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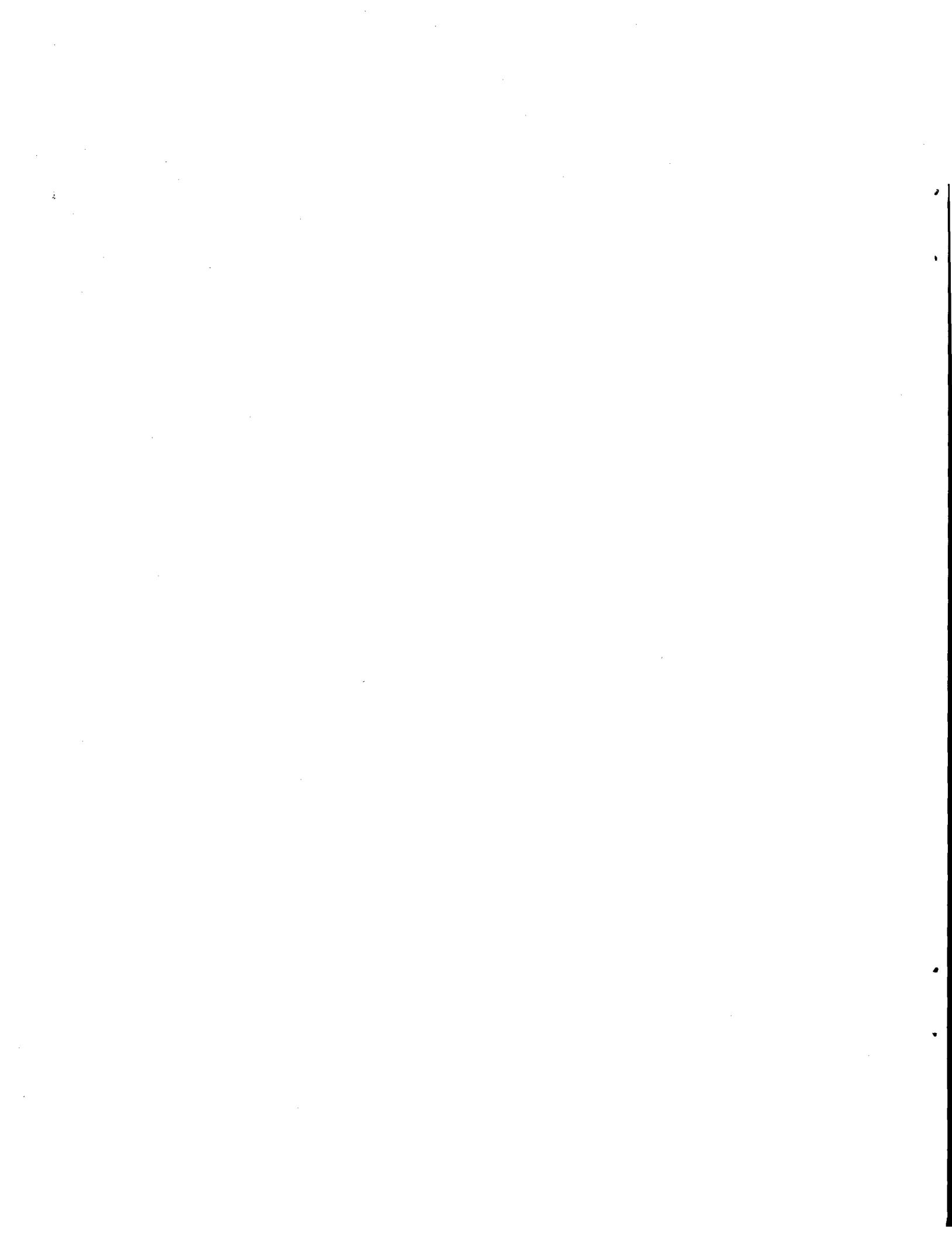
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**NAFTA Implementation in Canada:
The First Three Years**





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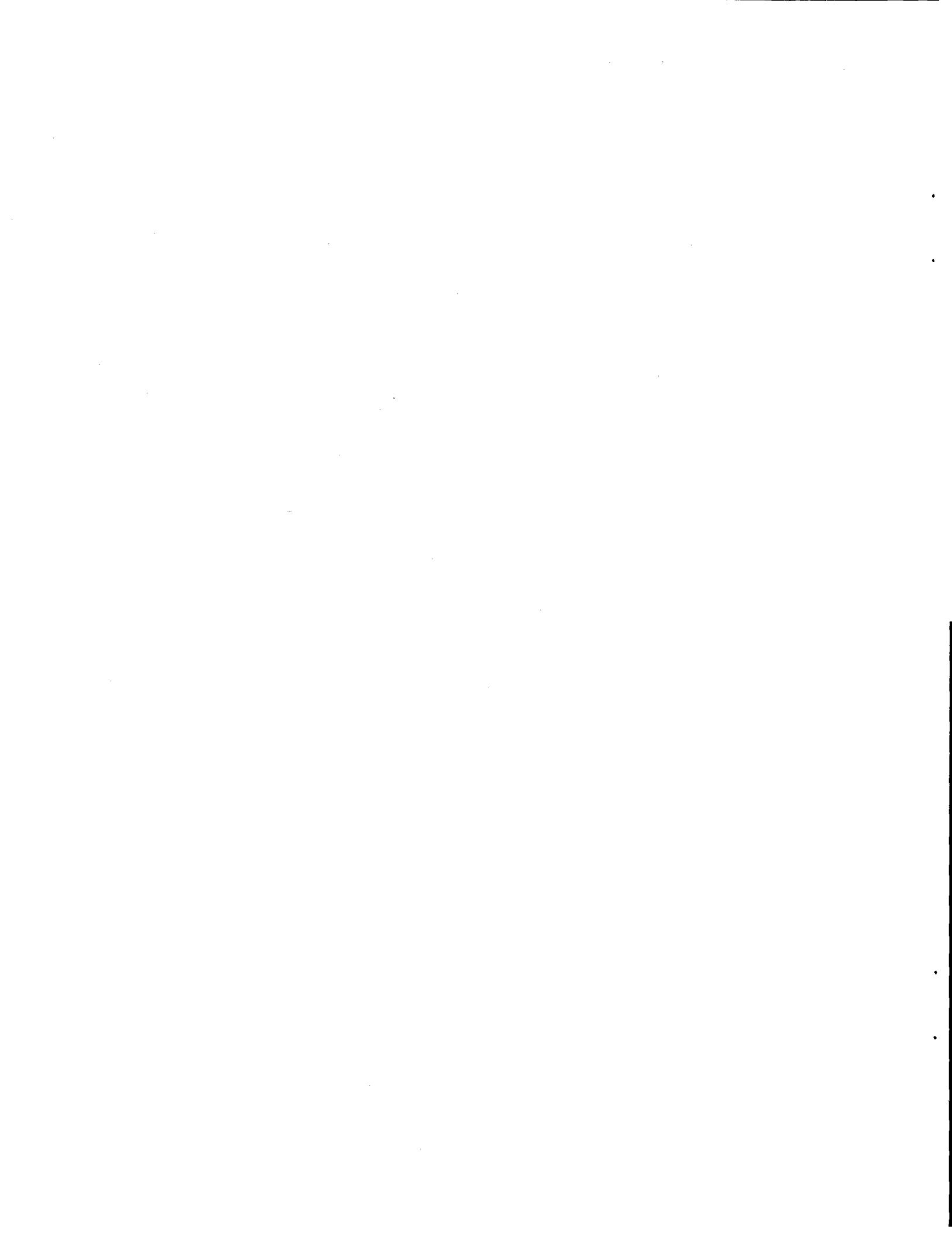
PRESENTATION

The North American Free Trade Agreement entered into force in Canada, Mexico and the United States on January 1, 1994. NAFTA progressively eliminates tariff and nontariff barriers to trade in goods, improves access for trade in services, establishes rules for investment, strengthens protection of intellectual property rights, and creates a dispute settlement mechanism among the three parties. The agreement improves on the U.S-Canada Free Trade Agreement (FTA), which came into effect January 1, 1989.

Designed to foster increased trade and investment, the NAFTA established a new framework for doing business and facilitating economic interdependence among the three countries. Further, the NAFTA is the first reciprocal free trade agreement ever negotiated by Canada and a Latin American country, thus setting an important precedent for economic relations with countries in the Western Hemisphere.

This report summarizes the main developments in the implementation of the NAFTA in Canada during the first three years of operation. It describes and illustrates the activities and efforts required by the effective functioning of such a comprehensive agreement. It follows a similar ECLAC Washington report on NAFTA implementation in the United States during 1994 and 1995.

The present report is divided in three sections. Section 1 describes Canadian trade with NAFTA partners. Section 2 covers the main activities required by the implementation of the agreement in the last three years. The last section describes the implementation of the environment and labor supplemental agreements.

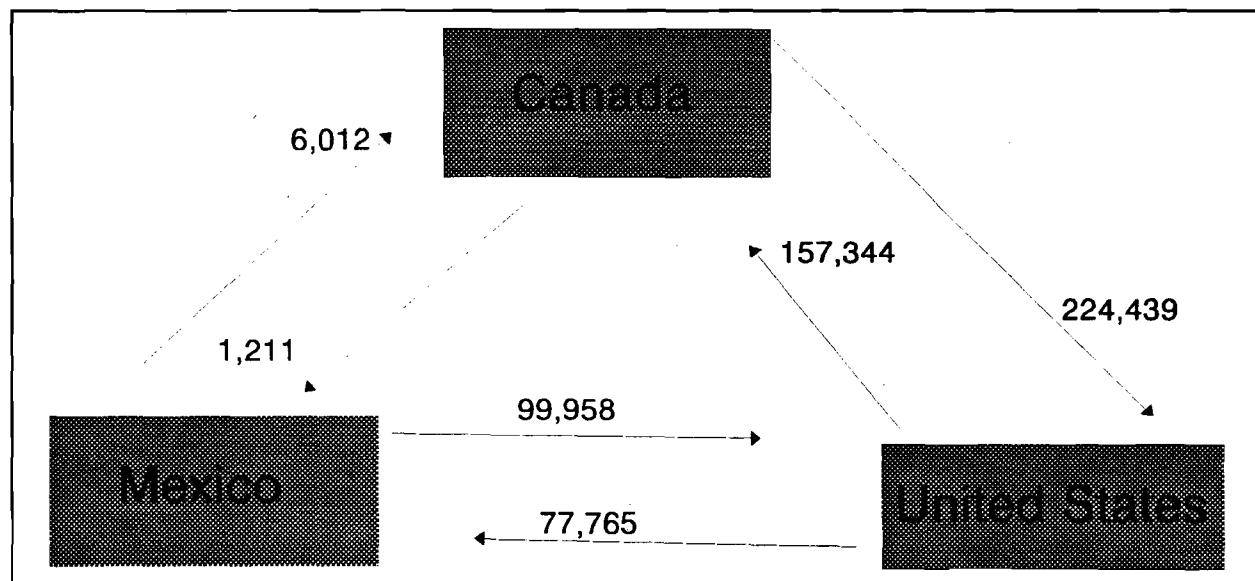


I. CANADA's TRADE WITH NAFTA PARTNERS

Since NAFTA entered into effect on January 1, 1994, trade among Canada and its partners has considerably increased, basically as a result of lower tariff duties and clearer trading rules. Total trade flows among the NAFTA countries amounted to C\$566.7 billion in 1996, growing by 10% with respect to 1995. During the first and second years of NAFTA, three-way trade grew 11% and 24%, respectively.

