

UNITED NATIONS

ECONOMIC COMMISSION
FOR LATIN AMERICA
AND THE CARIBBEAN



Distr.
LIMITED
LC/WAS/L.34
27 June 1996

ORIGINAL: ENGLISH



NAFTA IMPLEMENTATION IN THE UNITED STATES:

THE FIRST TWO YEARS

24 JUL 1996

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Introduction

The North American Free Trade Agreement (NAFTA) signed by the Governments of Canada, Mexico and the United States on December 17, 1992, entered into force on January 1, 1994, after the negotiation of supplemental agreements on environment and labor and Congressional approval of the required implementing legislation. The 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 is an improved version of the 1988 U.S.-Canada Free Trade Agreement (CFTA), which contains precedent-setting rights and obligations in the area of services, investment, and addresses cross-border environmental concerns.

The NAFTA is the most comprehensive regional trade agreement ever negotiated by the United States and the first reciprocal free trade agreement between a developing and two industrial countries of the Western Hemisphere, thus setting an important precedent for trade and economic cooperation. Its entry into force brought about the immediate elimination of tariffs on about 50 percent of U.S. exports to Mexico in terms of value and the phasing out of the remainder over the next 5-15 years. In addition, it meant the adoption of a myriad of decisions to make real the terms of the agreement.

This report summarizes the main developments in the implementation of the NAFTA in the United States during 1994 and 1995. Its purpose is to describe and illustrate the activities and efforts required by the effective functioning of such a comprehensive trade agreement. What this report does not attempt is an evaluation of NAFTA's impact. Such undertaking, to be reliable, would have to quantify, as much as possible, the impact of the intense levels of interdependence that prevail among the participants, including those that existed before the signature of the agreement. Furthermore, such an evaluation may still be premature, after only two years of NAFTA implementation.

The report is divided in three sections. Section 1 describes U.S. trade with its NAFTA partners during 1994 and 1995. Section 2 covers the main activities required by the implementation of the agreement in the last two years. The last section describes the implementation of the environment and labor supplemental agreements.

I. U.S. TRADE WITH NAFTA PARTNERS

The expansion of trade among NAFTA partners during 1994 and 1995 was consistent with recent trade patterns and the continued and already intense integration of the three economies. In NAFTA's first year, U.S. trade with Canada and Mexico --the largest and third-largest trading partners-- reached record levels. In 1994, U.S. exports to NAFTA partners grew by 16 percent, over twice as fast as U.S. exports to the rest of the world. Total three-way trade reached almost \$350 billion in 1994, a 17 percent rise over the previous year.

In the agreement's second year, trade flows were decisively influenced by Mexico's financial crisis. As Mexico entered into a severe recession, U.S. exports to Mexico fell by almost 9 percent in 1995, after increasing over 22 percent in 1994. However, despite this sharp drop, U.S. exports to Mexico remained 10 percent higher than in 1993, before NAFTA. Total three way trade increased overall by about 8 percent in 1995, to \$380 billion.

Through the difficult year of Mexico's financial crisis, the NAFTA was instrumental in preserving trade and investment liberalization. Mexico continued reducing tariffs in accordance with NAFTA provisions, even as it increased tariffs on many items from non-NAFTA countries. In part because of this, U.S. market share in Mexico grew from 70% in 1994 to 73% in 1995. This time, the performance of U.S. exports contrasted with that of Mexico's financial crisis in 1982, when Mexico's government imposed 100 percent duties and import permit requirements on products from the U.S. and other countries, such that U.S. exports were cut in half. In addition, the Mexican authorities accelerated the pace of financial liberalization in 1995.

Observers hold that Mexico's response to the crisis would not have been the same had NAFTA not been in existence. Unlike what had been the norm on previous occasions when Mexico faced a balance of payments crisis, the Mexican authorities did not resort to trade restrictions against its NAFTA partners. According to Sidney Weintraub, "... the existence of NAFTA made a marked difference in how Mexico and the United States reacted to the crisis; or put differently, that NAFTA added much depth to the integration of the two economies."¹

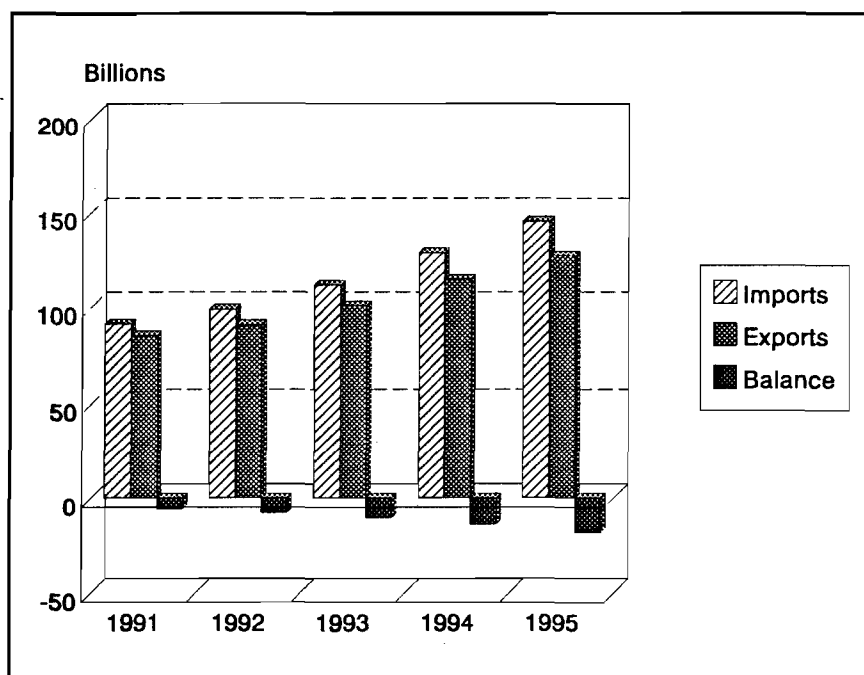
1. U.S. trade with Canada

The expansion of trade between the United States and Canada --the largest two-way trading relationship in the world-- continued strongly under NAFTA, following five full years of operation of the U.S.-Canada bilateral free trade agreement. After a growth of about 15% in 1994, two-way merchandise trade expanded by a further 12 percent in 1995, to reach \$272 billion.

¹ "The Depth of Economic Integration between Mexico and the United States," The Washington Quarterly, vol. 18, no.4 (Autumn 1995), pp.173-184.

Since 1989, U.S. trade with Canada has grown 17% faster than U.S. trade with the rest of the world. Most of this increase has taken place in the last two years. Exports to Canada rose by 14 percent and 11 percent in 1994 and 1995, respectively, to reach \$126 billion. Imports from Canada, on the other hand, increased by 13% in 1995, to \$145.1 billion.

Figure 1: United States Trade with Canada



By 1994, when the NAFTA entered into force, the majority of duties on U.S.-Canada trade had already been eliminated, even products considered most sensitive had their duties cut in half. In this regard, NAFTA's impact on trade relations between the U.S. and Canada was less dramatic than with Mexico. However, NAFTA improved the bilateral relationship in many areas and further reduced trade barriers, and the agreement and its mechanisms for the resolution of differences considerably enhanced the relationship.

For instance, several difficulties were prominent within this U.S.-Canada intense bilateral trading relationship, including differences on salmon, steel, beer, dairy and poultry, and communications issues. Among these, trade in softwood lumber and in wheat were the most tense of the bilateral agenda. By the end of 1995, after a year-long effort by the U.S. and Canada to resolve their fifteen year-long bilateral dispute on lumber, both governments were close to concluding an agreement to avoid litigation. The purpose is to address the concerns of the U.S. lumber industry with respect to increasing levels of imports of Canadian softwood lumber and those of the Canadian industry regarding secure access to the U.S. market.

Additionally, U.S. restrictions on imports of Canadian wheat were terminated in

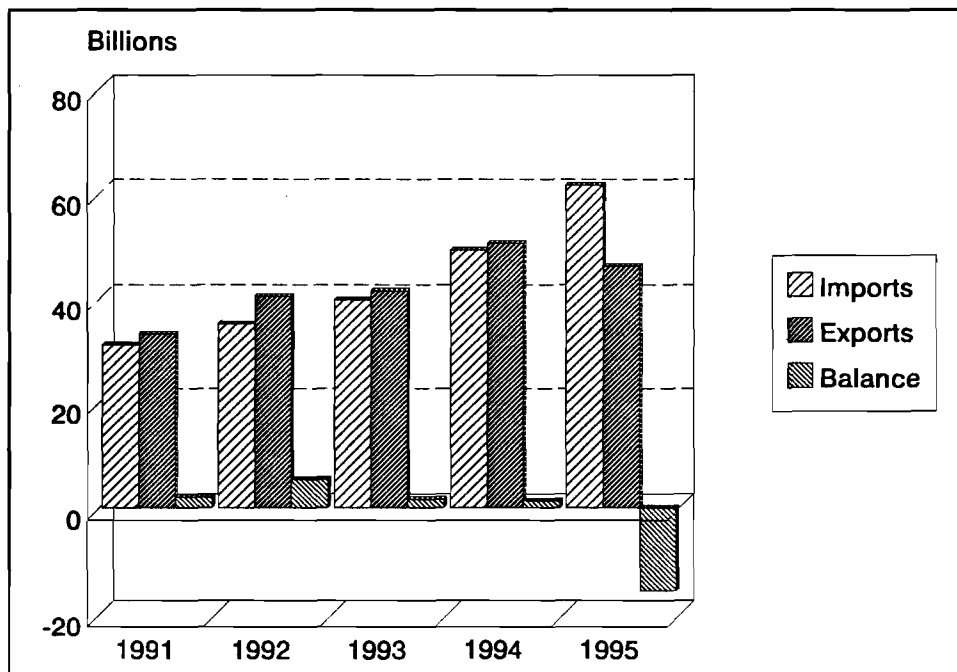
September 1995, restoring Canadian access to the U.S. wheat market. To avoid market disruptions from imports of Canadian wheat, it was agreed that consultations between both governments will take place at six, nine, and eleven month intervals.

