproduction paper.
4. Photo-finishing equipment.
5. Motion equipment.
6. Micrographic equipment.
7. Photo copying equipment.
8. Photographic chemicals.
9. Still picture equipment.
10. X-ray film.

Mexican tariffs on the remaining 15% of Canadian and U.S. products will end by 2004. Under NAFTA, Mexico is precluded from requiring import licenses for photographic equipment exported from the United States or Canada. Such licenses can be required from other foreign exporters.

The United States eliminated its tariffs on all Mexican photographic exports on the enactment of NAFTA.

Tariffs on photographic products traded between Canada and the United States will end by 1998 pursuant to the terms of the 1988 Canada-U.S. Free Trade Agreement. As of 1994, the Canadian tariffs on most U.S. products had been eliminated and had been reduced to 4% for the rest on the way to zero. Prior to CFTA, Canada charged tariffs of 9.2% on photographic products exported from the United States. Partly as a result of CFTA, photographic trade between the United States and Canada has expanded greatly. Based upon the

Canadian experience, NAFTA will result in a similar growth of trade with Mexico.

V. STANDARDS

NAFTA nations retain the right to maintain their own technical standards for their publishing, printing and photographic industries. NAFTA nations are not permitted to adopt technical standards merely for the purpose of restricting access to their economy. Each NAFTA country is required to bestow nondiscriminatory treatment to a publishing, printing and photographic exporter of a NAFTA country. The exporter must be treated at least the same as a domestic supplier of the goods or an exporter of a non-NAFTA country. This is free trade in its simplest form. Each NAFTA country must treat the exports of fellow NAFTA country as though they were manufactured domestically. By treating all goods equally, no country gives an unreasonable benefit to its own citizens. Goods freely trade across the borders with the effect that capitalism functions according to market operations and not in accord with artificial government regulation.

Each NAFTA nation is required to give fellow members advance notification of any proposed change to its printing, publishing or photographic standards. This is a major improvement over the GATT process. It allows early discussion by members before changes are implemented. If a NAFTA country permits participation in the change making process by its citizens or companies, it must also

permit participation by affected citizens and companies in the fellow NAFTA countries, GATT has no set time period to allow comment on proposed changes in standards before implementation. By comparison, NAFTA requires that a comment period of 60 days be established before any changes in standards can be adopted. Mexico's Federal Law of Meteorology and Standardization provides for a longer comment period than required by NAFTA: 90 days.

NAFTA envisions a single lab to certify a product meets the technical standards of all three countries. NAFTA nations expect labs in Canada and the United States will apply for accreditation in Mexico in the same manner as Mexican labs. U.S. labs will certify a product for sale in Canada, Mexico and United States. The cost for products will be significantly reduced. Canada and the United States implemented this provision immediately at enactment of NAFTA. Mexico will implement in 1999.

VI. CUSTOMS INFORMATION

In order to provide assistance to printing, publishing or photographic exporters, the government of Mexico, the United States Department of Commerce and the United States Customs Service have instituted several phone services for information. These phone numbers are:

UNITED STATES DEPARTMENT OF COMMERCE

1. Office of Mexico (202) 482-0300

2. Office of Mexico, "FLASH FACTS" Information Line (202) 482-4464

3. Office of Canada (202) 482-3103

4. Office of Canada, "FLASH FACTS" Information Line (202) 482-3101

5. Technology and Aerospace Industries (202) 482-0574
   Computer and Business Equipment (Photographic) - Joyce Watson

6. Industrial Trade Staff (202) 482-3703

7. Office of Consumer Goods (202) 482-0379
   Printing and Publishing - William Lofquist

UNITED STATES CUSTOMS SERVICE

1. NAFTA HELP DESK (202) 692-0066

2. NAFTA HELP DESK, "FLASH DESK" Information Line (202) 692-1692

MEXICAN GOVERNMENT

1. NAFTA Hotline (011-525) 211-3545

2. Faxline (011-525) 256-4737

EPILOGUE

This NAFTA volume is one in a series of self help legal books on such areas of law as:

1. Estate Planning I

2. Estate Planning II

3. Financial Planning I

4. Financial Planning II

5. Powers of Attorney
6. Incorporation
7. Limited Liability Companies
8. Partnerships
9. Nonprofit Corporations
10. Small Claims Courts
11. Chapter 7 Bankruptcy
12. Chapter 13 Bankruptcy, and
13. NAFTA

Each book in this series is a compendium compiled by an attorney covering the substance of a major number of facets of law that the lay person should understand. Each book is unique in that:

- It is written in straight-forward language, not legalese.
- It is brief and concise, yet covers all the major aspects the reader needs to know about that particular subject matter.
- It details both the law and the practical measures the reader must understand to complete each task or requirement described in the book.
- It includes most of the forms the reader will need.
- It applies to all 50 states and the District of Columbia, and clearly identify the differences and similarities between these entities.
- It provides the specific requirements, actions and forms for use in each state when the use of official forms are not

required.

To the best of our knowledge no other compendium provides the law, instructions and forms that are acceptable in each of the 50 states.

This one does.

APPENDIX

DOCUMENTATION NECESSARY FOR EXPORTING

NAFTA dealing with the importing and exporting of good between Canada, Mexico and the United States. As such, there will always be a certain amount of paperwork necessary for the transaction. The most frequent documentation will be the shipping instructions themselves which is between the exporter, importer and shipper. There are several business supply companies which publish the forms necessary for international shipping, such as:

Apperson Business Forms
8616 East Slauson Avenue
Pico Rivera, CA. 90660
(800) 438-0162
In CA: (310) 949-4952

Unz & Company
190 Baldwin Avenue
Jersey City, NJ 07306
(800) 631-3098
In NJ. (201) 795-5400

Often, or at least initially, an exporter will use a Customs Broker who will have experience with the completing the Certificate of Origin although it is relatively simple to do. In fact, it is quite easy when all of the goods originated in the United States and are being exported to Canada or Mexico. The Customs Broker could be especially useful for arranging complicated shipping such as overland or my sea. Shipping by mail is, however, quite easy and generally the use of a customs broker is not needed.

A Customs Broker is a person licensed by the Customs Service who has passed a rigorous written examination on both the U.S. Customs Regulations and the Harmonized Tariff Schedule of the United States. The Customs Broker has very specific duties imposed

upon him. Specifically, the Customs Broker has the responsibility to both the government and the importer that the correct amount of tariffs is collected for the goods. Only licensed people can hold themselves put as Customs Broker. Anyone who simply advertises as an import broker or merchant is not licensed by the government and care should be used in employing their services.

NAFTA, however, created a new form called a CERTIFICATE OR ORIGIN, for the goods being shipped between Canada, Mexico and the United states which are entitled to receive the special tariff treatment afforded under NAFTA. This section discusses the Certificate of Origin for use under NAFTA.

In addition to the Certificate of Origin, an American exporter will be required to file an Export Vessel Movement Summary Sheet if the goods are shipped by ocean or special postal forms if they are shipped by mail. These forms are also discussed herein. Such forms are often handled by the international freight forwarder utilized by the exporter. An International freight forwarder is, in essence, merely the shipper who is transporting the goods internationally.

Freight forwarders are often selected based upon the method of shipment to be utilized. The Federal Maritime Commission licenses shippers for oceanic shipments. These are the most professional and competent of all shippers. Not all maritime shippers are FMC forwarders so the exporter must beware. There is no commission of the licensing of air freight or surface forwarders. There is,

however, an International Air Transport Association (IATA) operated by airlines having international service. Agents to IATA operate as air freight forwarders which is perfectly legal and legitimate.

CERTIFICATE OF ORIGIN

The Certificate of Origin is a new form created under NAFTA for use with goods that are entitled to its special tariff treatment. Certificate of Origin provides the means to the Customs authorities of both the exporting and exporting country to determine if the goods actually qualify for the special NAFTA tariff treatment. This can be a very difficult determination when, for example, the goods have been manufactured from materials derived from Non-NAFTA countries or assembled in one of more NAFTA countries. The discussion of how the percentage of attributable NAFTA content are discussed in preceding chapters.

Often, or at least initially, an exporter will use a Customs Broker who will have experience with the completing the Certificate of Origin although it is relatively simple to do. In fact, it is quite easy when all of the goods originated in the United States and are being exported to Canada or Mexico. The Customs Broker could be especially useful for arranging complicated shipping such as overland or my sea. Shipping by mail is, however, quite easy and generally a customs broker is not needed.