Figure 1

Trade Flows in the NAFTA Region, 1996 (millions of C\$)



Source: Embassy of Mexico, SECOFI, Canada.

1. Trade with the United States

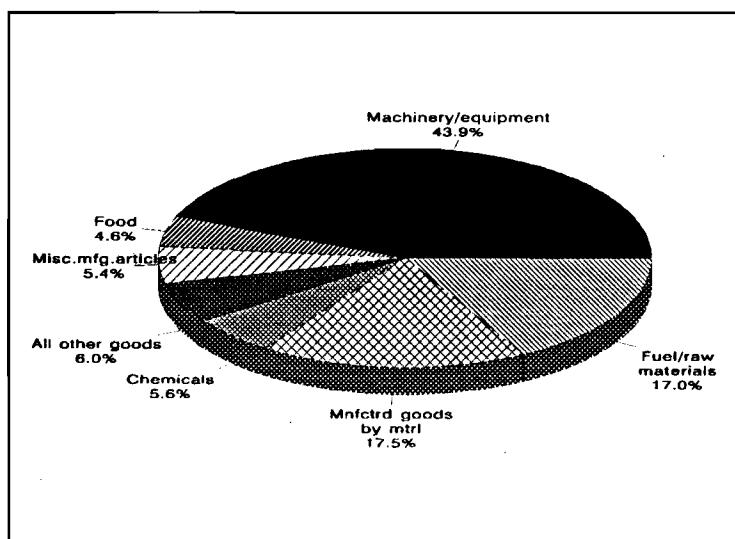
Canada and the United States share the world's largest bilateral trading relationship, each serving as the largest market for the others' goods. In 1996, the total value of bilateral trade between Canada and the U.S. amounted to C\$382 billion, with both countries trading more than one C\$ billion in goods and services each day. In 1996, 81.6% of Canadian exports went to the U.S. market, while imports from the U.S. represented 67.5% of total imports.

In NAFTA's first three years, Canadian exports to the United States expanded by 22.3% in 1994, 14% in 1995, and 6.9% in 1996 to reach C\$224 billion. Machinery and

equipment are the principal Canadian exports to the U.S., followed by other manufactured goods, with fuel and raw materials in third place. Crude oil, coniferous wood, and natural gas are the three leading natural resource exports. In all, the top 20 commodities exported from Canada to the U.S. account for about half of total exports.¹

Imports from the U.S. grew 20.5% in 1994, 9.8% in 1995, and 4.3% in 1996 to reach C\$183 billion. Manufactured goods such as electronics, plastics, and steel are among the most important imports. The top 20 imported commodities account for approximately one-third of total Canadian imports from the U.S.

Figure 2 Canada: Composition of Exports to the U.S. 1995



Canada's trading relationship with the U.S. has deepened and expanded over the years. Back in the 1950s, Canada was dependent on the export of unprocessed or semiprocessed commodities and a protected manufacturing sector oriented to import substitution. For example, in 1960, more than 90% of Canadian exports were primary or semiprocessed commodities².

In the next two decades, tariff reductions achieved under the General Agreement on Tariffs and Trade (GATT) proved beneficial in

fostering increased trade between Canada and the United States. In addition, the 1965 U.S.-Canada Auto Pact paved the way for free-trade in new autos and original-equipment parts. Through tariff reductions and a complex duty-remission scheme, which favored production in Canada by U.S. based corporations, the auto sector grew impressively. By 1986, as free trade negotiations approached, the auto sector represented about 36% of total bilateral trade.

By that time, Canada's economic recession of 1982-83, the competition created by the Tokyo Round tariff reductions, as well as the escalating threat of U.S. countervailing and anti-dumping duties, among other factors, presented a challenge to many Canadian industries,

¹ United States International Trade Commission, The Year in Trade 1995, (47th Report, USITC Publication 2971), August 1996, p.31.

² Murray G. Smith, "Canada and Economic Sovereignty," in Joyce Hoebing, Sidney Weintraub, and M. Delal Baer, eds. NAFTA and Sovereignty, CSIS, (Washington D.C., 1996).

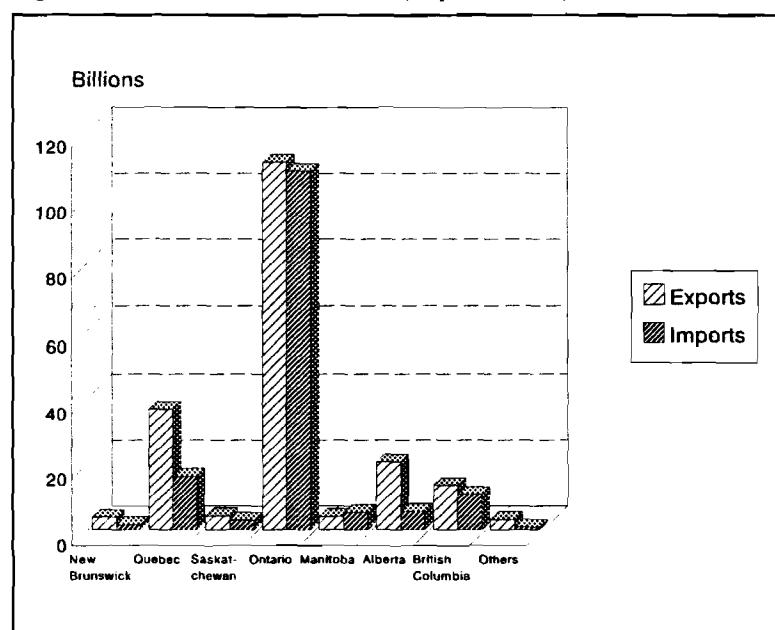
including the auto industry. It became apparent that the time had arrived to take measures to improve trade relations with the U.S., the main economic partner, which absorbed 75% of Canada's exports and provided 70% of its imports³.

Canada's official goals in the bilateral negotiations were fourfold: secure access to the U.S. market by limiting the effects of unilateral trade remedy laws; enhance access to the U.S. market by eliminating tariffs and liberalizing non-tariff barriers; institutionalize these gains through an effective dispute settlement mechanism; and, maintain policy discretion in cultural industries and foreign investment in some sensitive sectors⁴.

The Canada-U.S. Free Trade Agreement (FTA), which came into effect January 1, 1989 was the most comprehensive bilateral trade agreement ever concluded between two countries, covering trade in goods and services and direct investment flows. It phased out tariffs on bilateral trade within 10 years, liberalized many nontariff barriers and defined common rules for subsidies, dumping, product standards, and services.

It should be noted that even before the implementation of the agreement, 75 percent of bilateral trade between the U.S. and Canada was duty free. In essence, the meaningful part of the Canada-U.S. FTA was not that it eliminated tariffs, since that had been for the most part accomplished through the GATT. Rather, non-tariff barriers to trade were reduced, ensuring enhanced access for a wider range of Canadian products to the U.S. market. Moreover, the establishment of a mechanism for settling disputes put trade relations on a more secure footing.

Figure 3 Canada - U.S. Trade, by Province, 1995

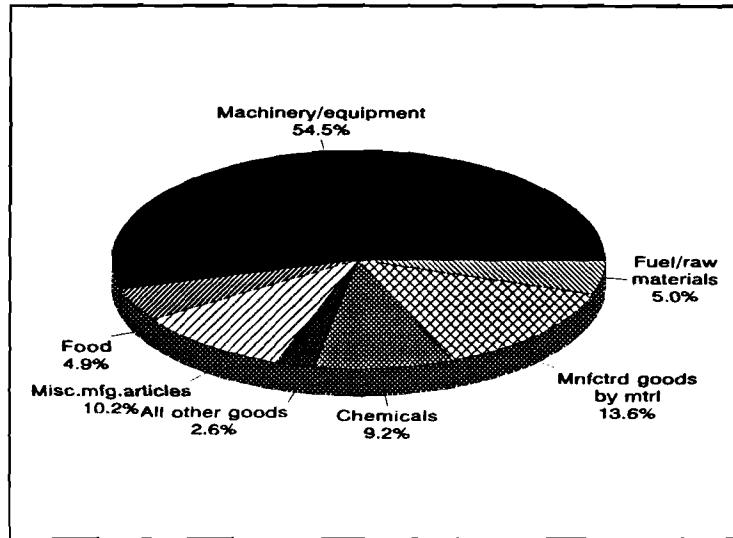


³ The idea of a preferential trading relationship between Canada and the U.S. has a long history. Both countries engaged in limited duty-free trade from 1854 to 1866, and many efforts were made to revive the concept subsequently. See, Peter Morici, "The Environment for Trade," in Making Free Trade Work: The Canada-U.S. Agreement, ed. Peter Morici, (New York: Council on Foreign Relations Press), 1990, p.12.

⁴ Ibid., p.14.

Figure 4 Canada: Composition of Imports from the U.S. 1995

Canada's trade ties with the U.S. deepened and expanded with the free trade agreement. Bilateral trade expanded significantly over the five-year period, from C\$186.8 billion in 1988 to C\$ 264 billion in 1993. Canadian exports to the U.S. performed the strongest in those sectors liberalized by the agreement, particularly in nonresource-based manufacturing sectors such as telecommunications, office, and precision equipment. Canadian exports to the U.S. of high-value-added resource-based goods, such as petrochemicals and fine papers, which previously faced high U.S. tariffs, outperformed exports to other countries. At the same time, Canada's exports in sectors not opened by the agreement stagnated⁵.



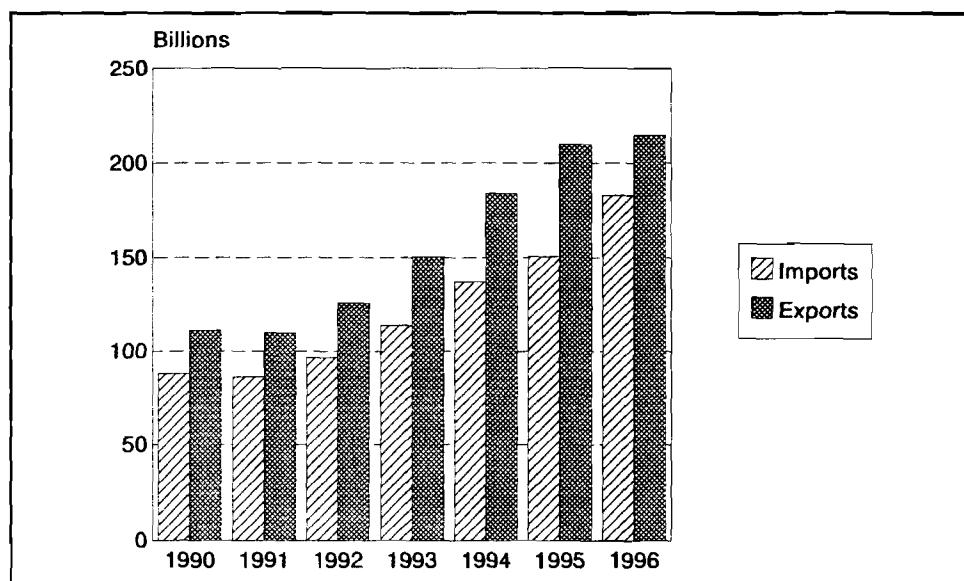
Although many in Canada were concerned that the free trade agreement with the U.S. would make Canada more dependent on exports of natural resources and hurt its automotive sector, the share of manufactured products in Canada's exports increased from 1988 to 1993. In addition, two-way automotive trade has become a prime example of the close integration of both economies. Seven of the top 20 items Canada exports to the U.S. are in the automotive sector. Similarly, eight of the top 20 commodities imported from the U.S. fall in the automotive category and account for well over half of the total for the top 20 imported items. Canadian assemblers produce almost one in five vehicles sold in North America. In 1995, Canada's 14 assembly plants produced 2.4 million units, of which about 90 percent was sold to the U.S. In the same year, 63% of the C\$21 billion value of production of parts was exported to the U.S.

