

# **NORTH AMERICAN FREE TRADE ASSOCIATION AND THE ENVIRONMENT**

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## **Summary**

The North American Free Trade Agreement (NAFTA) that came into being January 1, 1994 establishes a free trade area encompassing Canada, Mexico, and the United States. This landmark agreement aims to eliminate trade and investment barriers within the region and advances the process of regional trade integration throughout the Americas. Over its first five years, total regional trade has risen from US\$289 billion in 1993 to US\$507 billion in 1999. While stimulating regional trade and investment, NAFTA also raised public concern for potentially adverse regional effects on the environment and social conditions arising from amplified trade and investment. Reflecting these

concerns, NAFTA's several side agreements on labor and environment aim at monitoring labor and environment conditions in the North American region, promoting tri-national cooperation on labor and environmental issues, and bolstering environmental infrastructure in the USA-Mexico border region. While NAFTA's specific environmental impact remains disputed, its environmental institutions have proven their worth and warrant further strengthening in order to ensure that environmental values are taken into consideration as regional economic integration proceeds.

## **1. Introduction**

In December of 1992, Canada, Mexico and the United States of America entered into a historic trade pact, the North American Free Trade Agreement (NAFTA). This agreement, which came into force 1 January 1994, is considered one of the most comprehensive frameworks regarding trade and investment ever signed between large sovereign countries.

## **2. NAFTA Overview and Background**

NAFTA is intended to facilitate trade and investment throughout North America by eliminating tariff and other trade barriers on most goods produced and sold in North America. By removing barriers to the efficient allocation of economic resources, it is expected to generate long-running economic gains for the three member countries. Intra-industry trade and co-production of goods across borders are also expected to increase, leading to enhanced specialization and greater productivity. Many duties were immediately eliminated when NAFTA took effect with remaining tariffs and barriers to trade to be phased out over a period of 15 years.

NAFTA was built upon the 1989 Canada-US Free Trade Agreement, which eliminated or reduced many tariffs between the two countries. NAFTA is broader in scope, both with the addition of Mexico and with the issue areas covered, and supersedes the 1989 agreement. In December 1992, NAFTA was signed by the leaders of the member countries: Brian Mulroney of Canada, Carlos Salinas de Gortari of Mexico and George Bush of the US. Lengthy debates within the three member countries' legislatures followed, with fierce opposition coming from labor and environmental supporters. In response to the voiced concerns, in 1993 the three legislatures approved not only NAFTA, but also two supplemental agreements addressing labor and environmental issues.

### **2.1 NAFTA's Aims**

The major aim of NAFTA is to eliminate barriers to trade in and facilitate the cross border movement of goods and services between the member countries. Other objectives include the promotion of fair competition in North America, the increase of investment opportunities among the member countries, and the provision of adequate and effective protection and enforcement of intellectual property rights in Canada, the USA and Mexico. Finally with NAFTA, the member countries worked to create effective procedures for the implementation and application of their stated aims and

establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of the Agreement.

## **2.2 NAFTA's Institutions**

The central institution of NAFTA is the Free Trade Commission. The Commission consists of cabinet-level representatives from the three member countries. It supervises the implementation and further elaboration of the Agreement and helps to resolve disputes over interpretation of the Agreement. Overall, political direction for NAFTA is provided by the NAFTA Commission. NAFTA Deputy Ministers of Trade meet twice a year to provide general oversight. However, day-to-day management of NAFTA is provided by the three senior trade department officials designated by each country. The Commission also oversees the work of NAFTA's committees and working groups.

Other bodies delineated in the Agreement include more than 30 committees and working groups. These bodies facilitate trade and investment and ensure the effective implementation and administration of NAFTA. They also help to smooth the implementation of the Agreement and provide forums for discussion of ideas and the airing of disagreements.

## **2.3 Dispute Settlement**

The majority of trade and investment among the member countries flows freely across borders. Nonetheless, some disagreements are bound to arise in such a large trading relationship among three diverse, sovereign nations. Included within NAFTA are procedures meant to avoid or resolve disputes between parties to the agreement. NAFTA created an impartial, rules-based system to resolve disputes between or among the member countries. NAFTA's dispute settlement process involves three major dispute settlement provisions: committees, panel review, and transparency in laws.

NAFTA contains mechanisms such as committees and working groups, designed to help avoid conflict and to help settle disputes effectively when they do arise. NAFTA's committees and working groups each deal with key trade-related issues, providing member countries with a channel for discussion of concerns. Further, these committees and working groups open a forum for consultation on various trade-related subjects increasing the general levels of understanding and reducing delays. These committees and groups are composed of knowledgeable officials from the Canadian, Mexican and US governments.