2. U.S. Trade with Mexico

As Mexico entered into a severe recession, U.S. exports to Mexico fell by 8.9 percent in 1995 after growing by 22.1 percent --over twice as fast as U.S. exports to the rest of the world-- in NAFTA's first year. As a result, the U.S. trade surplus with Mexico in 1994 of \$1.3 billion was reversed to a deficit of \$15.4 billion. Even though U.S. exports to Mexico fell as a consequence of Mexico's recession, they were 10 percent greater in 1995 than in 1993 before NAFTA, Mexico remained the third-largest market in the world for U.S. exports. Two-way trade surpassed \$108 billion in 1995, \$8 billion more than in 1994 --when it surpassed \$100 billion for the first time-- and 24.5 percent more than in 1993.

The impact of NAFTA on U.S.-Mexico trade flows is difficult to ponder by itself because of Mexico's severe financial crisis during 1995. The crisis erupted on December 20, 1994, when the Mexican authorities attempted to devalue the peso by widening the dollar/peso exchange rate band from 3.5 to 4.0 pesos to the dollar. Faced by a strong speculative attack against the peso, the authorities allowed it to float freely on December 22. The peso depreciated from 3.5 pesos to the dollar on December 20 to 5.7 pesos to the dollar, or by 38 percent at its lowest point in January 1995, before an international loan package to Mexico was announced on January 31, 1995.

Figure 2: United States Trade with Mexico



Mexico's financial crisis prompted the U.S. government to lead an effort to put together a \$50 billion multilateral loan package to assist in Mexico's stabilization. To deal with the crisis, the Mexican government adopted a rigorous adjustment program to narrow the current account deficit and reestablish the necessary conditions for growth, through tight fiscal and monetary policies and wage restraint. The plan involved the abandonment of the currency-band system, which had served as an anti-inflationary anchor since 1988, and its replacement by a floating exchange-rate system. The emergency economic program led to a severe contraction in domestic demand, with economic activity falling 7 percent in 1995. At the cost of the harsh impact on output, employment and real wages, the program yielded satisfactory results with regard to the current-account deficit, which declined substantially as a result of the remarkable growth in manufacturing exports and the decrease in imports.

Meanwhile, the schedule of annual tariff reductions proceeded on steady course. On January 1, 1994, half of all U.S. exports to Mexico became eligible for duty-free treatment. The reduction or elimination of Mexican tariffs and other barriers in 1994 brought about important gains for U.S. exporters as products that became duty-free grew rapidly, rising by 26%.² The second and third rounds of reciprocal tariff reductions took place on January 1, 1995 and 1996. As a result, the average Mexican tariff on U.S. products has fallen from 10 percent to 4.9 percent, while the average U.S. tariff on Mexican products has fallen from 4.0 percent to 2.3 percent.³

² U.S. Department of Commerce, International Trade Administration, NAFTA Office, NAFTA: First Year Snapshot, February 2, 1995.

³ United States Trade Representative, 1996 Trade Policy Agenda and 1995 Annual Report of the President of the United States on the Trade Agreements Program (Washington D.C., 1996) p. 75.

The following table shows the top 25 U.S. exports to Mexico made duty-free by NAFTA. In 1995, these represented 10% of total U.S. exports to Mexico. The dynamism of many exports in NAFTA's first two years has been impressive, particularly semiconductors, computers, machine tools, medical devices, and aerospace equipment.

Table 1
Top 25 United States Exports to Mexico that became Duty Free with NAFTA
(thousands of dollars)

U.S. Export Category--HS 6-digit	1993	1994	1995	93-95 Dollar Change	93-95 Percent Change
Electronic integrated circuits	84 002	372 476	506 505	422 503	503
Monolithic integrated circuits	16 538	28 947	398 522	381 984	2 310
Cathode-ray tubes	6 821	156 442	222 019	215 198	3 155
Cathode-ray tv picture tubes	359 588	472 542	569 749	210 161	58
Digital monolithic integrated circuits	211 665	492 264	312 458	100 793	48
Spark-ignition piston engine	332 991	409 206	418 363	85 372	26
Parts & accessories machines & units	656 330	761 612	739 538	83 208	13
Diodes ex photosensitive	36 668	62 773	118 006	81 338	222
Xylenes	20 762	41 559	83 944	63 182	304
Parts for electrical capacitors	119 314	189 339	180 927	61 613	52
T-shirts, singlets, tank tops, knit	66 597	113 112	123 657	57 060	86
Transistors, other than photosensitive	28 169	48 451	82 760	54 591	194
Electronic integrated circuits	36 288	53 552	89 992	53 704	148
Molybdenum ores & concentrates	100	6 297	40 205	40 105	40 105
Electrostatic photocopying image	33 430	75 762	73 168	39 738	119
Brassieres, knit or crocheted	39 939	43 559	76 597	36 658	92
Woven fabric 85% nylon	13 674	47 970	50 047	36 373	266
Insulating fittings for machines	56 036	83 389	92 163	36 127	64
Radio remote control apparatus	2 310	4 614	32 384	30 074	1 302
Electric apparatus carrier-current	23 651	67 106	51 698	28 047	119
Propane (propylene)	32 883	40 834	58 888	26 005	79
Transistors ex photosensitive	16 100	22 987	41 804	25 704	160
Injection-molding machine for rubber or plastic	22 292	37 253	45 464	23 172	104
Golf equipment	43 965	52 227	65 456	21 491	49
TV camera tubes; image converter	42 255	24 495	63 008	20 753	49

Source: U.S. Department of Commerce

Further, the biggest exporters to Mexico, by state, remain Texas and California. However, in just about every state exports to Mexico grew faster than to the rest of the world. Even states with traditionally few links to Mexico saw their exports increase during 1994, as shown in the next table.

Table 2
United States exports to Mexico by State

	1993	1994	1995	93-94	94-95
	Thousands of dollars			Growth Rates (%)	
TOTAL	41 635.5	50 840.3	46 311.5	22.1	-8.9
TEXAS	20 379.6	23 849.5	21 863.5	17.0	-8.3
CALIFORNIA	6 521.6	7 657.6	7 362.9	17.4	-3.8
MICHIGAN	1 295.2	1 522.2	3 100.5	17.5	103.7
ARIZONA	1 927.9	2 428.8	2 147.1	26.0	-11.6
ILLINOIS	1 181.6	1 676.5	1 055.1	41.9	-37.1
NORTH CAROLINA	506.2	734.2	914.9	45.0	24.6
NEW YORK	858.8	1 098.2	767.8	27.9	-30.1
PENNSYLVANIA	653.6	853.8	697.9	30.6	-18.3
OHIO	751.1	982.9	671.7	30.9	-31.7
LOUISIANA	501.3	753.2	663.8	50.3	-11.9
FLORIDA	755.0	844.1	569.7	11.8	-32.5
TENNESSEE	467.6	603.0	532.9	29.1	-11.6
GEORGIA	410.9	565.0	506.5	37.5	-10.4
NEW JERSEY	505.5	613.1	442.7	21.3	-27.8
MISSOURI	393.9	503.9	426.1	27.9	-15.4
CONNECTICUT	316.8	420.8	331.3	32.8	-21.3
KANSAS	283.5	390.9	316.0	37.9	-19.2
WISCONSIN	289.3	420.3	314.0	45.3	-25.3
INDIANA	374.0	464.5	281.0	24.2	-39.5
SOUTH CAROLINA	145.1	240.1	253.2	65.5	5.4
MASSACHUSETTS	294.9	349.5	243.1	18.5	-30.5
ALABAMA	207.0	267.0	240.0	29.0	-10.1
PUERTO RICO	141.8	161.2	217.6	13.7	35.0
IOWA	150.0	226.0	217.2	50.8	-3.9
VIRGINIA	216.3	228.5	202.0	33.4	-30.1
MISSISSIPPI	90.4	133.4	190.5	47.5	42.8
MINNESOTA	242.4	257.2	187.8	6.1	-27.0
WASHINGTON	301.3	477.6	176.0	58.5	-63.1
DELAWARE	133.8	188.5	159.6	40.9	-15.3
KENTUCKY	197.1	256.8	158.5	30.3	-38.3
OKLAHOMA	176.5	221.6	146.6	25.6	-33.9
COLORADO	154.7	212.4	123.9	37.3	-41.7
NEBRASKA	108.8	212.3	119.0	94.9	-43.9
ARKANSAS	104.5	160.7	111.3	53.7	-30.8
OREGON	125.9	135.3	86.6	7.5	-36.0
UTAH	51.3	112.4	71.7	119.1	-36.2
MARYLAND	68.8	91.5	59.6	33.0	-34.9
NEW MEXICO	76.8	102.0	55.2	32.9	-45.9
NEW HAMPSHIRE	39.7	52.7	51.7	33.0	-2.0
IDAHO	40.4	43.8	45.6	8.5	4.0
VERMONT	23.5	41.6	41.4	77.2	-0.5
NORTH DAKOTA	16.3	18.6	41.2	14.6	120.9
RHODE ISLAND	32.0	37.2	33.9	16.0	-8.7
WEST VIRGINIA	37.4	24.0	27.8	-35.9	16.0
MONTANA	13.0	16.9	22.8	30.7	35.0
MAINE	18.7	27.7	14.3	48.4	-48.5
NEVADA	25.4	13.0	13.9	-49.0	7.2
WYOMING	7.7	8.1	8.1	5.4	0.2
SOUTH DAKOTA	4.8	8.1	7.4	69.4	-8.7
ALASKA	5.2	27.8	2.9	434.8	-89.7
HAWAII	1.4	15.5	1.1	974.6	-93.1