Much of the information on the Canada-U.S. FTA indicates that it has encouraged trade creation in both countries and helped to create a more open Canadian economy, with exports of both goods and services, which now account for 37% of Canada's GDP. For Canada, several studies show that the reduction of trade barriers has resulted in improvements in Canadian market shares in the U.S. and a more favorable pattern of

⁵ Richard G. Lipsey, Daniel Schwanen, and Ronald J. Wonnacott, Inside or Outside the NAFTA? The Consequences of Canada's Choice, C.D. Howe Institute Commentary, No. 48, June 1993, pp.5-6.

Canadian specialization across industries, mostly in manufacturing.⁶ It has led to a more horizontal division of labor with intraindustry specialization within manufacturing and services replacing the intraindustry specialization of Canada exporting resources and importing manufactures. As summarized by Murray G. Smith, the Canada-U.S. FTA consolidated "the postwar trend of greater economic integration between Canada and the U.S."⁷

Figure 5 Canada - U.S. Merchandise Trade



Source: NAFTA Office, U.S. Department of Commerce.

⁶ Peter Morici, "Assessing the Canada-U.S. Free Trade Agreement," American Review of Canadian Studies, forthcoming.

⁷ Smith, Canada and Economic Sovereignty, p. 56.

2. Trade with Mexico

The Canadian-Mexican trade relationship, though small, is not insignificant. Total trade between Canada and Mexico amounted to C\$7.2 billion in 1996, with Mexico ranking as Canada's 4th supplier and its 9th buyer at the world level. In 1996, imports from Mexico represented just 2.6% of total Canadian imports, and exports to Mexico 0.4% of Canadian total exports, but the trading relationship has been strengthened as a consequence of NAFTA's first three years.

Canadian exports to Mexico expanded 31.2% in 1994, 5.4% in 1995, and 6.1% in 1996. Leading goods exported to Mexico include canola seeds, oil seeds, motor vehicle parts, powdered milk, semi-chemical wood pulp, bituminous coal, and digital processing units. Canada's imports from Mexico, in turn, expanded 21.5% in 1994, 18.2% in 1995, and 12.4% in 1996. Fruits and vegetables, electrical machinery, motor vehicles, mineral fuels and organic chemicals are among leading Canadian import items.

When the NAFTA negotiations started, in mid-1991, Canada's trade with Mexico was small, C\$2.4 billion in 1990. Mexican trade barriers against Canadian products were substantially higher than Canadian trade barriers. In fact, more than 70% of imports from Mexico entered Canada duty-free before the NAFTA.

With NAFTA, Canada gained access to a fast-growing Mexican market. The reduction of Mexican trade barriers provided new markets and opportunities for Canadian goods and services. Also, dynamic, medium-term advantages from expanding business opportunities opened in previously closed sectors such as autos and parts,

Figure 6 Canada: Merchandise Trade with Mexico

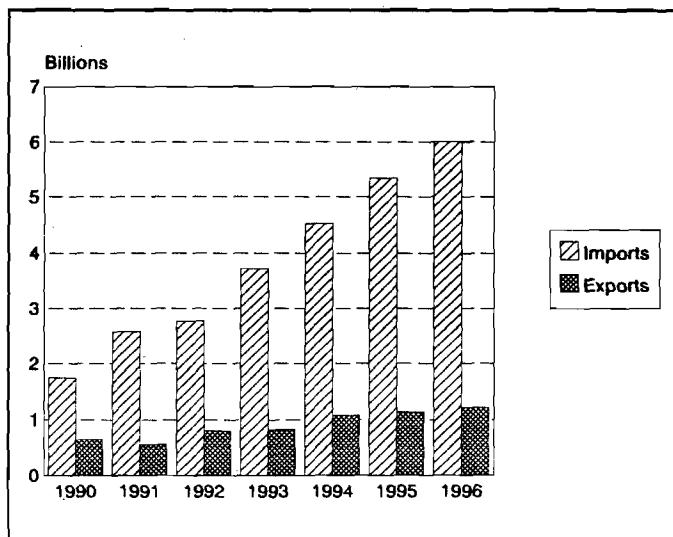
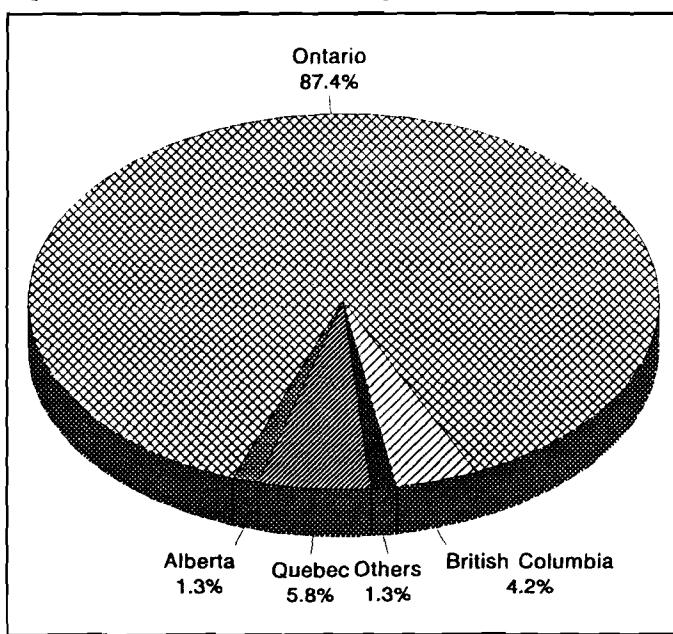
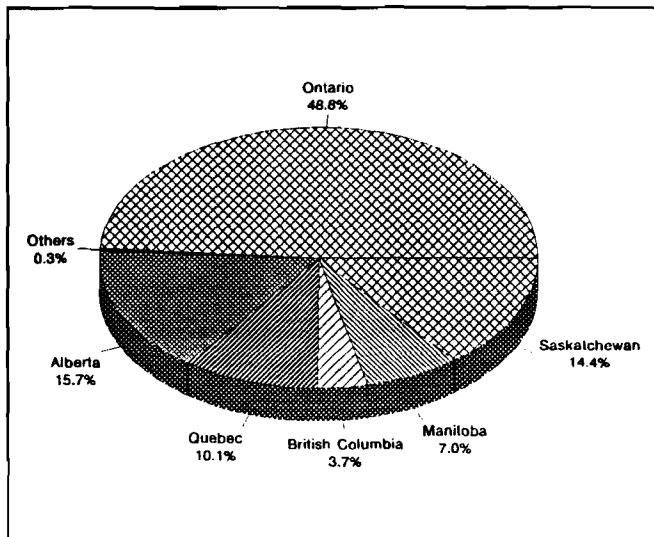


Figure 7 Canada: Provincial Imports from Mexico 1995



financial services, trucking, energy and fisheries.⁸

Figure 8 Canada: Provincial Exports to Mexico 1995



The NAFTA incorporated some provisions of the Canada-U.S. agreement by reference.⁹ For example, NAFTA did not modify the bilateral tariff phase-out schedules and left, mostly unchanged, the Canada-U.S. free trade agreement's provisions on agricultural market access, energy, and temporary entry. NAFTA also preserved the Auto Pact and left untouched Canada's ability to promote cultural industries. However, NAFTA not only safeguarded the gains Canada made under the Canada-U.S. agreement but also improved on some of its provisions. NAFTA provided clearer rules to govern North American trade, strengthening the dispute-settlement system, extended

coverage of cross-border trade in services, to include transportation services and new areas of professional services, and granted better access to government procurement of goods, services and construction services. The inclusion of intellectual property in NAFTA was a major improvement over the Canada-U.S. agreement.¹⁰

NAFTA represented for Canada a further step along the road of trade liberalization, providing Canada with the opportunity to preserve its trade interests in the U.S. and to extend them to include the Mexican market. After three years of operation of the NAFTA, Canada's free-trade relationship with Mexico is developing with much potential, as the two countries are now discovering each other. Increased trade between both countries is being accompanied with new Canadian investment in Mexico and a new way of doing business with one another. As one author described it, "NAFTA was the catalyst Canada and Mexico needed to forge a closer relationship¹¹."

⁸ Canada, Department of Finance, The North American Free Trade Agreement. An Economic Assessment from a Canadian Perspective, November 1992.

⁹ On December 30, 1993, Canada and the United States agreed to suspend the operation of their bilateral free trade agreement upon the NAFTA's entry into force.

¹⁰ Canada, Department of Finance, NAFTA - An Economic Assessment, p.11.

¹¹ Brian J.R. Stevenson, "Canada-Mexico Relations after NAFTA," Policy Options, November 1995, p.31.

II. IMPLEMENTATION OF NAFTA COMMITMENTS

Economic relations between Canada, the United States and Mexico expanded in NAFTA's first three years. Total trade increased rapidly and to a great extent remained free of major problems. However, issues such as agricultural trade between Canada and the U.S. have continued to be a source of serious friction. Though in 1996, Canadian agrifood trade with the U.S. amounted to C\$ 18.2 billion, just 5% of total bilateral trade, agricultural issues have proved to be among the most difficult to resolve.

Overall, where frictions have occurred --normal in any relationship that has attained such significant levels of trade interdependence-- solutions have been attempted through NAFTA dispute settlement procedures, or through bilateral negotiations. An example of the latter is the agreement on lumber, effective April 1, 1996, limiting the amount of Canadian exports of softwood lumber to the U.S., which ended the longest running bilateral dispute between both countries.

NAFTA, in this regard, has led to greater consultation and collaboration among the three governments, providing a new framework for conducting business and for dealing with emerging difficulties. For instance, the NAFTA was instrumental in preserving trade and investment liberalization following Mexico's 1994 financial crisis¹²

The following sections provide an overview of the main developments in Canada during NAFTA's first three years. These include commitments in the following areas: tariff phase outs, rules of origin and customs procedures, agriculture, technical barriers to trade, government procurement, services, cultural industries, investment, temporary entry, dispute settlement, accession, and institutional developments.

1. Tariff phase-outs

Elimination of tariffs among the three countries has proceeded as planned, with reductions taking place on January 1 of each year since 1994. NAFTA adopted the Canada-U.S. FTA's bilateral tariff phase-out schedule designed to eliminate over a ten-year period virtually all tariff and non-tariff barriers to trade between the two countries. Tariff phase-outs between Canada and the U.S. will be completed by 1998, as set out under the Canada-U.S. FTA. NAFTA's impact on Canadian trade relations with the U.S. was less intense than the

¹² United Nations-ECLAC, Nafta Implementation in the United States: The First Two Years, (LC/WAS/L.34), 27 June 1997.

opening of a new trading relationship with Mexico, since the majority of duties on Canada-U.S. trade had already been removed by the time NAFTA entered into force.