The exporter of the goods is the person or entity responsible for providing the Certificate of Origin. The exporter is required

to give a signed original to the importer. Both the exporter and importer are required, under the terms of NAFTA, to keep their Certificate of Origin in their records for five years. Upon request by the Customs Service, it must be provided.

NAFTA CERTIFICATE OF ORIGIN

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 12/31/96
OMB No. 1515-0204

NORTH AMERICAN FREE TRADE AGREEMENT

CERTIFICATE OF ORIGIN

19 CFR 181.11, 181.22

1. Exporter Name and Address Tax I.D. Number	2. Blanket Period (*DD/MM/YY*) FROM TO
3. Producer Name and Address Tax I.D. Number	4. Importer Name and Address Tax I.D. Number

5. Description of Good(s)	6. HS Tariff Classification Number	7. Preference Criterion	8. Producer	9. Net Cost	10. Country of Origin

I Certify that:

- The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;
- I agree to maintain, and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that would affect the accuracy or validity of this certificate;
- The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the North American Free Trade Agreement, and unless specifically exempted in Article 411 or Annex 401, there has been no further production or any other operation outside the territories of the Parties;
- This certificate consists of [ ] pages, including all attachments.

11a. AUTHORIZED SIGNATURE		11b. Company:	
11c. NAME		11d. Title:	
11e. DATE (*DD/MMY/YY*)	11f. TELEPHONE NUMBER ▷	*(Voice)* ( )	*(Facsimile)* ( )

BLANKET PERIOD. The blanket period of the Certificate can be made completed so as to cover one shipment at a time or for an entire year, hence the name blanket. Generally, it is a better idea to do a blanket certification rather than for or a one time sale. This has the advantage of permitting further shipments during the year without having to refile. For shipment of under $1,000, the exporter does not need to complete a Certificate or Origin. The notation on the invoice will suffice. However, if there are more than one shipment and they altogether will exceed $1,000 then a Certificate should be prepared.

PRODUCER'S NAME AND ADDRESS. The producer is generally the manufacturer of the goods. Generally, the producer is the same as the exporter. Occasionally, the exporter may wish to keep the producer's name confidential for business reason, such as preventing customers from going directly to the producer rather than buying through the exporter. In such an event, the exporter type in the language "available to the Customs Service upon request". Likewise, if the producer is the exporter then yes will be types in section 8 otherwise the answer will be NO.

When the exporter is not the producer of the goods, the exporter is required to have on file information from the producer which certifies that the goods satisfy the NAFTA rules of origin. This can be satisfied by having detailed information on the construction and assembly of the goods or most often by a Certificate or Origin

executed by the producer. Even a letter to that effect signed by the producer would probably work as well although it is not, obviously, the preferred method of proving NAFTA compliance.

IMPORTER. Listed in bock 4 is the name and address of the person or entity who is importing the goods. This permits the Customs Service to cross-check the information set forth in the exporter's Certificate.

HS TARIFF CLASSIFICATION NUMBER. Under NAFTA all goods shipped between the NAFTA countries are given a classification number and a tariff schedule. Most goods have no tariffs imposed upon them and others have a sliding tariff scale. The classification of the goods and the classification number can be found by reviewing the NAFTA ACT or, most simply, by contacting the Customs Service. If a Customs Broker will be used, the broker will have this information already at hand. Likewise, the freight forwarder can supply it as well, at the time when quotes are first solicited for the shipment.

PREFERENCE CRITERION. NAFTA rates, in five volumes, all goods as either an A, B, C, or D which can be exported between the countries. Generally, nearly all goods will be classified as C. However, many agricultural goods are classified as D. As with the classification number, the preference criterion for the goods can easily be ascertained by reviewing the NAFTA books or simply contacting the Customs Service by phone or fax and requesting this information. A Customs Broker would also provide this information

if his services will be utilized. In addition, the freight forwarder will also be able to provide this information.

NET COST. If the exported goods have been entirely produced in the United States with American products, type NO. This section is completed only when the exported goods have been constructed in part with labor or goods outside the United States.