Source: Embassy of Mexico, NAFTA Office.

II. IMPLEMENTATION OF NAFTA COMMITMENTS

Much of NAFTA's first two years of implementation activities were dedicated to setting up the institutions, rules, and procedures and to execute technical and administrative decisions for the agreement to operate fully as a legal instrument. Implementing the terms of such a comprehensive agreement --the NAFTA and its accompanying tariff schedule is over 2000 pages long-- proved to be a complex task.⁴

The implementation of commitments required the adoption of both domestic and joint measures and collaboration among officials in the various committees and working groups mandated by the agreement. Over 1994 and 1995, these committees and working groups addressed issues that were unresolved when the agreement came into force, as well as dealt with topics of ongoing concern, including administrative matters, technical obstacles and trade disputes.

Amidst the intensification of trade flows, during the past two years the NAFTA partners had to deal with both old and new frictions, normal in any relationship that has attained such significant levels of trade. Tensions over tomatoes, package delivery services, and trucks, for instance, were added to the bilateral commercial disputes that existed before NAFTA, such as old disputes on steel, tuna, lumber, wheat, and cement. Thus, NAFTA did not reduce commercial tensions between the member governments, nor did it eliminate all unfair trade practices.

However, the agreement led to greater consultation and collaboration among the three governments and enhanced cooperation. In fact, NAFTA provided a new framework for dealing with old and emerging difficulties.

The following sections provide an overview of the main implementation developments during the agreement's first two years of operation. These include commitments in the following areas: tariff phase-outs, rules of origin and customs procedures, agriculture, technical barriers to trade, government procurement, services, investment, temporary entry, dispute settlement,

⁴ The NAFTA is contained in five volumes. Volume I includes the general text, while volume II includes specific rules of origin and reservations and exceptions to the provisions for investment, cross-border trade in services, and financial services. Volumes III through V contain the tariff schedules for Canada, Mexico, and the United States, respectively. The general text comprises twenty two chapters, divided into the following eight parts: objectives and general definitions; trade in goods (including provisions for tariff elimination, rules of origin, customs procedures, and special sections governing agriculture, textiles and apparel, energy, and automotive trade); technical barriers to trade; government procurement; investment, services, and related matters; intellectual property; administrative and institutional provisions, including dispute settlement, and "other provisions," including exceptions to the agreement.

accession, and institutional developments⁵.

1. Tariff Phase-Outs

When the NAFTA entered into force, about half of all U.S. exports to Mexico became eligible for duty-free treatment. Remaining tariffs are phased out on a five, ten, or fifteen year schedule, with annual rate reductions implemented on January 1 of each year.⁶ Based on the composition of imports from Mexico in 1991, tariffs were eliminated on about 60 percent of dutiable goods in 1994. As the schedule below shows, duties on about 70 percent of goods that are currently subject to duty will be eliminated by 1998.

Table 3
Tariff Elimination Schedule

Elimination on January 1	Dutiable Goods on which Tariffs are eliminated (%)
1994	60
1998	9
1999	11
2002	*
2003	12
2008	8

Source: Congressional Budget Office

* Less than one-half of one percent.

As in the CFTA, NAFTA provides for quicker elimination of tariffs for specific goods, if both countries agree to accelerate the rate at which their duties are phased out. The NAFTA parties started on January 1994 a first round of "accelerated tariff elimination" talks. Of particular interest to the U.S. were acceleration of tariff phaseouts on items such as wine and brandy, flat glass, home appliances and bedding components, dry beans, cream cheese, and potatoes. Though talks were slated to be wrapped up 120 days after the NAFTA went into force, progress has been very slow and by the end of 1995, these talks still continued.

⁵ An excellent review of NAFTA implementation in 1994 is U.S. ITC, The Year in Trade 1994, (46th Report, USITC Publication 2894), July 1995, pp.41-61

⁶ The U.S.-Canada bilateral tariffs will continue to be phased out according to the CFTA schedule, that is by January 1998.

2. Rules of Origin and Customs Procedures

During the agreement's first two years, implementation of rules of origin required close collaboration between the three governments, to ensure the consistent application, compliance and administration of the rules throughout the free trade area. Government officials worked together to address some difficulties and confusion in the interpretation of rules and procedures. Firms, too, had to become aware of numerous rules of origin requirements.

This was not simple, because there is not even an agreed count of the number of separate rules of origin contained in the NAFTA. It has been suggested that the number is in excess of 11,000.⁷

In any case, to earn the NAFTA origin label and qualify for the agreement's preferences, goods are required to: a) be wholly obtained or produced entirely in the NAFTA region --for example, animals, minerals, agricultural products; b) incorporate non-NAFTA materials that are sufficiently processed in North America to undergo a change in tariff classification; c) be produced entirely in North America exclusively from originating materials; d) satisfy a minimum value-content rule. Regional value content (RVC) requirements apply to a variety of goods.

The NAFTA also contains special rules of origin for automobiles, textiles and apparel, high technology products, and agriculture. In the case of automobiles, for instance, rules of origin are more stringent than those agreed for most other products. The NAFTA raised the regional value content required for duty-free treatment from 50 percent, as was the case in the CFTA, to 62.5 percent and introduced mechanisms to improve enforceability.

In the case of textiles and apparel, the agreement specifies a yarn-forward rule of origin, stricter than the CFTA transformation rule and even more strict than other rules in NAFTA⁸. The agreement also sets up separate tariff preference levels (TPLs), which are exceptions to the rules of origin, allowing limited amounts of a product to receive tariff preferences without meeting the agreed rules. Additionally, there are provisions for safeguards in textiles and apparel during a 10-year transition period.

The past two years required an effort on the part of customs officials to become familiarized with NAFTA procedures and also to resolve differences in interpretation of customs rules and regulatory requirements. For instance, customs officials held different views as to the need for NAFTA certificates of origin, whether NAFTA certificates of origin had to be

⁷ See, N. David Palmeter, "Rules of Origin in a Western Hemisphere Free Trade Agreement," in IDB-ECLAC, Trade Liberalization in the Western Hemisphere, (Washington D.C.: 1995), p. 193.

⁸ To be considered North American, an item of apparel must be made in North America from fabric that is made in North America and from yarn that is made in North America. Only the fiber from which the yarn is made may be imported. Hence, the rule for apparel is a triple-transformation rule --fiber transformed to yarn transformed to fabric transformed to apparel.

presented with every shipment, as it clears customs, or they are only required if NAFTA treatment is claimed.

Also, differences arose regarding compliance with the Mexican Government's August 30, 1994 decree on certificates of origin requirements imposed on non-NAFTA shipments to Mexico. In this last case, the question was whether verification of the participating exporters' country-of-origin declarations, by private inspection companies or accounting firms, must be conducted before or after goods are permitted to enter Mexico, and the scope, duration and expense of such verification audits⁹.

The work of the Customs Subgroup proved to be particularly useful in dealing with disagreements before they became disputes and in collaborating toward greater harmonization of customs administrations. Also, the NAFTA Customs Subgroup provided the effort necessary to finalize the NAFTA Regulations and Standards for Chapters Four and Five, which were incorporated in the final NAFTA regulations published in the U.S. Federal Register. In particular, these regulations and standards addressed the interpretation of the rules of origin, trilateral administration of the certificate of origin, keeping of records, origin verifications, advance rulings, reviews and appeals, transshipment, and standardized questionnaires.¹⁰

In addition, the three countries made progress in agreeing on a prototype for standardized electronic documentation to clear goods through customs. More ambitious plans by the trilateral Information Exchange and Automation Working Group are to create an international data syntax, for information exchanged during trans-border trade, whereby the three governments will agree on one electronic customs document and common electronic equipment for government agencies and trade.