Duty-free trade with Mexico is scheduled for 2003. Canada and Mexico agreed to phase out virtually all tariffs over a maximum of 10 years, with tariff reductions either immediate or generally phased out in equal annual cuts over 5 or 10 years. Mexico provided immediate duty-free access for many of Canada's key export interests including many fish items, some grains, many ferrous and non-ferrous metals and minerals, fertilizers, and sulphur, certain wood and paper items, most telecommunications equipment, and many types of machinery manufactured in Canada.

An overview of current tariff treatment under Canada's main import regimes is shown in the following table¹³. NAFTA, as well as General Preferential Tariff (GPT) preferences, are significant in particular for non-food items. Duties on imported manufactures from the U.S. currently average 1.1%, and 3% from Mexico¹⁴.

Table 1 **Tariff Treatment by origin, 1996***
(Unweighted tariff averages, per cent)

Product	M.f.n	United States	Mexico	GPT
Agricultural products and food	7.8	5.1	4.9	6.7
Food, beverages and tobacco	33.8	28.2	28.3	31.6
Mining	0.8	0.0	0.1	0.3
Manufacturing (excl. food)	6.6	1.1	3.0	4.4

* Aggregated according to ISIC; Tariff items carrying non-ad valorem rates, for which no ad valorem equivalents were available, have been omitted.

Source: WTO

Canada's tariffs on key import-sensitive sectors will be phased out over the longer term of 10 years, including such areas as apparel, most footwear, toys, plastic articles and other manufactured articles. Tariff cuts on Mexico's import-sensitive sectors will also be phased-in over 10 years, including furniture, pharmaceuticals, certain grains, some wood

¹³ Canada's General Preferential Tariff (GPT) scheme provides preferential tariff treatment for imports from developing countries and countries in transition; the relevant rates are generally set at two thirds of the most favored nation (m.f.n.) rate or lower.

¹⁴ World Trade Organization, Trade Policy Review of Canada, (WT/TPR/S/22), 7 October 1996, p.25.

products, some finished metal products, toys, and some sporting goods.

Further, as in the case of the Canada-U.S FTA, the NAFTA allows for tariff acceleration if agreed to by member countries¹⁵. On March 20, 1997, at the Fourth Meeting of the NAFTA commission, the trade ministers of Canada, Mexico, and the U.S. announced the conclusion of the first round of tariff acceleration talks, agreeing to eliminate tariffs on 75 products by July 1, 1997¹⁶.

2. Rules of Origin and Customs Procedures

Under NAFTA there should be uniform interpretation and application of rules of origin, a common origin certificate, uniform regulations for certain customs procedures and cooperation between custom services in enforcement and in harmonizing documentation.

About a year after the NAFTA entered into force, in March 1995, the Canadian Chamber of Commerce surveyed Canadian exporters, importers, trading houses, customs brokers and freight forwarders, to measure the recent experience of Canadian businesses with the NAFTA customs environment and identify needed reforms¹⁷. The survey reported that the most frequently cited causes of delays at Canadian customs was understaffing, over-utilization of resources and miscommunication. For instance, new developments on cross-border procedures were not effectively being transmitted to staff operating at border-crossings.

The most NAFTA-specific problems identified were differing interpretations of tariff categories, resulting in frequent disagreement at the border as to proper classifications, and ambiguous rules for completion of NAFTA Certificates of Origin. With respect to the U.S.-Mexico Border, Canadian exporters indicated that customs officials lacked familiarity with NAFTA rules such that longer delays were incurred. Notwithstanding these problems, the survey results were mostly positive. Overall, delays had not increased after NAFTA despite a large increase in volume of cross-border trade.

Several reforms are being pursued to reduce costs and increase efficiency at the

¹⁵ The accelerated elimination of tariffs was one of the most acclaimed successes of the Canada-U.S. FTA. Three rounds of negotiations took place between Canada and the U.S. The first round of tariff acceleration concluded in May 1990, covered over 400 products valued at almost US\$6 billion. In September 1991, the second round of negotiations produced accelerated elimination of the tariffs on over 250 products with a bilateral coverage of US\$2 billion. On July 1993, the U.S. and Canada implemented tariff reductions negotiated in the third round affecting approximately US\$1 billion in two-way trade.

¹⁶ Office of the United States Trade Representative, NAFTA Commission Joint Ministers' Statement, Press Release No. 97-23, March 20, 1997.

¹⁷ Canadian Chamber of Commerce, North American Customs Report, Ottawa, August 4, 1995.

border. These include simplifying and expediting the release process of shipments at the border, through a Pre-Arrival Release System (PARS), which allows approval of shipments prior to actual border crossing and through a Frequent Importer's Release System (FIRST), an automated processing system which allows frequent-business travelers to be pre-approved to pass through customs. Other new programs include a North American Trade Automation Prototype, which would create a common database and pre-arrival processing systems through paperless electronic transfers.

Moreover, the inclusion of the private sector in customs reform is being promoted by supporting a nation-wide system of 142 privately-owned warehouses licensed and bonded by the Canadian federal government. These warehouses offer on-site customs inspection, bar-coded storage and handling, and after-hours clearance.

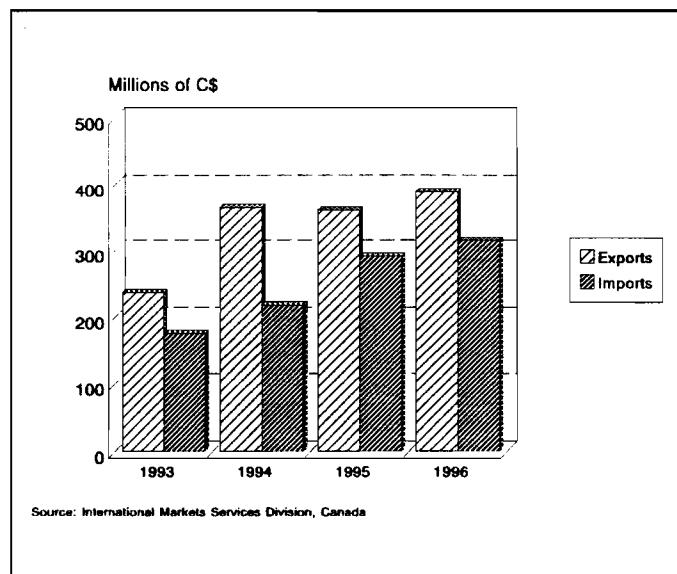
Further, Canada and the U.S. have continued striving towards facilitating customs and administrative procedures. On February 24, 1995, Prime Minister Chrétien and President Clinton announced a border management accord at a bilateral summit in Ottawa. The accord set out a number of objectives for customs reform and border management, including the simplification of the movement of business and frequent travelers and temporary workers. Officials planned the expansion of pre-clearing facilities to allow travelers to the U.S. to clear customs before leaving Canada¹⁸.

3. Agriculture

Agriculture is the only area where the NAFTA is divided into three different bilateral agreements. The general rules of the Canada-U.S. FTA continue to apply to agricultural trade between the U.S. and Canada, whereby all tariffs on agricultural products were eliminated within 10 years, but restrictions on various products remain. Tariffs on most agricultural products will be eliminated by January 1, 1998.

The Canada-Mexico bilateral agreement eliminates tariffs and non-tariff barriers within 15 years for most agricultural products. The agreement

Figure 9 Canada - U.S. Agricultural Trade

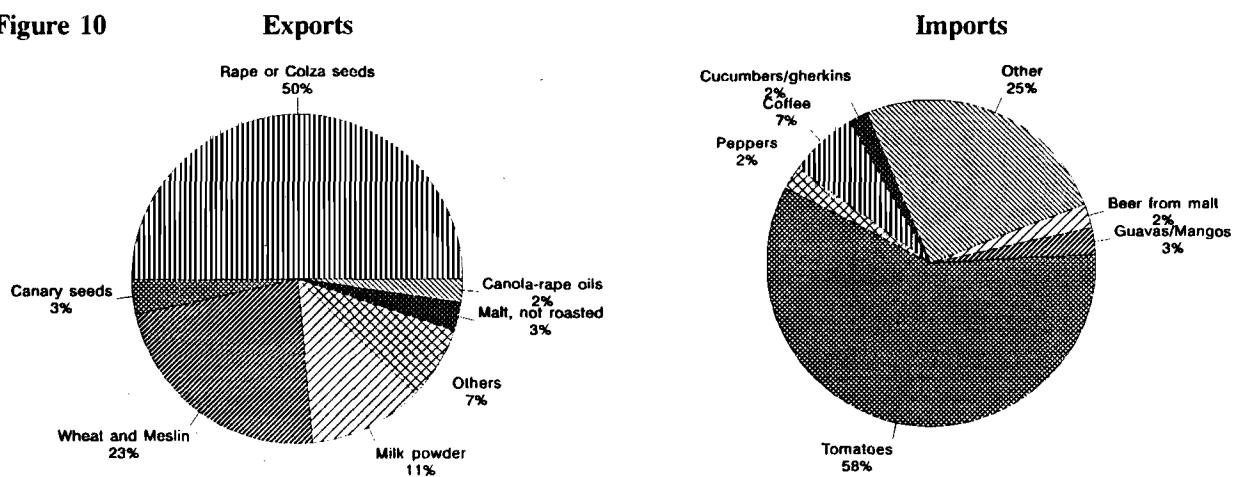


¹⁸ Ibid., p. 6

does not envisage, however, the complete elimination of tariffs. For sugar, poultry, eggs, and dairy products, both countries agreed only to grant each other the same access enjoyed by other GATT/WTO members. Mexico established tariff rate quotas (TRQs) for several products, including slaughter swine, pork and ham, fresh potatoes, dry beans, and corn. Canada granted Mexico immediate duty-free access for most fruits and some vegetables and established tariff-rate quotas for the most sensitive fruit and vegetable categories.

Canada: Sectoral Composition of Agricultural Trade with Mexico 1996

Figure 10



With respect to Canada-U.S. bilateral agricultural issues, trade in grains continued to be of the highest priority. On September 26, 1994 both countries announced a one-year Memorandum concerning trade in grains. It established limits on the amount of Canadian wheat exported for a 12-month period from September 1994-to September 1995 --separate tariff-rate quotas (TRQs) on durum and nondurum wheat for a total of 1.5 million metric tons. U.S. restrictions on imports of Canadian wheat were terminated in September 1995, thus restoring open Canadian access to the U.S. wheat market. Both governments agreed to consult if Canadian exports of wheat should exceed proportional shares of the expired 1994-95 TRQs¹⁹.

In NAFTA's first year, Canada and the United States had a fundamental disagreement on the status of commitments under NAFTA and on the relationship of those commitments to

¹⁹ United States Trade Representative, 1997 Trade Policy Agenda and 1996 Annual Report of the President of the United States on the Trade Agreements Program, (Washington D.C., 1997) p. 195.

