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## NORTH AMERICAN FREE TRADE AGREEMENT

GENERAL DATA SUBMITTED WITH THE DEPARTMENT OF FOREIGN AFFAIRS OF MEXICO:

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CANADA  
UNITED STATES OF AMERICA  
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**Country Members:** United States of America; Canada; Mexico

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## **NORTH AMERICAN FREE TRADE AGREEMENT**

### **BACKGROUND**

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The North American Free Trade Agreement (NAFTA) was the result of a long-time process involving meetings and discussions at an international level, which were aimed at creating one of the biggest commercial regions of the world.

In 1990, the Presidents of Mexico and the United States of America decided to start negotiations about a comprehensive agreement on free trade between both countries. In September of that same year, Canada decided to enter said negotiations, thereby starting trilateral tasks intended to create a free trade area in North America.

In 1991, the presidents of the three countries announced their decision to create the NAFTA, and a first meeting for negotiations was held in June of that same year. Said negotiations were held up to August 11, 1991. However, an agreement was not approved by the Legislative Power of the said three countries until 1993. The agreement came into force on January 1, 1994.

### **OBJECTIVES**

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The NAFTA is a regional agreement executed by the governments of Canada, Mexico and the United States to create a free trade zone.

Based on the three zone principles of national treatment, most favored national treatment and transparency, the objectives of the agreement are as follows:

- To remove obstacles to commerce and to ease the cross-border trade in goods and services.
- To promote the conditions for fair competence within the free trade region.
- To substantially increase investment opportunities.
- To adequately and effectively protect and enforce intellectual property rights in the territory of each of the country members.
- To create effective procedures for implementing and enforcing the agreement, for jointly managing the same and solving disputes.
- To establish guidelines for a subsequent trilateral, regional and multilateral cooperation directed to enlarge and improve benefits.

The central chapters of the agreement refer to: trade in goods, governmental purchases, intellectual property, investment and services, financial services, revision and settlement of special and general disputes, environmental and labor agreements and taxing exemptions and provisions.

## NAFTA TEN YEARS LATER

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The NAFTA has become one of the pillars for Mexican economic development and, further, it turned North America into one of the more dynamic and integrated commercial regions of the world.

The proposed objectives have not yet been fulfilled at a 100%, but significant advances have been made. Some of the results obtained are the following:

- ✓ Direct foreign investment flows could be captured and commerce has increased.
- ✓ Mexico has become the eighth world commercial power and one of the most important ones in Latin America.
- ✓ Mexico has tripled exports and has increased imports by 161%.
- ✓ Total commerce among Mexico, United States of America and Canada increased by 117%.
- ✓ Commerce and investment opportunities have increased, both for Mexican and foreign companies.
- ✓ A 50% of direct foreign investment in North America is intra-regional.
- ✓ The United States of America and Canada have relocated several production centers within North America.
- ✓ The NAFTA has helped in the establishment of strategic alliances aimed at facilitating technology transference. This has encouraged the “technological leveling” among the three countries.
- ✓ Producers benefit from their better access to raw material, at lower costs.
- ✓ Through the NAFTA , the North American Environmental Cooperation Agreement and the North American Labor Cooperation Agreement were created, both of which have been of essential importance to the three countries.

## NAFTA AND INTELLECTUAL PROPERTY

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The NAFTA contains a broad chapter related to the rules the three countries are to follow concerning intellectual and industrial property matters.

In general, each of the parties shall grant within its territory and to the nationals of the other parties “*adequate protection and defense for intellectual property rights, though securing that steps taken in that regard shall not become an obstacle to trade*”.

Likewise, each of the parties shall enforce at least said chapter on intellectual property rights, as well as substantive provisions of the Geneva Convention for the Protection of Phonogram Producers Against Unauthorized Reproduction of their Phonograms (Canada is not yet a member thereto), the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention on Industrial Property Protection, The International Convention for New Plant Variety Protection (UPOV Convention). [ *It is to be noted that the Agreement establishes that the parties shall do their best to adhere to said conventions if they are not already a member thereto on effective date of the NAFTA*].-

Each of the country members shall be entitled to enlarge the protection of their local legislation, provided that such protection is consistent with the agreement. Further, each country



member shall give nationals of the other country members a treatment no less favorable than that given to its own nationals.

Likewise, some specific rules refer to protection of copyrights, phonograms, encrypted program-carrying satellite signals, trademarks, patents, layout designs of semiconductors integrated circuits, industrial secrets and trade secrets, geographical indications and industrial designs.

The agreement sets forth that each of the parties shall guaranty that its internal legislation will contain procedures in defense of intellectual property rights, which will allow the adoption of effective measures against any act infringing intellectual property rights, that such procedures in defense of said rights will be fair and equitable and not necessarily complex or expensive and that they will not involve unreasonable terms or unjustified delays.

Regarding specific procedural aspects, each of the country members shall provide said right holder with civil court proceedings for the defense of any intellectual property right, and shall make arrangements to have its judicial authorities vested with the power to order preliminary measures. Criminal proceedings and penalties shall be provided for, which shall be enforced at least in cases of trademark fraudulent infringement or copyright piracy at a commercial level.

Several guidelines are given as related to the defense of intellectual property rights at the country borders, such as adopting procedures that will enable the holder of the right to file a written request with the pertinent authority to have the free trade of infringed or piracy goods, among others, suspended by the customs authorities.

Finally, and pursuant to said chapter, the parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities.

## NAFTA TODAY

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During the last 10 years, advances have been continuously made in the agreements reached through the NAFTA, such as the creation of institutions generating healthy and transparent business environments.

Committees and working teams have been created, which are made up by experts from the three countries, who are specialized on the field in which they are engaged and help to avoid potential trade conflicts.

Source: Dr. Carlos Pérez De La Sierra, Calderón y De La Sierra, Mexico City, Mexico.  
Verifier: Moeller & Co., Buenos Aires, Argentina.