3. Agriculture

NAFTA immediately eliminated tariffs and other restrictions for a large number of agricultural products. Between the U.S. and Mexico all tariffs, quotas, and licenses, that act as barriers to agricultural trade, are eliminated over the 15-year implementation period.¹¹ Non-tariff barriers, such as quotas and licenses are generally converted to "tariff-rate quotas" (TRQs), which allow a specific quantity to enter at reduced tariffs, usually zero, with imports above the quota facing higher tariffs. These over-quota tariffs will be reduced to zero during the implementation period. The agreement includes special safeguards for a limited number of

⁹ U.S. ITC, *op cit.*, pp.43-44

¹⁰ Federal Register, (Vol. 60, #172), September 6, 1995, pp.46334-46481

¹¹ NAFTA provisions for market access in agriculture are contained in two separate bilateral agreements, between the U.S. and Mexico and between Canada and Mexico.

import-sensitive products in each country and special rules of origin for trade in some farm products. There are also trilateral provisions that deal with domestic farm supports, agricultural export subsidies, and sanitary and phytosanitary requirements for trade.

Table 4
United States Agricultural Imports from Mexico: Tariff Scheduling under NAFTA

Tariff reduction method	Starting period	Agricultural products
Immediate elimination		Corn, grain sorghum, barley, malt, soybean meal, dry beans, dried fruits, potatoes, cattle/beef, swine/pork, eggs, animal fats, other livestock, most wood products, vegetables oils (pt)*, fresh nuts, dried nuts, fresh grapes, fresh deciduous fruit and stone fruit, alcoholic beverages (pt), melons (pt), citrus (pt), cauliflower (pt), cucumbers (pt), asparagus (pt), other fresh horticulture (pt).
Tariff staging only	5 year	Wheat (pt), soybean oil, vegetable oil (pt), cucumber (pt), asparagus (pt), broccoli (pt), cauliflower (pt), melons (pt), citrus (pt), other fresh horticulture (pt), processed potatoes (pt), processed fruit juices (pt).
	8 year	Beer
	10 year	Wheat, rice, cucumbers (pt), asparagus (pt), broccoli (pt), cauliflower (pt), melons (pt), citrus (pt), other fresh horticulture (pt), processed vegetables (pt), processed fruit juices (pt), tobacco, alcoholic beverages (pt).
	15 year	Cucumber (pt), asparagus (pt), broccoli (pt), melons (pt), processed vegetables (pt).
Safeguards plus tariffs	10 year	Tomatoes (pt), onions, eggplants (pt), squash (pt), peppers (pt), watermelon (pt), potatoes (pt).
Tariff rate quotas	10 year	Milk powder, cheese, cotton, sugar-containing products.
	15 year	Frozen concentrated orange juice (FCOJ), peanuts, sugar.

Source: United States International Trade Commission.

* The term "pt" indicates that different types of the specified product or imports during different seasons of the year will be subject to different staging schedules under NAFTA.

In addition to the liberalization schedule indicated in the above table, the three governments addressed several issues, including gathering information regarding grading and marketing requirements to facilitate trade and assist the private sector, U.S. minimum import quality requirements for grapes, rice tariffs in Mexico, grading requirements for beef in certain Mexican states, to name but a few. Further, they also discussed the possibility of increased trilateral cooperation in advancing agricultural trade policy objectives of common interest in other fora, including the World Trade Organization (WTO) and the Free Trade Area of the Americas (FTAA).

An issue that attracted attention during NAFTA's second year, were the surges of Mexican fruit and vegetables exported to the U.S., which followed the devaluation of the Mexican peso in December 1994. In particular, surges of tomato imports dominated discussions between U.S. and Mexican officials during most of 1995, with Florida growers complaining that

increased tomato imports were causing them severe damage.¹² Tomato growers also requested the U.S. Trade Representative (USTR) to revise the allocation process of the TRQ for Mexican tomatoes on a weekly basis, rather than quarterly as agreed upon in the NAFTA.¹³ U.S. producers argue that the current TRQ allocation, on a quarterly basis, fails to accurately take into account the huge volumes of Mexican tomatoes that are being shipped northward.

In response to these charges, on December 14, 1995, the Office of the USTR issued a public notice of its consideration of a proposal to recalculate the way it assesses TRQs for tomato imports. To date, this notice of proposed rulemaking has been criticized in Mexico and by several U.S. agricultural groups. For instance, the U.S. poultry and egg industries consider that a change in the calculation of the U.S. TRQs on Mexican tomatoes would be a violation of NAFTA rules and set a dangerous precedent.

As for Canada and the U.S., both countries attempted to resolve differences regarding interpretation of the precedence of liberalization commitments of the NAFTA and the Uruguay Round. On July 14, 1995, the U.S. formally requested the establishment of an arbitral panel under the NAFTA to settle its dispute with Canada over high Canadian tariffs on imports of dairy, poultry and egg products, the first case ever filed under NAFTA's Chapter 20 dispute settlement process. The U.S. argues that duties of up to 350 percent on imports of dairy, poultry, and egg products imposed by Canada on January 1, 1995 as part of its Uruguay Round commitments --to convert its quotas and import-licensing requirements into tariff-rate quotas that provide equivalent levels of protection-- violate NAFTA provisions against new tariffs on cross-border trade. For its part, Canada maintains that the tariffication commitments it made in the Uruguay Round are exempt from the NAFTA. The final panel decision is not expected until mid-1996.

4. Technical Barriers to Trade

Compliance with product standards, labeling, and sanitary and phytosanitary regulations also required attention during NAFTA's first two years. Government officials ensured that

¹² Florida growers estimated that during the first five months of 1995, U.S. imports of tomatoes --which were up 36% over 1994 levels-- had cost over 10,000 jobs and losses to growers of between \$50 and \$100 million. Early in 1995, they tried to get quick temporary protection from surges of fairly traded Mexican tomatoes from January through April -- in the form of increased tariffs of 50 percent *ad valorem* on Mexican tomatoes through April, but the U.S. International Trade Commission voted 5-to-0 against giving them relief, as requested under section 202(d) of the amended Trade Act of 1974.

¹³ Under the NAFTA, Mexican tomatoes entering the U.S. market are subject to two quarterly TRQs. Under the TRQS, approximately 170,000 metric tons of Mexican tomatoes enter the U.S. market under the NAFTA tariff rate (currently 3.7 cents per kilogram). Any amount over this TRQ enters the U.S. at the MFN rate (4.5 cents per kilogram). The quota allocation is done on a quarterly basis, that is, Mexico can use its entire quarterly quota at any time during the quarter.

technical standards are applied on a non-discriminatory basis. NAFTA rules seek to neutralize the impact of differences between national standards on trade by promoting compatibility, equivalence, notification and information exchange requirements, rather than harmonization between different national standards. NAFTA establishes a new type of equivalency test, such that the three countries can maintain differing regulations, while allowing trade in the regulated products.

During NAFTA's first two years, the three governments worked to make compatible their standards, technical regulations and conformity-assessment procedures in order to facilitate trade. Among the issues that demanded particular attention were new regulatory requirements issued by Mexico, such as product certification rules, Spanish labeling and packaging requirements, which generated some confusion and trade disruptions. Enforcement of sanitary and phytosanitary standards gave rise to several skirmishes between Mexico and the U.S., over requirements on certain products including cherries, grains, meat, potatoes, and peaches. For instance, by year-end 1995, Mexico called into question the status of a report prepared by a trilateral expert working group challenging the Mexican requirement that sweet cherries from the U.S. be fumigated with methyl bromide, to eliminate three different kinds of pests before they are sold in Mexico.

Also, plant health officials made good progress on technical arrangements to make possible for Mexico to export avocados, apples, and peaches to the U.S. market. In the case of avocados, by year-end 1995, it was likely that the U.S. Department of Agriculture (USDA) would go forward with a proposal to lift an 81-year-old ban on imports of Mexican avocados, on the basis of scientific findings that imports pose little or no risk of introducing dangerous pests into California, where 90% of U.S. avocados are grown. Although lifting the ban on avocado imports was considered a done deal within the USDA early in 1995, protests by growers led the agency to postpone initial plans to lift the ban formally by November. Meanwhile, the U.S. has requested additional information to update its evaluation prior to issuing a definitive decision that is expected to favor Mexican avocados.

5. Government Procurement

NAFTA provides for transparent tendering and bid protest procedures, establishes a bid challenge mechanism, and prohibits offsets. The agreement applies to contracts, by specified Federal Government departments and agencies of more than \$50,000 in goods and services and more than \$6.5 million for construction services. For covered government enterprises, NAFTA rules apply to procurement of more than \$250 million in goods and services and more than \$8 million for construction services. Mexico is permitted to phase in the new procurement regime over ten years.