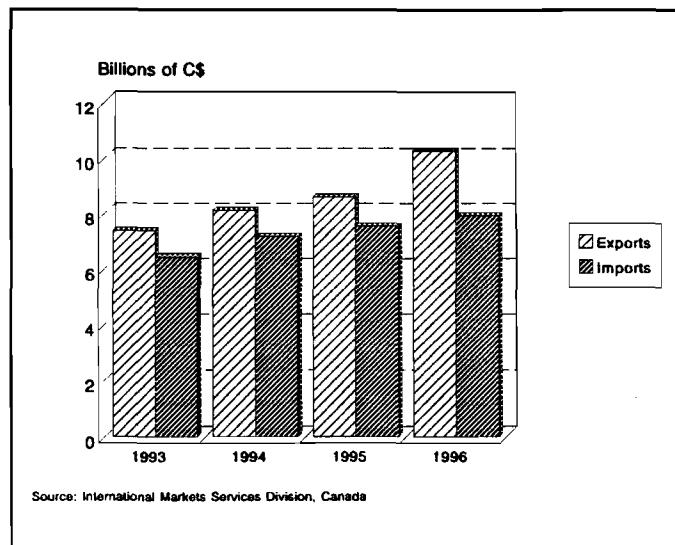
the Uruguay Round agreement.²⁰ On January 1, 1995, Canada began applying duties ranging up to 350 percent on imports of most dairy, poultry, and egg products above threshold levels specified for each product. In February 1995, the U.S. requested consultations with Canada pursuant to Chapter 20 dispute resolution procedures of the NAFTA. As the consultations did not resolve the matter, the U.S. requested on July 14, 1995 the formation of a dispute settlement panel in accordance with NAFTA's Chapter 20.

On December 2, 1996, a five-member binational panel ruled unanimously that high Canadian tariffs on U.S. dairy, poultry, egg, margarine and barley sales are consistent with the NAFTA and can therefore be legitimately maintained. The panel's rule --the first that has been issued under NAFTA's Chapter 20-- concluded that Canadian tariffs of up to 350 percent on those goods qualify under an exception to NAFTA's general prohibition against raising or imposing new tariffs on other members' products²¹.

The panel concluded that the tariffication exercise in the Uruguay Round allowed Canada to maintain new, high tariffs on even some farm goods which previously were not subject to quotas.

Finally, Canada's agricultural policy is undergoing significant changes. The most significant is the elimination, effective August 1, 1995, of the C\$561 million Western Grain Transportation Act (WGTA) freight subsidy program for Canadian prairie grains, oilseeds, and other specialty crops. The program, which had been operating for close to 100 years, paid railroads for part of the freight cost of transporting grain and other eligible crops. To assist Canadian grain producers for the loss of the WGTA subsidy, the Government established a compensation of C\$1.6 billion lump sum payment to farmland owners and a C\$300 million adjustment assistance fund²².

Figure 11 Canada: Agricultural Trade with Mexico



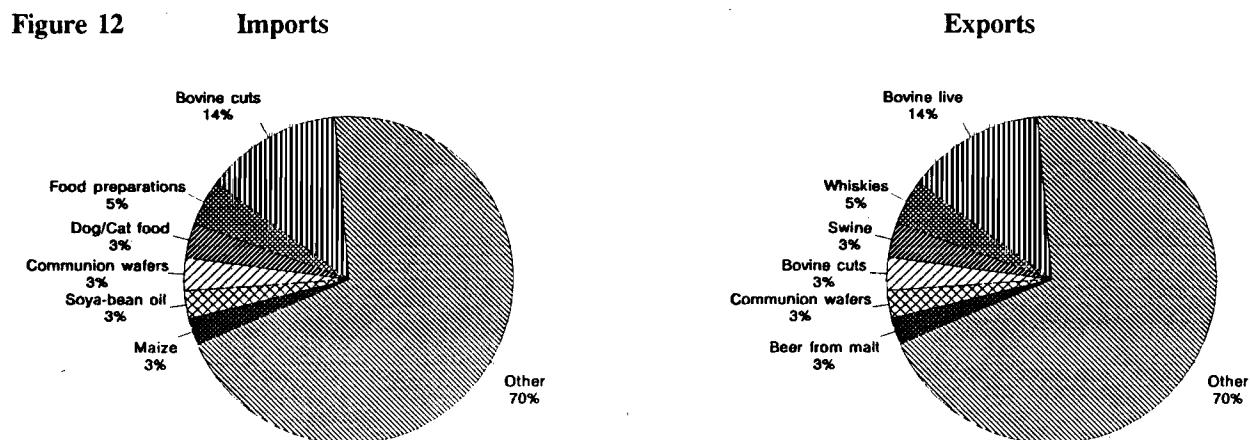
²⁰ As a result of the Uruguay Round, Canada converted its non-tariff import quotas and restrictions into a system of 22 tariff quotas. In-quota imports are subject to relatively low duties while the duties on out-of-quota supplies are bound at prohibitive levels.

²¹ USTR, 1997 Trade Policy Agenda, p.196.

²² U.S. Department of Agriculture, Economic Research Service, NAFTA: Year Two and Beyond, April 1996.

Canada: Sectoral Composition of Agricultural Trade with the U.S.

Figure 12



4. Technical Barriers to Trade

Canada and its NAFTA partners have continued making progress on a number of issues ranging from the harmonization of labeling and packaging requirements, including pesticide harmonization and virus testing. However, differences in regulatory requirements, as in the system for establishing standards still pose difficulties.

For instance, Canadian small and medium sized exporters complain of difficulties in dealing with the U.S. standards system, particularly in identifying the authority responsible for required approvals, since the U.S. system operates without national coordination or uniform rules in most areas. This has caused frequent and costly delays in obtaining multiple approvals²³.

Also, difficulties to prove that Canadian products meet the U.S. Food and Drug Administration (FDA) requirements for quality and labelling have been reported. In part, the uncertainty and problems at border points is attributed to the lack within the U.S. FDA of a mechanism for approval of exporters' labels in advance of shipment. Lengthy FDA laboratory testing procedures of food products stopped at the Canada-U.S. border have also caused delays.

²³ Canada, Department of Foreign Affairs and International Trade, 1996 Register of United States Barriers to Trade, p.16.

In the case of sanitary and phytosanitary regulations, detainment of Canadian livestock and agricultural products waiting for U.S. Department of Agriculture (USDA) or FDA approval caused occasional delays. The time lapse was most harmful to perishable fruits, vegetables or dairy products and extra costs were incurred by Canadian exporters. Currently, several pilot projects are in effect to help speed up the process²⁴.

5. Government Procurement

NAFTA provisions for government procurement are confined to federal government purchasing. The NAFTA and the Canada-U.S. FTA increased considerably the value of the Canadian procurement market. Additionally, the scope and coverage of procurement contract opportunities available to Canadian companies increased from C\$20 billion under the General Agreement on Tariffs and Trade (GATT) and Canada-U.S. FTA to C\$70 billion under the NAFTA.

Table 2
Procurement thresholds under the WTO Agreement and NAFTA, 1 January 1996

Product/Service	Institution	WTO SDR (C\$)	NAFTA (C\$)
Goods	Federal Government entities	130,000 (259,000)	34,300 ^a 70,700 ^b
Services	Federal Government entities	130,000 (259,000)	70,700
Goods/Services	Federal Government enterprises	n.a.	353,800
Construction	Federal Government entities	5,000,000 (9,000,000)	9,100,000
Construction	Federal Government enterprises	n.a.	10,300,000

n.a. Not applicable

a. Between Canada and the United States

b. Between Canada and Mexico

Source: WTO, on the basis of official information.

While the coverage in terms of goods and services of the NAFTA is similar to that of the WTO Agreement on Government Procurement, the relevant thresholds, though not fully identical for all signatories, are below those under the WTO agreement²⁵.

²⁴ Ibid., p.17.

²⁵ WTO, Trade Policy Review of Canada, p. 42.

Despite the substantial opening of government procurement in the North American market, several barriers remain. Canada considers that the Buy American Act (BAA) still affects some federal contracts and that Canadian exports are often affected by protectionist provisions in U.S. state and local government contracts, while small business set-asides also impose limitations on Canadian bids²⁶. In turn, the U.S. government has identified barriers such as federal and provincial "buy national" or "buy local" policies, still applied in some of Canada's government procurement operations²⁷.

6. Services

Production of services, currently accounting for close to two-thirds of GDP, constitutes Canada's single most important economic activity. Both the NAFTA negotiations and the WTO, in conjunction with domestic reforms, have increased foreign access to the Canadian services market. NAFTA built upon and provided larger coverage of cross-border trade in services relative to the Canada-U.S. FTA, including financial, specialty air services and transportation services. The following sections provide an overview of developments in transportation, financial services, and telecommunications.

6.1 Transportation. NAFTA contributed to increase the coverage of transportation services, a sector of vital importance to Canada given its geography. The trucking industry, for instance, was opened allowing greater freedom for Canadian transporters to carry cargo from Canada to the U.S. and onward to Mexico. Domestic carriers in each of the three NAFTA countries retained the exclusive right to haul cargo within their own country. Also, the inclusion of specialty air services for the first time, opened opportunities for Canadian suppliers, including in high-tech areas such as aerial mapping and surveying.

Overall, NAFTA governments have continued exploring ways of improving transportation services between their countries. The wide variety of matters discussed include cargo exchange, commercial driver license reciprocity, transportation training, safety requirements, technical and operating standards, and compatible regulatory requirements. With Mexico, Canada signed a memorandum of Understanding (MOU) in March, 1994 granting Canadian motor carriers access to Mexican trucking terminals and facilities in the border zone²⁸.

²⁶ Canada, 1996 Register, pp. 13-15.

²⁷ United States Trade Representative, 1996 National Trade Estimate Report on Foreign Trade Barriers, (Washington D.C., 1996) p. 35.

²⁸ USITC, The Year in Trade 1994, (46th Report, No. 28940) July 1995, p. 46.

In addition, Canada and the U.S. signed on February 24, 1995 a new bilateral aviation agreement, which immediately eliminates most restrictions on air service between the two countries and virtually deregulates the transborder market over three years. The new agreement complements the NAFTA and is expected to energize the largest bilateral aviation market in the world, with 13.5 million passengers traveling between both countries annually. Air service between Canada and the U.S. has lagged behind overall trade, which grew 74% between 1980-1993, almost three times the growth in air travel²⁹. So far, in response to the agreement, there has been a 25% to 30% capacity increase and a 15% traffic expansion in the Canada-U.S. aviation market.³⁰

The new bilateral aviation agreement provides that: 1) U.S. and Canadian carriers will have unrestricted rights to transborder markets, with some exceptions; 2) airlines of both countries will have unrestricted U.S.-Canada all-cargo rights, with some exceptions; 3) substantial liberalization of charter service rules; 4) open code-sharing rights, in which one airline advertises and sells the services of another carrier as its own; 5) market-based pricing and the ability to match prices for third-country service; 5) Canadian carriers will be subject to U.S. slow rules for high-density airports; and 6) nonstop service between Canada and Washington National Airport is subject to U.S. Customs Service and U.S. Immigration and Naturalization Service preclearance available at the Canadian point of departure.

Before this new agreement was negotiated, about two-thirds of the 100 largest American cities were without non-stop service to Canada, and most routes could be served by only one airline from each country. Also, the old agreement disallowed market-based fares, placed onerous restrictions on air cargo service, and limited aircraft size, among other restrictions.

6.2 Financial services. NAFTA improved foreign access to the Canadian financial market and came to complement a deregulation that started in the mid-1980s. Currently, Canada's financial services sector accounts for 7.5% of GDP. The banking industry is highly concentrated, with six banks representing two thirds of all assets held by deposit-taking institutions³¹.

Competition in the Canadian market is expected to increase. On February 14, 1997, the Canadian government agreed to relax its controls on foreign banks by allowing them to operate in Canada directly through branches. Foreign banks currently operate in Canada through subsidiaries, which must meet costly capital and regulatory requirements. This is expected to encourage new banks to enter the Canadian market and allow existing foreign

²⁹ U.S. Department of Transportation, Transportation Facts, February 24, 1995.