If the goods have been manufactured using non-NAFTA materials or goods, then the net cost of the exported using the NAFTA rules of origin must be calculated. The freight forwarder, generally, would be prepare the Certificate of Origin in such a situation for a nominal fee provided all of the information is given regarding the labor and goods used in manufacturing the product.

OCEANIC SHIPPING

Because oceanic shipping has been taking place much longer than air shipping, it has been developed its own special nuances and procedures separate from air or surface shipping. These can result in greater expense in shipping.

HARBOR MAINTENANCE FEE. Exporters are required to pay a harbor maintenance fee on their export shipments. Such a fee is also collected on imports at the time of entry. A form settling forth the harbor maintenance fee is filed and the fee paid each calendar quarter to the U.S. Customs Service. Payment must be received by the last day of the month following the end of the quarter of a sever penalty is assessed. The harbor maintenance fee does not

apply to air, truck or rail exports shipments that do not involve the use of seaports. There is no official form required to be used for the payment of the fee. A simple letter outlining the period covered by the fee and the amount enclosed is sufficient. The maritime freight forwarder would be of assistance in determining the amount of the fee.

In addition to the harbor maintenance fee, maritime exporters are required to file an **EXPORT VESSEL MOVEMENT SUMMARY SHEET** with the U.S. Customs Service. This form must be filed quarterly. The purpose of this form is to permit the assessment of a user's fee for ports maintained by the U.S. government. The fee is assessed at a rate of 1/8th of one percent of the fair market value of the shipment as stated in the export declarations. This fee is due by the end of the month following the close of the quarter. A copy of the official form follows:

EXPORT VESSEL MOVEMENT SUMMARY SHEET FOR QUARTER

DATED FROM OCTOBER 1, 1995, TO DECEMBER 31, 1995

TO: U.S. Customs Service
P.O. Box 70915
Chicago, IL 60673-0915

FROM: **Federal ID Number**

ORIGIN OF SHIPMENT	DESTINATION OF SHIPMENT	DATE OF ORIGIN	COMMODITY CODE	VALUE OF SHIPMENT

Total Value of Shipments for Quarter:

Collection Class Code 502

Total Fee paid: ($10,150.00 x .00125)

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding cargo loaded for export subject to the harbor maintenance fee for the quarter ending December 31, 1995 is complete and accurate to the best of my knowledge.

January 31, 1996

The Export Vessel Movement Summary Sheet is obtained from the Customs Service. The form can be prepared by the freight forwarder for a nominal fee. The form is easy to complete. The form has a section named Collection Class Code 502 which is imported goods. Fees are collected for imports but the importer does not file a quarterly report. The reason for this is that the import fees are collected at the time of importation not a month after the end of the quarter as for exports.

SHIPMENT BY MAIL

The easiest way to ship exports is by mail if it is possible. Many

exporters do not realize it but under the law an export is occurring only if a catalog is sent to potential customers. The law makes little distinction between the exportation of goods through the mails or the sending of catalogs of those same goods as long as the purpose is to effectuate or promote sales.

There are two ways in which the U.S. Mail; can be sued to make international delivery. They involve the use of wither Form 2966-A or Form 2966-B. Form 2966-A is an adhesive sticker for placement on the outside of the package. Form 2966-B is a dual carbon paper form. The form, both the original and carbon, will once completed be placed into a clear plastic envelope that is taped or glued to the outside of the package. Publication 51 can be obtained from the post office and will give instructions on postage rate, sizes and weight restrictions for each country.

For small packages 2976 labels can be obtained from the post office. Publication 51 can be quite useful in sending small packages abroad.

Special rules apply when shipments in the mail exceed $2,500 or involve a licensable commodity such as weapons, computer technology or nuclear hardware. Such shipments will require a shipper's export declaration. If the shipment is of the type that requires a valid license in order to be shipped, then it can not be mailed out of the country without that license.

When a shipment consists of more than one carton, good practice is to affix a copy of the invoice to each carton and label each carton as part of a particular shipment. For example, box one might be stamped, "Box 1 of 5 boxes under invoice 33789. If five boxes are not together, please search." Doing this will help minimize lost are separated packages.