To facilitate NAFTA's provisions on government procurement, the three countries are working together on the creation of an electronic bulletin board to enable easier access to information on government procurement. In addition to the efforts at improving coordination

and understanding of the business-government sales relationship, the three countries are working on helping small businesses obtain contract opportunities. For this purpose, they are producing a trilateral handbook or "How to Guide" on selling to the federal governments in North America and planning to conduct a series of seminars designed to teach small businesses how to bid for contracts in all three NAFTA countries. Also, they are looking at ways to facilitate general trade and investment among North American small businesses, in particular cross-border matchmaking.

6. Services

NAFTA liberalized cross-border trade in services, primarily by adopting the principles of national treatment and nondiscrimination. Thus, providers do not need to establish a local presence as a prerequisite to providing a cross-border service, except as required for legitimate regulatory reasons.

Existing federal measures, which do not conform with the NAFTA, can be maintained if they are listed in the agreement. Each party is allowed a two-year period to exclude specific federal, state and provincial measures. After two years, all services not listed will be covered by NAFTA rules. These exemptions cover specific NAFTA disciplines, such as the principle of national treatment and most-favored nation, the use of performance requirements to condition investments, and non-discrimination in the selection of senior management and boards of directors. Also, exemption is allowed from the NAFTA requirement that a foreign company cannot be asked to establish a local presence in order to provide a service.

In this regard, cooperation progressed smoothly, but at a lower pace than expected. On December 27, 1995, in an exchange of letters, the governments of Canada, Mexico, and the U.S. agreed to extend the NAFTA deadline for services reservations --the deadline for submission of state and provincial reservations from certain investment and services provisions-- from January 1, 1996 to March 31, 1996.

By contrast, work on the reservations for U.S. states from the commitments contained in the NAFTA financial services chapter 14 were completed as scheduled by January 1, 1995. A similar effort to specify state-level quantitative restrictions exempted from NAFTA was also completed and will become part of Annex V to NAFTA chapter 12.

In the area of telecommunications, the three governments worked together in monitoring and facilitating the implementation of NAFTA provisions. Basic telecommunication services are excluded from the agreement. However, the NAFTA opens up access for enhanced and value-added services, such as computer data processing and electronic data base services, encouraging both cross-border investment in telecommunication facilities and enhanced telecommunication services.

By January 1, 1995, the three partners had in place procedures to accept data from test

centers and laboratories located in the territory of the other parties in order to demonstrate compliance with telecommunications equipment authorization requirements. By year-end 1995, Mexico's Secretariat for Communications and Transportation decided to revise its existing terminal attachment standards to harmonize them with the U.S. and Canadian regulations.

In transportation services, NAFTA provides new regulations for trucking, bus, and rail services, while it contains reservations excluding maritime and air services from the agreement. The NAFTA allows U.S., Mexican, and Canadian trucking companies to carry international cargo to and from the contiguous U.S. and Mexican states by the end of 1995, and to have cross-border access to all the U.S. and Mexico by the end of 1999.

NAFTA's second year ended with a delay in the implementation of a services provision that allows trucks from Mexico to travel freely in U.S. border states. On December 18, 1995, the U.S. announced that it would delay processing Mexican applications to haul cross-border cargo into U.S. border states, until it completed consultations with Mexico on truck and driver safety issues. Under NAFTA, Mexican truckers were scheduled to get the green light to apply, beginning December 18, 1995, to the U.S. Interstate Commerce Commission (ICC) to travel into California, Texas, New Mexico and Arizona. Currently, U.S. and Mexican trucks may travel only 20 miles beyond borders. All such restrictions on trucking goods across the border into the two countries are set to expire in the year 2000. Mexico has charged that this delay, if it persists, constitutes a violation of U.S. obligations under NAFTA, calling for consultations under Chapter 20 dispute settlement procedure.

Additionally, the U.S. and Mexico have not succeeded in resolving a dispute over access of package delivery services to the Mexican market on par with Mexican nationals. Both countries are at odds over Mexican restrictions on the size of vehicles that U.S. small package companies (UPS and other U.S. small package delivery services) can use in bringing packages across the border. In this dispute, the U.S. argues that Mexico is in violation of NAFTA because of its limits on vehicle size. Mexico maintains that it is distinguishing between parcel delivery and the shipment of freight, and wants to restrict the size of vehicles for shipments that qualify, in Mexico's view, as shipments of freight rather than parcel deliveries.

7. Investment

During NAFTA's first two years, U.S. and Canadian investors responded to the liberalization of Mexico's investment regime. More than half --or \$1,607.7 millions-- of foreign direct investment in Mexican sectors with liberalized investment regimes came from the U.S. and Canada.

Furthermore, 86 percent of total U.S. and Canadian investment in Mexico's financial sector, which amounted to \$1,229 million in NAFTA's first two years, was channelled into recently liberalized activities. Similarly, over 55 percent --or \$188 million-- of total NAFTA countries investment in Mexico's industrial sector was in liberalized activities, while 31 percent (\$348 million) of the investment in communications and transportation was channelled to

activities liberalized when NAFTA came into effect.¹⁴

NAFTA ensured that investors and investments from member countries receive national treatment and most-favored-nation treatment in many sectors. It includes disciplines on performance requirements which prohibit most requirements for local content, for the transfer of technology to competitors, for exclusive suppliers of a particular product to a specific region or market. In addition, the NAFTA provides investors with the opportunity to directly enforce their rights and seek monetary damages through binding international arbitration, or may apply those remedies available through the host country's domestic courts.

8. Temporary entry

Immigration officials worked together to facilitate temporary entry of business visitors, traders and investors, intra-company transferee, and professionals, the four categories of travelers allowed temporary entry. The following table shows the number of visitors to the U.S. from Mexico and Canada under the NAFTA provisions for temporary entry in fiscal years 1994 and 1995. Note that the fact that Canadians are exempt from the nonimmigrant visa requirement in most categories, makes the number of Canadians admitted considerably higher than those shown in Table 5.

The NAFTA Temporary Entry Working Group also made progress on establishing common criteria for greater simplification and facilitation of business entries, and on updating the list of professionals seeking entry into another NAFTA country on a temporary basis, to provide their professional skills. By contrast, consultations on other issues, such as the elimination of labor certification tests for spouses of business persons, have remained at an impasse.

Table 5
Temporary Entry Visas into the U.S.

	1994		1995	
	Mexico	Canada	Mexico	Canada
Business Visitors	42,468	135	43,046	144
Traders	38	72	96	62
Investors	54	939	31	93
Intra-Company Transferees	898	64	65	65

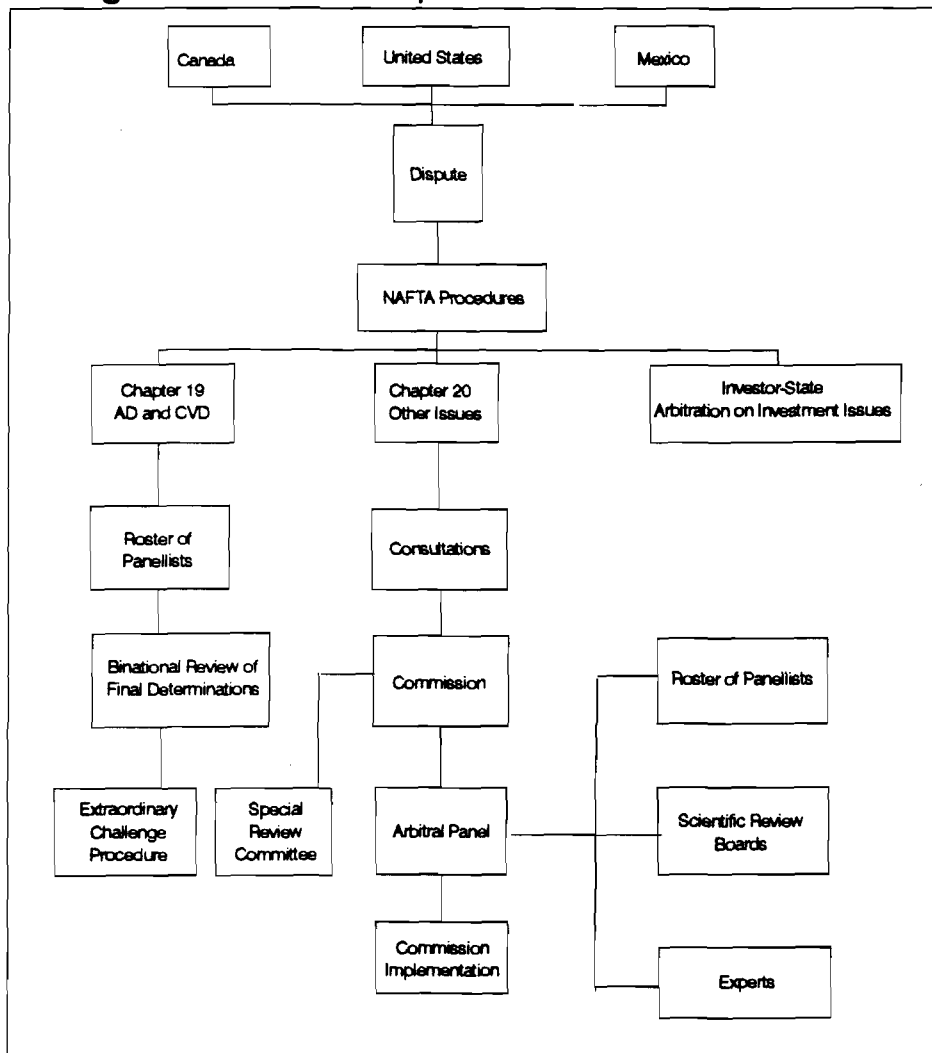
Source: United States Department of State, Visa Services.