³⁰ WTO, Trade Policy Review of Canada, p. 116-117.

³¹ Ibid., p. 103.

banks greater opportunity to compete. The 45 foreign bank subsidiaries currently based in Canada account for only about 8% of Canadian bank assets. Foreign banks compete with the six major Canadian banks, which have access to low-cost deposits through nationwide retail branch networks³².

On the other hand, NAFTA helped to strengthen Canada's presence in other North American markets. Two major Canadian banks recently took control of two Mexican banks, and 15 Canadian insurance companies are currently operating in the U.S. through branches, offices, or subsidiaries³³.

6.3 Telecommunications. Like the Canada-U.S. FTA, the NAFTA excludes basic telecommunications, such as local and long-distance telephone services. However, enhanced services such as advanced data-processing services are covered. In conjunction to this, Canada's liberalization of communication services has gradually improved foreign market ~~access~~ at a time when the telecommunications market has expanded fast.

The possibility of a bilateral agreement between Canada and the U.S. on direct-to-home (DTH) services was discussed during the last months of 1996. Canada and the U.S. attempted again to work out a bilateral agreement that would allow communications companies to provide satellite services in both countries regardless of which government had licensed the satellites. The talks stalled, however, over the longstanding dispute over Canadian cultural policies and how to handle Canadian content restrictions in broadcast services. Canadian officials were interested in negotiating a facilities based bilateral agreement excluding content issues. The U.S. Administration, by contrast, was interested in negotiating a bilateral deal which allows DTH providers in each country to serve both markets and it allows both governments to impose only minimal content restrictions on DTH services³⁴.

The two countries had agreed to negotiate a deal after the Federal Communications Commission (FCC) rejected two license applications, filed by TelQuest Ventures and Western Tele-Communications, Inc. (WTCI), to provide DTH satellite television broadcasts in the U.S. via Canadian satellites. The FCC said that it could not approve the applications because the applicants had not received approval from Canada to use the satellites in question.³⁵

³² Wall Street Journal, February 18, 1997.

³³ WTO, Trade Policy Review of Canada, p.103

³⁴ "FCC Again Rejects Bids for DTH Service Via Canadian Satellites", Inside U.S. Trade, November 1, 1996

³⁵ Canada protested that the satellites had been given the standard authorization for such applications. The FCC argues that nothing in the record reflects a binding commitment to license the satellites.

7. Cultural industries

As a consequence of concerns about its cultural identity and in particular about U.S. influence on certain Canadian industries, Canada has developed policies to support sectors and activities related to culture. These array of policies, which include direct subsidies and tax incentives, local-content requirements, and foreign-ownership restrictions, assist the Canadian cultural industry, mainly composed of relatively small producers, perceived to lack the capacity to successfully compete with multinationals. It is estimated that 200 sound recording companies and 740 film, video and television producers are currently active in the domestic Canadian market. However, non-Canadian products currently account for over 80% of the market for English-speaking magazines and 75% of the book market, representing 64% of air-time television programming and 96 % of total screen-time³⁶.

The latest data for 1993-1994 suggests, according to Statistics Canada, a decline in the market share held by foreign-controlled firms in Canada. Foreign-controlled companies accounted in 1993-1994 for 50% of the film and video distribution revenue (including 83% of the theater market and 40% of the home entertainment market), which represented a significant decline from the 57% share held in 1990-91. Also, foreign-controlled firms accounted for 84% of all record sales in Canada in 1993-94, a 5% drop below 1990-91 and they accounted for 38% percent of sales of books --an 8% drop below 1990-91³⁷.

To protect its cultural industry, Canada has sought to avoid policy bindings under international agreements. Under the terms of the Canada-U.S. FTA and NAFTA, culturally sensitive sectors --broadcasting, book publishing and distribution, film and video, audio music recordings, and music in print or machine readable form-- are exempt from the non-discrimination and market access obligations of the agreement. However, if an action by Canada has a negative impact or discriminates against U.S. cultural industries, the U.S. is entitled to take retaliatory measures of equivalent commercial effect.

Canadian government protection of cultural industries became the subject of several disagreements between Canada and the U.S. in the past three years. These include magazine practices, access to music services, and book retailing.

7.1 Magazines. In December 1995, Canada imposed an 80% tax on revenue from advertisements placed in Canadian editions of so-called "split-run" publications --periodicals sold both in Canada and abroad, in which the Canadian edition contains advertisements directed at a Canadian audience.

According to USTR, the tax was calculated to put the Canadian edition of Sports

³⁶ WTO, Trade Policy Review of Canada, p.120.

³⁷ Michael Durand, "International Trade in the Arts and Culture Sector", Culture: Quarterly Bulletin from the Culture Statistics Program, vol. 8, No.3, (Ottawa: Statistics Canada), Autumn 1996, pp.1-4.

Illustrated, published by Time Canada, Ltd. a subsidiary of Time Warner, Inc., out of business³⁸. On March 11, 1996, USTR initiated a section 301 investigation and requested consultations under GATT 1994 with the Government of Canada to address certain Canadian measures affecting magazines, including: measures prohibiting or restricting imports into Canada of certain magazines, tax treatment of split-run magazines, and the application of favorable postage rates to certain Canadian magazines. When the consultations did not succeed in producing a mutually satisfactory solution, the U.S. requested a WTO panel be formed to address these issues, which was established on June 19, 1996³⁹.

The final panel report was circulated to all WTO Members on March 14, 1997. In its report the Panel found that: 1) Canada's import ban violates global trade rules; 2) Canada's 80% excise tax violates Canada's national treatment obligations since the tax drew an artificial distinction between split-run and non-split-run magazines, which are "like products" and applied the excise tax only to split-runs; 3) the application of favorable postage rates to certain Canadian magazines was excused because these rates qualify as a subsidy⁴⁰.

7.2 Country Music Television. A two-year dispute between Canada and the U.S. over market access for U.S. music services ended on July 1996. The Canada-U.S. dispute stemmed from the revocation of the broadcast license of the Nashville-based Country Music Television (CMT) in June 1994. The dispute, which resulted in a Section 301 case being initiated by the U.S. administration, was ultimately settled by mutual consent. Formal approval to the new partnership between the U.S. and Canadian communications firms was given by the Canadian Radio-television and Telecommunications Commission (CRTC) on July 29, 1996⁴¹.

7.3 Borders Books. In late 1995, the unsuccessful venture of the U.S. bookseller Borders Books in the Canadian market caused a new disagreement between both countries over cultural protection. The U.S. company was informed that it did not appear to meet Canadian criteria for foreign ownership in this sector, one of the areas protected by the cultural exemption to NAFTA. The U.S. company was to be a minority partner in a joint venture with two Toronto business people. There was a concern that the large size of Borders and its centralized book-ordering and distribution system would shut out low-volume Canadian titles. It was maintained that despite majority Canadian ownership, the Borders'

³⁸ USTR, "Statement of the U.S. Trade Representative," Press Release 95-93, December 15, 1995.

³⁹ USTR, "United States Prevails in WTO Case Challenging Canada's Measures Restricting U.S. Magazine Exports," Press Release 97-22, March 14, 1997.

⁴⁰ Ibid.

⁴¹ "USTR Announces Market Access Restored in Country Music Television Dispute with Canada," Press Release, 96-66, August 8, 1996.

Canadian undertaking would be effectively controlled by the U.S. and not under Canadian control⁴².

The USTR has argued that such policies protect Canadian industries by discriminating against legitimate U.S. interests, effectively violating the 301 provisions. Canada, however, claims legitimacy of its actions under the terms granting special protection for its cultural industries of the Canada-U.S. FTA and NAFTA.

8. Investment

Both investment in Canada as well as Canadian investment abroad have increased considerably over the years. Between 1989 and 1995, the stock of inward foreign direct investment (FDI) increased from 20% to 22% of GDP, while the stock of outward FDI grew from 14% to 18% of GDP. The U.S. is Canada's largest investment partner, accounting for half of total FDI in Canada and two-thirds of Canadian investment abroad.

Table 3 **Sectoral Distribution of Canadian
Investment in Mexico***
(U.S. millions of dollars)

Sector	1994	1995	*1996	Accumulated	Participation
Total	740.8	153.8	407.7	1,302.2	0.0
Agricultural	15.5	0.0	0.0	15.5	5.7
Mining	70.8	2.8	0.0	73.7	52.3
Manufactures	553.3	96.8	29.0	681.1	0.0
Electricity and Water	0.0	8.3	0.0	8.3	0.7
Construction	0.3	0.6	7.9	8.8	8.2
Commerce	103.5	1.4	1.3	106.3	0.0
Transport and Communications	22.5	0.0	0.0	22.5	32.8
Financial Services	9.1	49.5	368.3	426.9	0.4
Communal, Social Services	1.6	2.6	1.2	5.5	100.0

*January-June

Source: Embassy of Mexico, SECOFI, Canada.

⁴² USITC, The Year in Trade, 1996, p. 50.

Canada's investment in Mexico has been energized by the NAFTA. Mexico's Secretaria de Comercio y Fomento Industrial (SECOFI) reported that Canadian investment flows in Mexico reached US\$407.7 million during the first semester of 1996, representing 21% of the total FDI in Mexico (US\$1,945.2 million). Since NAFTA's entry into force, Canadian companies have invested US\$1,302.3 million, representing 7% of all FDI in Mexico between January 1994 and June 1996. This places Canada as the third major investor in Mexico, only behind the U.S. with US\$4426 million, and Holland with US\$1,345 million.

Over half --52.3%--of Canadian investment is in the industrial sector; about 33% in financial services; followed by commerce with 8%; and, mines and extraction with about 6%.

Further, by June 1996, 734 Mexican companies received Canadian investment. This represents 5.5% of the total of corporations with FDI established in Mexico or 13,350. Canadian investors have a predominant participation in the capital stock of 583 corporations (79.4%) and a minor participation in the remaining 151 corporations (20.6%).

**Table 4 Sectoral Distribution of Companies with
Canadian Investment in Mexico***
(U.S. millions of dollars)

Sector	Less Than 50%	More than 50%	Companies
Total	151	583	734
Agricultural	0	4	4
Mining	36	95	131
Manufactures	29	157	186
Electricity and Water	0	1	1
Construction	9	17	26
Commerce	29	120	149
Transport and Communications	2	2	4
Financial Services	16	35	51
Communal, Social Services	30	152	182

Source: Embassy of Mexico, SECOFI, Canada.

* January - June 1996

As far as foreign investment in Canada is concerned, conditions for foreign investors improved considerably with both the Canada-U.S. FTA and NAFTA. The general NAFTA thresholds for investment review --Can\$168 million have been extended to all WTO members.⁴³ Under the 1985 Investment Canada Act, the Canadian federal government reviews foreign investment to determine the net benefit to Canada. The review requirement applies from a general threshold of C\$168 million to all direct acquisitions of investors established in WTO member countries; indirect acquisitions are no longer subject to review. Different thresholds apply to investments in different sectors⁴⁴.

Notwithstanding the improvement in conditions, Canada continues to regulate FDI in sectors considered sensitive for strategic, economic or cultural reasons. Limitations vary from province to province. Sectoral limitations on foreign investment are summarized in the following table.