NAFTA's dispute settlement process also contains a dispute review; however, members are encouraged to make every effort to resolve disputes within meetings or discussions before requesting a review. The dispute review contained within NAFTA's dispute settlement process gives those involved in a dispute an opportunity to air their concerns in face-to-face consultations. Only if these consultations fail to produce mutually agreeable solutions will the formal institutional panel review process be pursued.

Finally, NAFTA member countries are required by the agreement to increase the level of transparency in a number of laws including their trade remedies determinations. With

this increased level of transparency, it is expected there will be an increase in public participation, and a reduction in the potential for actions such as arbitrary anti-dumping.

## **2.4 NAFTA and the WTO**

Pursuant to NAFTA's objectives as set forth in Article 101, NAFTA is to operate in a manner consistent with the General Agreement on Tariffs and Trade (now the World Trade Organization, or WTO) Article XXIV. NAFTA's Article 301 fully incorporates GATT (WTO) Article III providing that each member country will accord national treatment to the goods of the other Parties. Should inconsistencies be found between NAFTA and WTO provisions, however, the NAFTA provisions are to apply (NAFTA Article 104). NAFTA's Dispute Resolution Process is similarly obligated to operate in a manner consistent with the WTO. Disputing parties may in fact elect to have their dispute heard in either a NAFTA or WTO dispute resolution forum, except that, if the parties are unable to agree on a common forum the dispute will be heard by a NAFTA panel.

## **3. NAFTA Implementation**

Assessment of NAFTA's impacts is a complex undertaking. First, it is difficult to isolate the effects of NAFTA from other trends and events. Second, the agreement's provisions are being phased in over a nearly 15-year period, leaving much in flux, and making it difficult to assess the impacts of NAFTA. Despite problems disentangling trade-specific events from other influential events, the NAFTA Commission notes that trade among the three countries grew by about 75% from 1994 to 1999, showing that, for whatever reason, there is a substantial increase in commerce among the member countries.

In the years since NAFTA went into effect, commerce among the NAFTA countries has mushroomed. Commerce between Mexico and Canada nearly doubled in NAFTA's first five years, making Mexico Canada's second largest trading partner. Trade between Mexico and the USA rose 113% from 1993 to the end of 1998, NAFTA's fifth year. Finally, trade between the USA and Canada has also increased. Volume is one thing, however, and overall success is another. There have been problems: serious concerns about fairness and beneficiaries, bureaucratic delays, trade disputes and other growing pains.

### **3.1 Employment and Labor**

NAFTA's impact on employment remains a matter of debate, particularly within the US. For both Canada and the US, unemployment has dropped, however issues such as the continued expansion of the US economy have added to this trend, leaving questions about the exact numbers of jobs lost and gained due to NAFTA. Most people agree, however, that NAFTA has put pressure on low-skilled workers in both the USA and Canada.

The story is different for Mexico. Within Mexico, the rapid development of the *maquila* industry, in-bond assembly plants, has vastly contributed to employment opportunities.

Employment in the *maquila* sector grew nearly 11% in 1998 alone, and has doubled since the beginning of NAFTA. Unemployment in Mexico has fallen from around eight per cent to two and a half per cent through the fourth quarter of 1998. These data suggest that NAFTA has increased the contact between Canada and Mexico and the USA and Mexico and that this increased contact has helped Mexico increase its level of employment.

### 3.2 Transportation

Few of NAFTA's issue-areas are as troubled as transportation. NAFTA's proponents touted an efficient world of harmonized trucking practices, expedited customs operations, new and better highways and high-grade railroads connecting producers and consumers across North America. In these land transportation services, however, commitments have yet to be implemented.

The failure to implement the agreement under the NAFTA timetable has become intertwined with the failure to solve a number of other NAFTA-related transportation issues. These include: removing restrictions on scheduled passenger bus service across the USA-Mexico border, providing expanded operational capabilities in Mexico for USA and Canadian small package delivery operations and safety issues, in particular, for Mexican trucks crossing into the US.

According to NAFTA rules, permit-carrying Mexican drivers were to have complete access to US border states on 18 December 1995, subject only to requisite customs inspections at the border and compliance with state and federal insurance, safety, and environmental standards, with full access to all US states and Canada by the year 2000. The US government has opted to indefinitely delay the process pending further negotiations related to the security and safety of US highways.

Despite these problems with trucking, other areas of transportation have been more successful. Border infrastructure development has accelerated since NAFTA. More bridges and border crossings, renovation and construction of railroads, highways and ports have been built.

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### **Biographical Sketches**

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