¹⁴ Secretaría de Comercio y Fomento Industrial (SECOFI), Mexico. The figures correspond to investments in goods and services.

9. Dispute settlement

Several commercial disputes between the three NAFTA partners during NAFTA's first two years, warranted use of the dispute settlement procedures which --as shown in Figure 3-- are available for resolving disputes. These include: a) comprehensive procedures for government-to-government dispute settlement, as shown in figure 3, which comprise three stages: consultations, referral to the Free Trade Commission (FTC) and panel proceedings; and, b) binational panel review and dispute settlement regarding antidumping and countervailing duty matters. Also if a country disagrees with any binding panel decision, it may request the establishment of an extraordinary challenge committee to review the decision.

Figure 3: NAFTA Dispute Settlement Procedures



Source: External Affairs and International Trade, Canada

As of December 7, 1995, nineteen 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.

One case was filed 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 fail to resolve outstanding issues, a country may request a dispute settlement panel to provide its views and recommendations on the issue.

Of the nineteen dispute settlement proceedings filed under Chapter 19, seven were filed to review U.S. agencies' decisions, eight to review Canadian decisions, and four to review Mexican decisions. The list of cases reviewed is summarized in Table 6. A case on leather goods was the first ruling in favor of Mexico under NAFTA's Chapter 19. Following final recommendations by a NAFTA dispute-resolution panel, Mexican exporters of leather accessories can again enter the U.S. market without unfair-trade penalties, been imposed on August 25, 1994 for trade taking place in 1992. Two Mexican companies, Pielas Pitic and Finapiel of Mexico, successfully argued to the NAFTA panel that the U.S. Commerce Department did not adequately notify them during the initial investigation. The U.S. Commerce Department reimbursed Mexican exporters for unfair-trade duties of 13.35%.

Table 6
Dispute Settlement Cases under Chapter 19

	Review of U.S. Decisions	Review of Mexican Decisions	Review of Canadian Decisions
Active	<ul style="list-style-type: none"> - ceramic kitchen appliances from Mexico - cement from Mexico - oil country tubular prods. from Mexico - flowers from Mexico - television parts from Canada 	<ul style="list-style-type: none"> - cut to length steel from the US - polystyrene glass from the US - flat steel sheet from the US - steel tube from the US 	<ul style="list-style-type: none"> - steel from the US - beer from the US - sugar from the US
Completed	<ul style="list-style-type: none"> - pork from Canada - leather from Mexico 		<ul style="list-style-type: none"> - steel sheet products from the US - synthetic baler twine from the US
Terminated at request of participants			<ul style="list-style-type: none"> - apples for processing from the US - apples from the US - machine tufted carpeting from the US

Source: United States Department of Commerce, NAFTA Secretariat.

By contrast, the first decision issued by a dispute resolution panel under the NAFTA in favor of the U.S. was on steel. On August 30, 1995, the panel accepted the U.S. Group and Bethlehem Steel argument that Mexico's commerce agency lacked jurisdiction in an unfair trade case. The panel held that the General Direction of International Commercial Practices did not legally exist at the time of an unfair trade investigation, from December 4, 1992 to April 1, 1993. Thus, the penalties decreed against U.S. plate steel were declared invalid. As a result, both U.S. companies were allowed to have their plate steel imported into Mexico without the 38.21% duties imposed by the Mexican commerce agency.

Finally, the trade law working group, established under NAFTA to regulate the use of dumping and antidumping law among the three countries completed its work by December 31, 1995. It produced recommendations for changes in administrative practices and regulations governing antidumping cases, but fell short of recommending legislative changes.

10. Accession

NAFTA stipulates that other countries may seek admission to the free trade area upon meeting such conditions as determined by the members. Accession is thus open to any country. Immediately after the Miami Summit, on December 11, 1994, Prime Minister Chrétien of Canada and Presidents Frei of Chile, Zedillo of Mexico, and Clinton of the United States issued a joint statement announcing their decision to begin the process by which Chile would accede to the NAFTA. They directed their trade officials to undertake the preparations necessary to begin formal negotiations, including technical procedures and institutional issues.

On June 7, 1995, the NAFTA partners plus Chile officially commenced negotiations for Chile's accession. By June 20, 1995, participating officials with negotiating authority, organized four negotiating groups¹⁵. The first round of technical level negotiations took place July 25-August 2, 1995, in Mexico City. The meetings were general in nature, with delegates exchanging questions and highlighting issues for future discussion. At the second meeting of negotiations, held between September 26 and 28, 1995, in Mexico, Chile went beyond the information exchange process and proposed its first formal offer in the area of government procurement.

However, these Chilean accession talks were interrupted in the fall of 1995, at Chilean request, over fast-track trade negotiating authority, which allows the President to negotiate trade agreements that Congress only approves or rejects, but cannot modify. Although fast-track authority, technically, is not necessary to complete the negotiations, it allows negotiators to work out the details of a trade agreement with the confidence that the deal will remain unaltered

¹⁵ The first round of negotiations of the individual NAFTA chapters and related agreements were organized as follows: Group One: Chapters 3,4,5,7,10; Group Two: Chapters 11,12,13,14,16,17; Group Three: Chapters 1,2,15,18,20,21,22; Group Four: 6,8,9,19, supplemental agreements. It was agreed that this structure would be reviewed at the end of the first sessions.

through the congressional approval process.

Meanwhile, on December 29, 1995, the governments of Canada and Chile announced that they would launch negotiations for a bilateral trade pact. The interim bilateral talks are expected to result in a separate "stand-alone" accord, that will be folded into the full NAFTA accession talks, expected to begin once the U.S. executive branch obtains fast-track negotiating authority.