⁴³ Investors from non-WTO countries are subject to lower thresholds: C\$5 million for direct acquisitions and C\$50 million for indirect acquisitions. The acquisition of a Canadian enterprise is considered "direct" when it involves the control of a corporation carrying on a Canadian business, and "indirect" when it involves the transfer of control of a non-Canadian corporation that, in turn, controls a Canadian corporation carrying on business in Canada. WTO, Trade Policy Review of Canada, p.44.

⁴⁴ Ibid., p. 45.

Table 5 Investment Restrictions and Controls in Selected Services Sectors, 1996

SECTOR	LEGAL BASE	LIMITATION
Investment Review	Investment Canada Act	Review of direct acquisitions by WTO members of a business whose assets exceed Can\$168 million, to assess the "net benefits to Canada". Review thresholds for non-WTO members: Can\$5 million for direct acquisitions; Can\$50 million for indirect acquisitions representing no more than 50 per cent of a transaction.
Sector-specific provisions Transport services*	Investment Canada Act	Review thresholds for WTO and non-WTO members: Can\$5 million for direct acquisitions; Can\$50 million for indirect acquisitions representing no more than 50 per cent of a transaction
Cultural industries	Investment Canada Act	Review of any investments (acquisition or new business) in activities related to Canada's cultural heritage or national identity.
Ownership limitations Telecommunications	Telecommunications Act	Foreign ownership of Canadian common carriers limited to 20 per cent (33.3 per cent in the case of holding companies). Foreign ownership of an airline limited to 25 per cent.
Air transport	National Transportation Act	Individual ownership limited to 10 per cent of a Schedule I bank (regardless of nationality).
Financial services	Bank Act	Foreign ownership of a radio or television station limited to 20 per cent (33.3 per cent in the case of a holding company).
Broadcasting	Broadcasting Act	New businesses must be Canadian-controlled. Foreign acquisition of existing Canadian-controlled businesses is allowed only in extraordinary circumstances.
Book publishing and distribution	Investment Canada Act (Section 20) and supplementary policy guidelines	Foreign acquisition of a Canadian-controlled distributor is not allowed. Investment in new business permissible only for importation of proprietary products. Direct or indirect acquisition by foreign-owned companies is permissible only if the investor undertakes to reinvest a portion of its Canadian earnings "in accordance with national and cultural policies".
Film distribution	Investment Canada Act: policy guidelines under the Act	

* The Bank Act exempts banks from the Investment Canada Act

Source: Canada Trade Policy Review 1996, WTO Secretariat.

9.Temporary Entry

One of the goals under the NAFTA was to facilitate the movement of certain business travelers between countries. It established four broad categories of international travelers for

which the burden of customs would be lessened: restricted business visitors, traders and investors, intra-company transferees and certain professionals. Business visitors covered under NAFTA do not require work authorization. They must have proof of U.S. or Mexican citizenship, meet general requirements pertaining to health and security, and qualify as one of the aforementioned categories. In addition, citizens and permanent residents of the U.S. do not require a passport when travelling directly to Canada from the U.S. and in most cases work authorizations or permits are not required for temporary entry into Canada.

To streamline temporary entry, countries have agreed to harmonize accreditation standards for certain professional categories. In other words, professional associations may eventually recognize a professional accredited in one of the other two countries. For example, in the U.S. and Canada, a common exam designed for accreditation allows an architect in one country to be recognized as accredited in the other.

10. Dispute Settlement

NAFTA directs the governments to attempt to resolve their differences amicably, through consultations, committees, and working groups. If a mutually acceptable solution is not found, the NAFTA provides an effective and expeditious panel procedure. The dispute settlement system of the NAFTA attempts to enforce the trade agreement's rules to promote fairness and transparency.

As of December 30, 1996, twenty four dispute proceedings were initiated under NAFTA's Chapter 19, which allows private parties to appeal antidumping and countervailing duty decisions to binational panels. These panels, formed from rosters of experts maintained by each country, are empowered to require domestic administering authorities to reconsider their decisions in light of the panel findings.

Of the twenty four dispute settlement proceedings filed under Chapter 19, nine were filed to review Canadian decisions, eight to review U.S. decisions, and seven to review Mexican decisions.

Table 6 Dispute Settlement Cases under Chapter 19

	Review of Canadian Decisions	Review of U.S. Decisions	Review of Mexican Decisions
Active	- refined sugar and refined sugar products from the U.S.	- oil country tubular products from Mexico - flowers from Mexico - television parts from Canada	- flat coated steel sheet from the US - rolled steel sheet from Canada - rolled steel plate from Canada
Completed	- corrosion-resistant steel sheet products from the U.S. - synthetic baler twine from the U.S. - certain malt beverages from the U.S. - corrosion-resistant steel sheet products from the US, Australia, Brazil, and other European countries	- live swine from Canada - leather from Mexico - color picture tubes from Canada - tariffs applied by Canada to certain U.S. origin agricultural products - gray Portland cement and cement clinker from Mexico	- crystal and solid polystyrene from the U.S.
Terminated at request of participants	- apples for processing from the U.S. - certain Delicious apple varieties from the U.S. - machine tufted carpeting from the U.S. - bacteriological culture media from the US	- porcelain-on-steel cookingware from Mexico	- cold rolled steel from Canada - imports of cut-length plate products from the U.S. - machine tufted carpeting from the U.S. - bacteriological culture media from the U.S.

Source: United States Department of Commerce, NAFTA Secretariat in the US and in Canada .

Eleven consultations have been requested under Chapter 20 which allows governments to request consultations on matters arising from the implementation of NAFTA. If consultations and meetings of the Free Trade Commission, NAFTA's supreme decision making body, fail to resolve outstanding issues, a government may request a dispute settlement panel to provide its views and recommendations on the issue. Two of these consultations, on tariffs applied by Canada to certain U.S.-origin agricultural products and Broomcorn Brooms from Mexico, have proceeded to arbitral panels.

To date, one Chapter 20 panel review has been completed and one decision has been issued. As mentioned in the section on agriculture, on December 2, 1996, the panel reviewing tariffs applied by Canada to certain U.S. agricultural products unanimously sided with Canada. The panel supported Canada's view that it could apply high tariff rates (in excess of 100 percent) under its WTO tariff schedule to U.S. agricultural imports⁴⁵.

NAFTA also provides for and encourages the use of dispute resolution arbitration through non-governmental organizations, such as the Commercial Arbitration and Mediation Centre for the Americas (CAMCA), set up in December 1995, which is a tripartite organization composed of the Vancouver Centre, the Quebec International Arbitration Centre, the U.S.-based American Arbitration Association and the Mexican Chamber of

⁴⁵ NAFTA Secretariat, U.S. Section, Statistical Summary of Dispute Settlement Panels under the North American Free Trade Agreement, March 7, 1997.

Commerce⁴⁶. In addition, the NAFTA advisory committee on dispute resolution recommended a model arbitration clause for firms in Mexico, Canada and the U.S. on how to promote the use of arbitration and deal with enforcement problems once methods have been agreed upon. Principal areas needing assistance are those disputes involving small claims and small companies which do not have sufficient capital to invest in drawn-out dispute proceedings⁴⁷.

Despite the success of the dispute settlement mechanisms of the Canada-U.S FTA and NAFTA, Canada "continues to consider that the application of trade remedies have no place in a free trade area."⁴⁸ At Canada's insistence, two trade remedy working groups were established with NAFTA's entry into force, to review a number of issues regarding the use of dumping and antidumping law among the three countries and the operation of trade remedy laws. The group so far has made recommendations for changes in administrative practices and regulations governing antidumping cases, but fell short of recommending legislative changes.

In February 1996, Canada published proposed regulations under the Uruguay Round which call for a change in the way AD/CVD investigations are conducted. These proposed reforms are the same as those which Canada has been seeking for Chapter 19 of the NAFTA. The proposed reforms would apply to the way a subsidy is defined, the criteria for determining the specificity of a subsidy, and call for sufficient evidence of causal link between alleged injury and subsidized or dumped import⁴⁹.

In this regard, the bilateral free trade agreement between Canada and Chile --that will enter into force on June 2, 1997-- gradually phases out the use of anti-dumping measures between both countries over a six-year period. As the Government of Canada expressed, "as a potential NAFTA member, a mutual exemption from the application of anti-dumping duties in this free trade agreement is consistent with the Canadian government's long-standing objective to reform and eventually eliminate the use of anti-dumping duties within the NAFTA"⁵⁰. However, the right of each country to take countervailing duty action against subsidized imports and to utilize safeguard measures is not affected.

⁴⁶ Fitz-James, Michael, "New Institute looks to NAFTA for Arbitration Work," Financial Post, (Toronto), April 9, 1996, p.11.

⁴⁷ "Arbitration Model suggested by NAFTA Commercial Dispute Group," Inside NAFTA, October 30, 1996.

⁴⁸ Canada Department of Foreign Affairs and International Trade, NAFTA Year Two 1994-1996. A Canadian Perspective, June 1996.

⁴⁹ Canada Department of Foreign Affairs and International Trade, Register of U.S. Barriers, pp. 8-10.

⁵⁰ Canada Department of Foreign Affairs and International Trade, Canada and Chile Reach Free Trade Agreement, News Release No. 209, November 14, 1996.

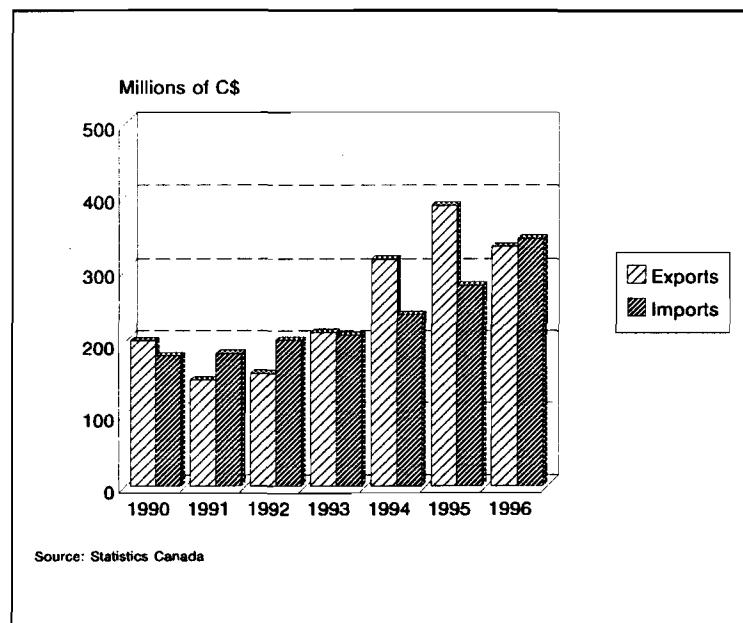
11. Accession

Talks between the NAFTA governments and Chile on the latter's accession to the NAFTA were interrupted in the fall of 1995, at Chilean request, over lack of U.S. fast-track negotiating authority. Separately, on December 29, 1995, the governments of Canada and Chile launched negotiations on an interim bilateral free trade agreement. The interim free trade agreement and parallel agreements on environmental and labor cooperation will serve as a bridge to Chile's eventual full accession to the NAFTA, of which Canada has been an active proponent.