FORM 2966-A

FRONT

United States Postal Service				No. 455706	
FROM Expéditeur				**Sender's Instructions** **If parcel is undeliverable** Dispositions de l'expéditeur En cas de non-livraison ☐ **Return to Sender** Renvoyer à l'origine (NOTE: Parcel will be returned by surface and at sender's expense.) ☐ **Forward to:** Réexpédié à ☐ **Abandon** Abandonné	
TO Destinataire					
QTY	**Itemized List of Contents** Please Print				**VALUE (US $)**
Signature of Sender				**Date**	
Insured No./Numéro d'assurance				**Weight/Poids**	
				lbs	**ozs.**
Insured Amount (US$)	**Gold Francs**	**SDR/DTS**		**Postage**	

PS Form 2966-A, June 1986 **Parcel Post Customs Declaration**
C2/CP3 **Colis de Poste Déclaration en Douane**

BACK

INSTRUCTIONS

- Using a ballpoint pen, the sender must complete all items except shaded areas. (Shaded areas for postal use only.)
- Your signature on the front of the declaration certifies that the particulars given are correct and that the package does not contain any dangerous substance or article prohibited by postal regulations.
- If package is to be insured, state insured amount to postal employee. Postal employee will complete appropriate insurance sections (insured amount, and equivalent values in Gold Francs (GF) and Special Drawing Rights (SDR).
- After completion, the sender must peel off the backing sheet and affix the form to the item, preferably on the address side.

PS Form 2966-A. June 1986 (*Reverse*)
C2/CP3

FORM 2966-B

FRONT

DETACH STUB BEFORE MAILING

United States Postal Service	No. 2937832
FROM Expéditeur	**Sender's Instructions** **If parcel is undeliverable** Dispositions de l'expéditeur En cas de non-livraison ☐ **Return to Sender** Renvoyer à l'origine (NOTE: Parcel will be returned by surface and at sender's expense.) ☐ **Forward to:** Réexpédié à
TO Destinataire	☐ **Abandon** Abandonné

QTY	**Itemized List of Contents** Please Print	**VALUE (US $)**

Signature of Sender			**Date**	
Insured No./Numéro d'assurance			**Weight/Poids**	
			lbs	**ozs.**
Insured Amount (US$)	**Gold Francs**	**SDR/DTS**	**Postage**	

PS Form 2966-B, July 1986 **Parcel Post Customs Declaration** Copy 1
C2/CP3 **Colis de Poste Déclaration en Douane**

BACK

INSTRUCTIONS

- Using a ballpoint pen, the sender must complete all items except shaded areas. (Shaded areas for postal use only.)
- Your signature on the front of the declaration certifies that the particulars given are correct and that the package does not contain any dangerous substance or article prohibited by postal regulations.
- If package is to be insured, state insured amount to postal employee. Postal employee will complete appropriate sections (shaded areas), and will apply a postmark on Copy 3. .
- After completion, remove stub, and insert Copies 1, 2, and 3, into envelope (*P.S. Form 2966-E*). Peel off cover and affix the envelope to the package, preferably on the address side, and seal flap.

PS Form 2966-B. July 1986 (*Reverse)*

FORM 2976

FRONT

Customs - Douane C-1
May be Officially Opened
(Peut être ouvert d'office)

\- - - - - - - - - - - - - - - - - -

See Instructions on Back

Contents in detail:
***Désignation détaillée du contenu*:** ____________________

____

____

____

____

Mark X here if a gift. . . . . ( )
Il s'agit d'un codeau
or a sample of merchandise . . .( )
d'un énchantillon de marchandises

Value:________ Weight:_____ _____
Valeur ***Poids*** **Lbs. Oz.**

PS Form 2976, Feb. 1993

BACK

Instructions

Affix only the upper portion of this label (cut on dotted line and discard lower portion) if you do not wish to list the contents on the wrapper, or in any case if their value exceeds $400. When this is done, enclose in the package a completed separate declaration (Form 2976-A) listing contents and value.

The contents of your article, even if a gift or sample, must be described correctly and completely. Failure to do so might delay your article and cause difficulty for the addressee, or even result in seizure of the article by the foreign customs authorities.

Your item must not contain any dangerous articles prohibited by postal regulations.

LABEL IS GUMMED, MOISTEN AND APPLY