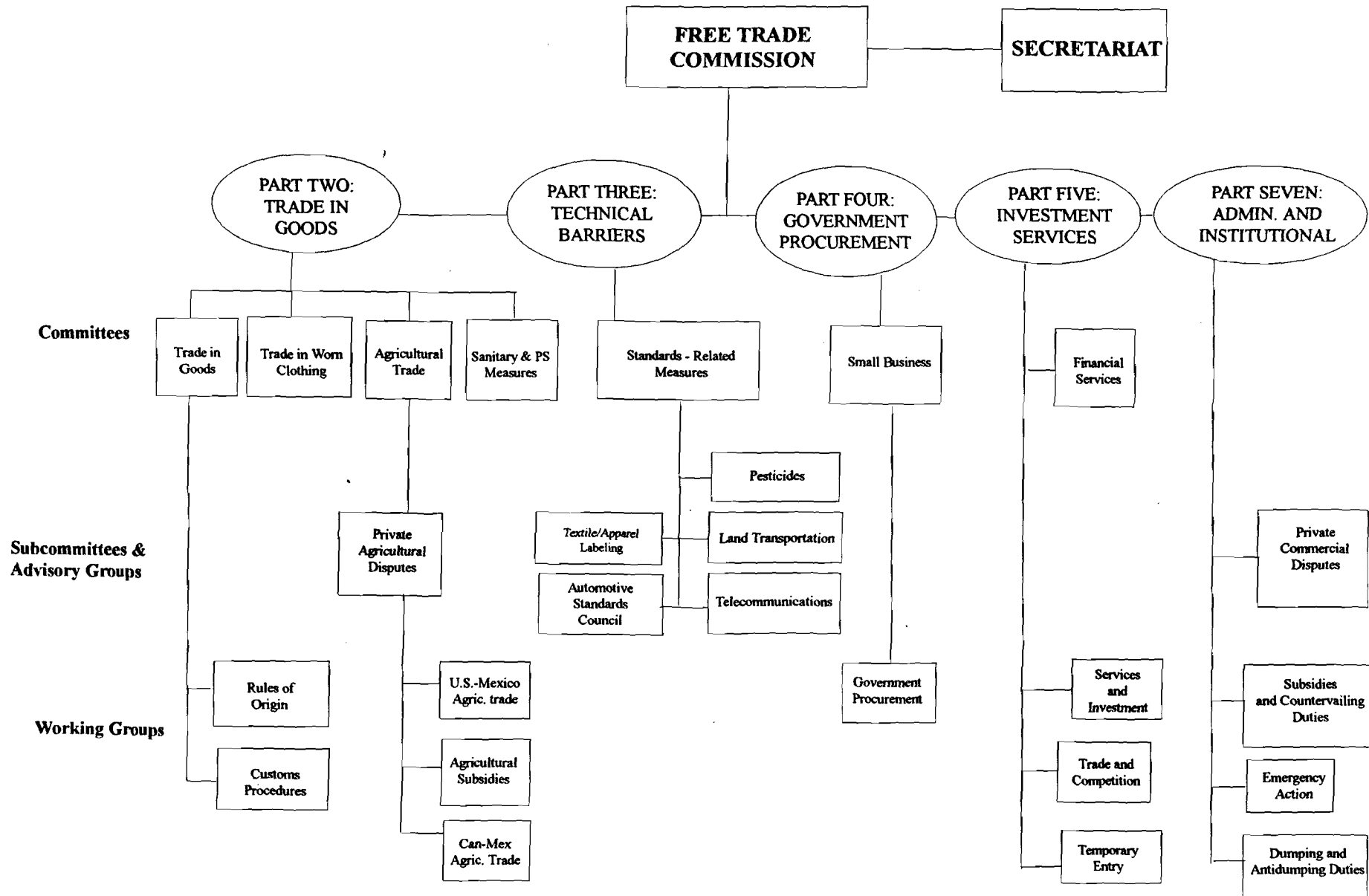
11. Institutional developments

The supreme organ of the NAFTA is the Free Trade Commission (FTC), chaired jointly by the U.S. Trade Representative, the Canadian Minister for International Trade, and the Mexican Secretary of Commerce and Industrial Development. The Commission is responsible for overseeing implementation and further elaboration of the NAFTA, and of dispute settlement. The day-to-day work of the Commission is carried out by several committees and working groups. NAFTA also establishes a Secretariat to serve the Commission and its dispute panels, committees, and working groups, which consists of national offices in Washington, Ottawa and Mexico City.

Almost all committees and working groups created under NAFTA, to perform day-to-day tasks or to implement the agreement, began operations in 1994, and a few in 1995. Also, the Free Trade Commission agreed at its first meeting, on January 14, 1994, to create two new committees, one on government procurement and another on investment and services.

The following diagram depicts the institutions, committees and working groups mandated by the NAFTA.

Figure 4: NAFTA - Institutions



In addition to the functioning of all the committees and working groups, a most significant institutional development was the creation of a trilateral coordinating secretariat, known as the NAFTA Coordinating Secretariat (NAFTACS), to complement the National Secretariats. The NAFTA Commission mandated, at the first meeting of January 14, 1994, the establishment of a coordinating secretariat to be based in Mexico and to serve as counterpart of the secretariats for the supplemental agreements on labor and environmental cooperation. However, by year-end 1995, funds had not yet been appropriated in the U.S. for this new secretariat.

IV. SUPPLEMENTAL AGREEMENTS

The NAFTA implementing legislation approved supplemental agreements on environmental and labor cooperation. Among the key goals of the environmental agreement are protection and improvement, fostering conservation, promoting sustainable development, and increasing cooperation on and enhanced enforcement of environmental laws and policies. The labor agreement aims at improving working conditions and living standards, and fostering compliance with and effective enforcement of labor laws. Both supplemental agreements establish commissions made up each of a council of ministers, a coordinating secretariat, advisory bodies to foster cooperation among the three parties on a broad range of issues, and to monitor relevant laws and their enforcement.

1. The North American Agreement on Environmental Cooperation (NAAEC)

The NAAEC was approved as a side agreement to the NAFTA, to insure that all parties enforce national environmental laws, international environmental law, and address environmental issues that arise as a result of NAFTA implementation. To fulfill these objectives the agreement creates three separate bodies: the Commission for Environmental Cooperation (CEC), the Border Environmental Cooperation Commission (BECC), and the North American Development Bank (NADBank). The CEC serves all three NAFTA Parties, while the BECC and the NADBank operate under a bilateral agreement between the U.S. and Mexico.

The Commission for Environmental Cooperation was created to oversee the implementation of the NAAEC, with responsibilities for promoting the exchange of information on domestic environmental standards and assisting in the prevention and resolution of environmental trade disputes. These tasks are performed by the Council of Ministers as the CEC's governing body, the Secretariat, and a 15-member Joint Public

Advisory Council (JPAC). The Secretariat provides administrative support to the Council, while the JPAC represents public interests from each country and to advise the Council and the Secretariat. The CEC Secretariat is headquartered in Montreal and Victor Lichtinger, a Mexican national, was appointed its Executive Director on July 6, 1994.

For 1995, the CEC budget was approved amounting to \$10,615,000.00. It allocates funding for educating the public on environmental issues, constructing ecosystem maps, protection of indigenous populations and hosting various intergovernmental meetings on topics of importance for the implementation of the environmental agreement.¹⁶ The 1996 budget, amounting to \$9 million is allocated to the same objectives.

In 1995, the Secretariat carried out the first investigation of a North American environmental incident with transboundary implications. On June 6, 1995, a petition was filed under article 13 of the NAAEC by three environmental groups --the U.S. based National Audubon Society, the Mexican based Grupo de los Cien, and the Centro Mexicano de Derecho Ambiental-- requesting a report on the winter 1994-95 mass mortality of between 20,000 and 40,000 migratory waterbirds in the Presa de Silva (Silva Reservoir), located in the city of Leon, in Mexico's Guanajuato State¹⁷. The petitioners requested that the report include an account of actions taken by the government of Mexico in connection with the waterbird deaths, and proposals to control and reduce pollution in the Turbio River Basin, where the Silva Reservoir is located. The Executive Director decided to investigate the issue, because of the destruction of a shared resource, and the CEC Secretariat presented its report to the three Environment Ministers on October 13, 1995¹⁸.

To prepare the report, the CEC Secretariat created the International Silva Reservoir Scientific Panel, composed of experts in water biology, wildlife disease, toxicology, ecology, hydrology, and chemical engineering. The panel was instructed, among other objectives, to report to the Secretariat on the causes of mortality of the waterbirds, to provide advice as to what can be done, and to identify opportunities for international cooperation.

The panel ascertained that there was no single reason for the deaths, but many. All of them have to do with improper disposal of chemicals and untreated sewage, leading to botulism in the birds. In their words, "the overriding cause of mortality of waterbirds at the Silva Reservoir was botulism; however, a small percentage of birds may have died of other

¹⁶Commission for Environmental Cooperation, 1995 Program and Budget, Montreal, Canada, January 19, 1995.

¹⁷ Article 13 of the NAAEC states that the Secretariat may prepare a report for the Council on any matter within the scope of the annual program.

¹⁸ CEC Secretariat, Report on the Death of Migratory Birds at the Silva Reservoir 1994-95, (Submitted to the Council pursuant to Article 13 of the North American Agreement on Environmental Cooperation), Oaxaca, Mexico, October, 1995.

causes."¹⁹ They also noted that the incident should be viewed in a larger context. The Secretariat endorsed the panel's recommendations and suggested to the Council of the CEC several options to prevent or at least minimize the likelihood of similar mass die-offs of waterbirds at the Silva Reservoir.

U.S.-Mexico Border

To improve environmental conditions in the U.S.-Mexico border, two institutions were set up: the Border Environmental Cooperation Commission (BECC) and the North American Development Bank (NADBank). Their primary role is to develop financing packages for environmental infrastructure projects and to provide support for community adjustment and investment. Up to 10% of NADBank capital can be used to provide services in both countries that need not be in the border region.

Locations of BECC and NADBank --Ciudad Juárez, México and San Antonio, Texas, respectively, were announced on March of 1994. At its first meeting on October 12, 1994, the 10 member Board of Directors of the BECC approved \$5 million budget for 1994-1995, financed from government contributions and from the collection of fines imposed on border industries which do not comply with BECC environmental standards.

The NADBank became fully operational on February 15, 1995, when Alfredo Phillips Olmedo, a Mexican national, was appointed director. The U.S. and Mexico will each contribute \$225 million to be paid in four equal annual installments between 1995-98. On the U.S. side, congressional funding for the bank has been difficult, but the contribution has been approved thus far. On Mexico's side, the economic crisis has raised questions about the bank's future.

Engaging in substantial lending operations in the short term has proven a more difficult process than originally expected. To date, the NADBank is considering funding three projects identified in Mexico, California, and El Paso.

2. The North American Agreement on Labor Cooperation (NAALC)

The North American Agreement on Labor Cooperation promotes the enforcement of national labor laws and transparency in their administration. The NAALC created both trilateral and domestic institutions. The Commission for Labor Cooperation is trilateral and consists of a Ministerial Council and a Secretariat. The domestic institutions are the National Administrative Offices (NAOs) in each of the countries and governmental advisory committees.