On November 14, 1996, Canada and Chile concluded a free trade agreement, expected to be implemented on June 2, 1997. Its key features include: 1) immediate duty-free access for most industrial goods, which account for 80% of Canadian exports, and the elimination of Chile's 11% import duty on almost all remaining industrial and resource-based goods over five years and improved access for a range of agricultural goods, including drum wheat, barley, lentils, pork, canola products, and beef; 2) new protection for Canadian investments in Chile, including an agreement to automatically grant Canadian investors the benefits of any further future liberalization; 3) new guarantees for Canadian exporters of services; 4) mutual elimination of anti-dumping duties within a maximum of six years; 5) creation of a Free Trade Commission and secretariat to ensure effective resolution of disputes; 6) exemptions on cultural industries and the Auto Pact; and, 7) side agreements on environment and labor emphasizing increased cooperation and effective enforcement of domestic laws.

The free trade agreement is expected to continue strengthening Canada's economic relations with Chile. Between 1983 and 1993, two way trade doubled between Canada and Chile to some \$500 million a year. From 1994 to 1996 bilateral trade increased 20.5 percent in 1995, and in 1996 reached C\$673 million. With less than one percent of Canada's total trade, Chile is Canada's 30th largest trading partner while Canada is Chile's 17th largest trading partner. These figures reveal that though small, the bilateral trade relationship has considerable growth potential.

Figure 13 Canada: Merchandise Trade with Chile



For instance, in agriculture Chile provides a new market for Canadian wheat, barley,

and oilseeds, while Chile will be able to export table grapes, kiwi, and sugarbeets to Canada. Trade in products such as salmon and wine is also expected to increase.

However, investment is the crucial element in the Canada-Chile relationship. Canada has consistently been the second largest investor in Chile over the past 25 years. Total Canadian foreign investment in Chile during the period 1974-1996 amounts to US\$3.1 billion, of which more than 50% was invested since 1994, mostly in mining⁵¹.

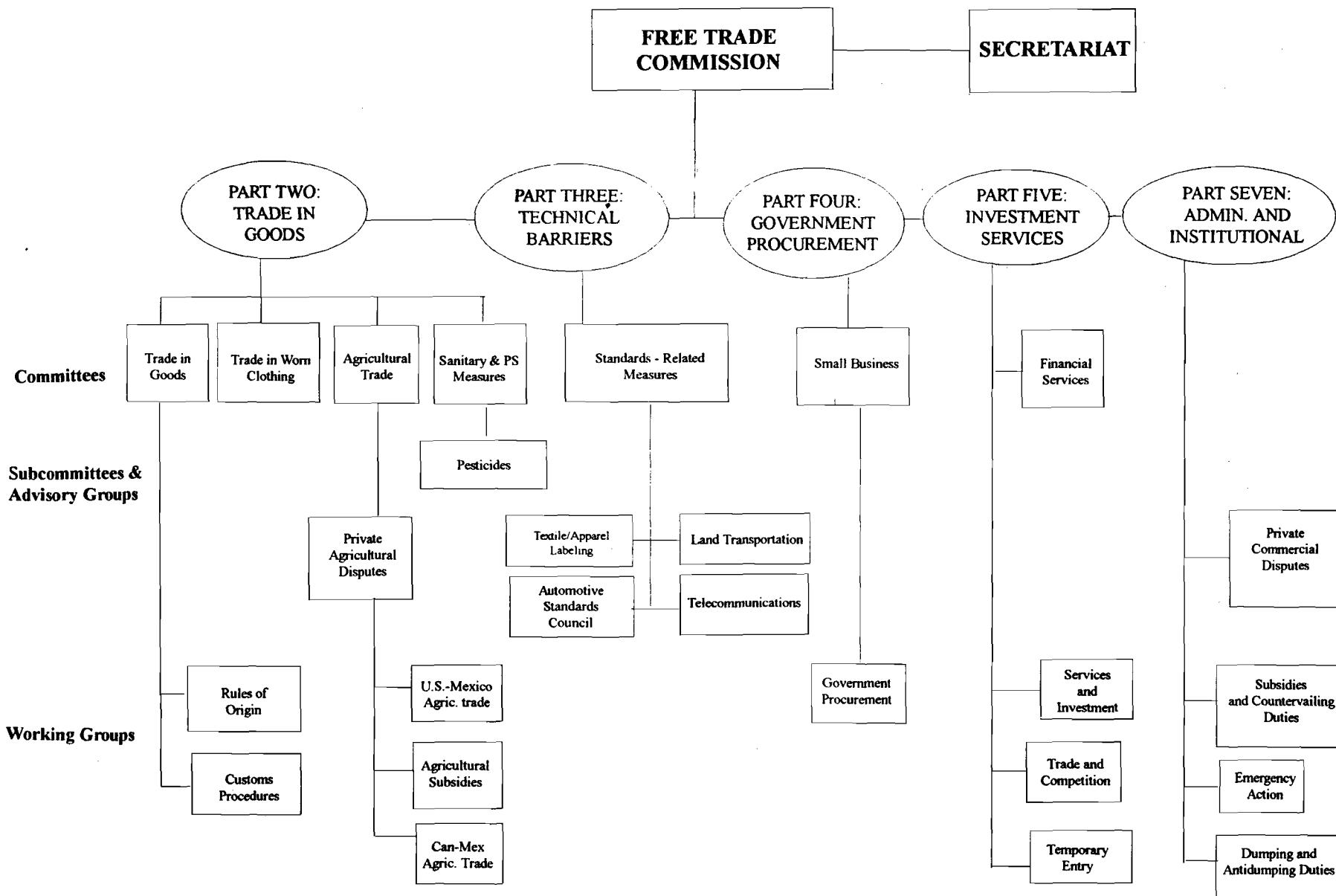
12. Institutional developments

Supervision of implementation and further elaboration of the NAFTA is the responsibility of the NAFTA Free Trade Commission (FTC), its central institution, comprised of cabinet-level representatives from the three member countries. The FTC also helps to resolve disputes arising from interpretation of the agreement and supervises the work of the various committees and working groups staffed by officials from the responsible agencies in the three countries. NAFTA also established a Secretariat to serve the Commission, which consists of national offices in Ottawa, Washington, and Mexico City.

The following diagram depicts the institutions, committees and working groups involved in the day-to-day work of implementing the agreement.

⁵¹ Chile Trade Bureau, Chile Investment Review, December 1996.

Figure 4: NAFTA - Institutions



III. SUPPLEMENTAL AGREEMENTS

The North American Agreements on Environmental and Labor Cooperation, known as the side agreements, were designed to facilitate greater cooperation on labor and environmental issues between the NAFTA countries and to promote the effective enforcement of each country's laws and regulations in these fields⁵².

The Canadian federal and provincial governments share jurisdiction over matters relating to environment and labor. Canada's role under the side agreements in matters related to the enforcement of labor and environmental laws is limited, unless provinces accounting for at least 55% of gross domestic product for the environment cooperation agreement and 35% of the labor force under the labor cooperation agreement sign on⁵³.

To date, Alberta, Quebec, and Manitoba have signed the Canadian inter-governmental agreement which provides a mechanism for provincial participation in the North American Agreement on Environmental Cooperation. In addition, these provinces have signed the inter-governmental agreement that enables Canadian provinces and territories participation in management and implementation of the North American Agreement on Labor cooperation with the result that more than 40% of the Canadian labor force is covered by the latter.

The North American Agreement on Environmental Cooperation (NAAEC)

The NAAEC was approved as a side agreement to the NAFTA to accomplish the following objectives: protect the environment through increased cooperation; promote sustainable development based on mutually supportive environmental and economic policies; support the environmental goals of NAFTA and avoid creating trade distortions or new trade barriers; strengthen cooperation on the development of environmental laws and enhance their enforcement; and promote transparency and public participation.

The Commission for Environmental Cooperation (CEC) was established to help the NAFTA countries achieve the objectives set out in the Agreement⁵⁴. It helps to coordinate

⁵² For a description of the side agreements, institutional developments, as well as an overview of activities undertaken during 1994 and 1995, see, UN-ECLAC, NAFTA Implementation in the United States, pp. 26-31.

⁵³ Canada Department of Foreign Affairs and International Trade, NAFTA Year Two, p. 3.

⁵⁴ Commission for Environmental Cooperation, Understanding CEC, Montreal, Canada, 1995.

cooperative environmental initiatives and identifies ways in which the three governments can work more efficiently to protect, conserve and improve the environment. The CEC also serves as an important forum where the NAFTA countries can work to avoid trade and environmental disputes. The CEC's work program includes five areas: environmental conservation; protection of human health and the environment; environment, trade and the economy; enforcement cooperation and law; and, information and public outreach.

The CEC is comprised of the Council of Ministers governing body, the Joint Public Advisory Committee composed of fifteen members who advise the Council on any matters within the scope of the Agreement, and the Secretariat to implement the annual work program of the CEC and maintains a specialized resource center on the North American environment.

The Secretariat, located in Montreal, is headed by Victor Lichtinger, a Mexican national. The staff is composed of approximately 30 professionals from the three countries, who provide technical and administrative support to the Council, and to the committees and groups established by the Council.

The CEC has begun work on a list of about 40 environmental projects under its cooperative work program. These projects include protecting endangered species, conservation of flora and fauna, developing approaches to environmental compliance, supporting human resource training in the environmental field, promoting greater public awareness of environmental issues, and assessing the environmental effects of the NAFTA.

In addition, an important function of the CEC is to help resolve disputes. According to Articles 14 and 15 of the NAAEC, the CEC should consider submissions from any non-governmental organization or person alleging that a NAFTA partner is failing to effectively enforce an existing environmental law. Until December 1996, six submissions on enforcement matters have been filed.

In addition to citizens submissions, a country-to-country dispute resolution process operates in cases where a NAFTA partner alleges that another NAFTA partner has persistently failed to enforce an existing environmental law. This dispute resolution process has not been invoked to date.

The North American Agreement on Labor Cooperation (NAALC)

The NAALC promotes the enforcement of national labor laws and transparency in their administration. The NAALC sets up a mechanism for cooperative activities and intergovernmental consultations, as well as for independent evaluations and dispute

settlements related to the enforcement of labor laws⁵⁵.

A Cabinet-level ministerial Council and a Secretariat make up the Commission for Labor Cooperation. The Council oversees the implementation of the NAALC and directs the activities of the Secretariat. On February 28, 1995, John S. McKennirey, a Canadian national, was appointed Executive Director of the Secretariat, located in Dallas, Texas.

The Secretariat undertakes research and analysis, and prepares reports on a variety of topics including: labor law and administrative procedures, labor market conditions, and human resource development issues. In addition to research work on labor matters, the Secretariat serves as the general administrative arm of the Commission.

The NAACL also requires each government to establish a National Administrative Office (NAO) within the Department or Ministry of Labor in each country. The NAOs serve as a point of contact and information, with other government bureaus and with the public. In addition, the NAOs receive and review petitions concerning labor law compliance⁵⁶.

Over the past years, an extensive program of trinational cooperative activities has been undertaken by the NAOs of Canada, Mexico, and the United States. The cooperative work program has included extensive meetings between labor officials of the three countries; exchange of information on standards and procedures; joint sponsorship of public conferences and seminars; and specific agreements for sharing technical assistance and training.

⁵⁵ Commission for Labor Cooperation, Annual Report 1995, Dallas, Texas, 1995.

⁵⁶ The Canadian National Administrative Office did not receive submissions regarding enforcement of labor law matters in Mexico and the United States. For information on submissions received by the U.S. NAO, see UN-ECLAC, NAFTA Implementation, pp. 28-31.