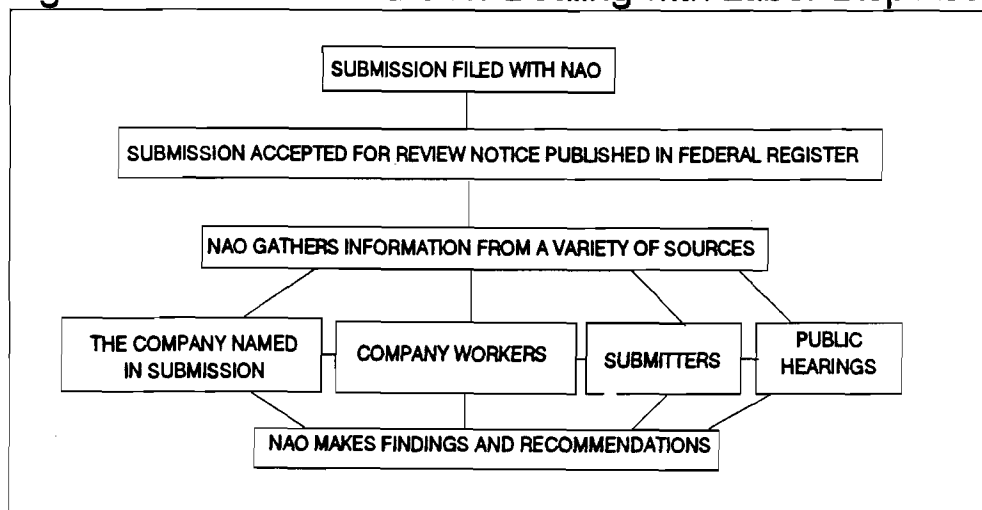
¹⁹ Ibid., p.4

The Council oversees the implementation of the agreement, promotes cooperative activities and directs the work of the Secretariat. On February 28, 1995, John S. McKennirey, a Canadian national, was appointed the first Executive Director of the Secretariat, located in Dallas, Texas. The cooperative work program of the NAALC in 1994 focused on four major areas: occupational safety and health; employment and job training; productivity and quality; and labor law/worker rights. The first activities carried out include five joint technical seminars, two workshops, and a cooperative conference on labor law. In 1995, cooperative work focused on projects related to labor law and industrial relations, workplace safety and health, employment, training and productivity in the three NAFTA countries.

The U.S. National Administrative Office was established on January 1, 1994, within the Bureau of International Labor Affairs of the Department of Labor and Irasema Garza was appointed director. The U.S. NAO supports trilateral cooperative activities, maintains a public information center and receives and reviews petitions concerning labor law compliance in Mexico and Canada.

NAALC's goal is to try to resolve labor issues cooperatively, since the agreement mandates that labor conflicts first be discussed between the National Offices (NAOs). If an issue cannot be resolved at that level, it is then brought before the Ministerial Council. The NAO of each country provides a focal point for the receipt and review of submissions on labor law matters in the other two countries. The focus of these inquiries is to determine whether the information presented substantiates allegations that the government in question is failing to enforce its own labor laws. The process is divided into the following stages:

Figure 5: NAO Procedure for Dealing with Labor Disputes



Source: U.S. Department of Labor, National Administrative Office

The U.S. NAO has received four complaints regarding enforcement of Mexican labor law.²⁰ Two submissions were accepted for review on April 15, 1994. One was filed by the International Brotherhood of Teamsters, AFL-CIO, against the operations of Honeywell Manufacturas de Chihuahua, in Chihuahua, Mexico, concerning freedom of association and the right to organize (submission #940001). The other was filed by the United Electrical, Radio, and Machine Workers of America (UE) against General Electric in Ciudad Juarez, Mexico, concerning freedom of association and the right to organize (submission #940002).

A joint public hearing was held on both submissions, on September 12, 1994 in Washington D.C, to allow interested parties to present additional information through testimony. The employees alleged that production personnel were fired, motivated by the desire of the companies to block the formation of labor unions. According to the companies, the terminations were the result of downsizing, or failure on the part of workers to perform their duties according to established rules. The companies stated that they had complied with Mexican labor law in the separations and paid the required severance payments due to their employees.

The focus of the NAO review was primarily on the Government of Mexico's promotion of compliance with and effective enforcement of labor laws, which guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights. On October 12, 1994, the NAO issued a report concluding that the information gathered in reviewing these two submissions did not reveal that the Mexican government had failed to promote compliance with or to enforce specific labor laws. The NAO did not recommend ministerial consultations for either case. The NAO recommended, however, that the three countries work together to develop cooperative programs regarding freedom of association and the right to organize, while each should undertake a public information and education program.

A third submission was accepted for review on October 13, 1994. Submission #940003 was filed jointly by the International Labor Rights Education and Research Fund, the Asociación Nacional de Abogados Democráticos, the Coalition for Justice in the Maquiladoras, and the American Friends Service Committee, against the maquiladora operations of the Sony Corporation, doing business as Magnéticos de México (MDM), in Nuevo Laredo, Tamaulipas. The allegations concern the freedom of association, the right to organize, and minimum employment standards related to hours of work and holiday work. The latter was not accepted for review.

On February 13, 1995, the NAO held a public hearing in San Antonio, Texas on the Mexican government's fulfillment of NAALC obligations. In April, 1995, the NAO determined that trinational programs should be organized to prevent the dismissal of employees for union related activities. The NAO also requested continued research

²⁰ The fourth complaint was accepted for review on November 4, 1994 but the submission was withdrawn on January 19, 1995.

regarding allegations of police brutality in terminating work stoppages. Ultimately, the U.S. NAO recommended ministerial consultations be held to address the operation of the union registration process.

Ministerial consultations were held among the three parties, on June, 1995, with the following results: the development of a work program by NAOs to improve public understanding and implementation of union registration procedures; the initiation of a study of labor law on union registration by the Mexican NAO; and a plan for Mexican labor officials to meet with plant workers to inform them of "the remedies available to them under Mexican law regarding union registration." ²¹

The enforcement of U.S. labor laws also came under scrutiny and led to ministerial consultations. A complaint was filed on February 9, 1995 by the Telephone Workers Union of Mexico (STRM) at the Mexican Administrative Office against Sprint Corporation regarding the closing of a San Francisco subsidiary on July 14, 1994. This case represents the first instance in which a Mexican trade union initiated a legal action in support of U.S. workers.

Allegedly, the San Francisco telemarketing unit fired 235 Hispanic workers as they were preparing to vote on joining the Communication Workers of America (CWA). Sprint Corporation stated that the reason for closing down the plant was related to unprofitability and not union activity.

On July 18, 1995, the workers argued before an Administrative Law Judge (ALJ), that the firm was closed to impede the formation of a union, in violation of freedom of association and right to organize laws. The ALJ found that the firm had engaged in activities that interfered with the employees rights. However, the ALJ also found that the closure of the facility was undertaken for lawful business considerations. The case is now pending appeal to the National Labor Relations Board.

For its part, on May 31, 1995, upon concluding its review, the Mexican National Administrative Office recommended ministerial consultations between the Secretary of Labor and Social Welfare of Mexico and the U.S. Secretary of Labor. On December 15, 1995, the U.S. and Mexican governments spelled out a plan to address the public submission, which included a study on the effects of sudden plant closing to be undertaken by the NAFTA labor secretariat in Dallas, and a public forum on plant closings and worker rights, to be held by the U.S. Department of Labor.

The Transitional Adjustment Assistance Program

The NAFTA Transitional Adjustment Assistance Program (TAA) was implemented in

²¹ U.S. Department of Labor, U.S. National Administrative Office North American Agreement on Labor Cooperation - NAO Submission #940003, April 11, 1995.

January 1994, to assist U.S. workers dislocated because of increased imports from or production shifts to Mexico or Canada. The program provides affected workers with both rapid and early response to the threat of unemployment and the opportunity to engage in long-term training while receiving income support.

To be eligible for the NAFTA-TAA program, a worker must be laid off, or forced to work part-time, as a direct result of increased imports from Mexico and Canada, or if there is a shift of U.S. production to those countries. If the manufacturer's production has declined in direct response to imports from Mexico or Canada, workers at that firm are then eligible for assistance. The program also covers workers in companies that are indirectly affected by trade with Mexico or Canada. For instance, it has a provision for family farmers and farm workers who are adversely affected by NAFTA, but who do not qualify for unemployment compensation.

The responsibility for investigating if the reasons for a worker's layoff are related to NAFTA is shared by the governor of the state where the workers' company is located and the U.S. Department of Labor. When the state receives a petition for assistance, the governor makes a preliminary finding as to whether the petition meets certain eligibility criteria.

Services provided by the NAFTA-TAA program include: rapid response and basic readjustment services; employment services; training; income support; job search; and, relocation allowances. In order to receive any of these services a petition must be filed by a group of three or more workers, their union, or a duly authorized representative.

Within the first 2 years of the TAA program, 617 petitions were filed, of which 334 were certified as NAFTA related, covering approximately 46,000 workers. Of these 334 certifications, 198 of them were based on a shift in production from the U.S. to Mexico or Canada, while the rest were based on increased imports.

