

# WORLD TRADE ORGANIZATION

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## NORTH AMERICAN FREE TRADE AGREEMENT

### Questions and Replies - Goods

#### Addendum

Document WT/REG4/1 contains joint replies of the Parties to the North American Free Trade Agreement (NAFTA) to questions received following the invitation in GATT/AIR/3607, of 29 June 1994, and GATT/AIR/3642, of 24 October 1994. This document reproduces additional questions addressed to the Parties, during or after the meeting of the Working Party on NAFTA, on 20-21 July 1995.

Questions are set out in bold type and replies in light type. The numbers in the margin refer to the questions and replies contained in document WT/REG4/1. When referring to more than one question a hyphen is used, indicating "through" and a slash indicates "and". For example, 3.-5./9. means questions 3 through 5 and question 9.

Responses provided by Canada and the United States to questions on intellectual property-related matters are found in Annex 2.

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**I. GENERAL PART**

**1. Referring to 'No economic sectors are excluded from the NAFTA':**

- (a) **Is our understanding correct that the NAFTA Parties were unable to set out common rules for the agricultural sector due to the extreme complexity of the negotiations in this area?**
  - (b) **If such is the case, will the existing rules of the agricultural sectors already in force, e.g. those of the U.S.-Canada FTA, still continue to apply as part of the NAFTA between the U.S. and Canada?**
  - (c) **If so, could the agricultural sector make a de facto exclusion from the NAFTA as no new agreements on agriculture are stipulated in the NAFTA? In other words, the NAFTA supposedly includes the agricultural sector through simply adding those existing rules to the NAFTA.**
- (a) No, this understanding is not correct. Section A of Chapter Seven sets out a number of common rules for the agricultural sector. Section B, on sanitary and phytosanitary measures, consists exclusively of common rules; these apply to agricultural trade as do numerous other provisions of the NAFTA. Chapter Seven also contains some provisions that are applicable only to some of the NAFTA parties. For example, Canada and the United States generally agreed in the context of the NAFTA to retain their existing market access agreement on agriculture, as provided in the Canada-United States Free Trade Agreement. The NAFTA also provides other separate bilateral market access agreements on agriculture, within the context of trilateral rules, for Canada and Mexico, and for the United States and Mexico.
  - (b) Several provisions of the Canada-United States Free Trade Agreement were incorporated into and continue to apply as part of NAFTA.
  - (c) The agricultural sector is covered by the NAFTA as described above and is therefore not a de facto exclusion from the NAFTA.

**2. The answer to question 2 provides examples of specific areas of NAFTA where the a Parties have agreed on particular definitions of what a “good of a Party” is. The questions, however, seems to be that the wording of Article 201 could, in fact, leave to the discretion of the NAFTA Parties the possible establishment of other criteria for different purposes and also to introduce, at their will, changes in the existing criteria. If, at the end of the day, what article 201 says is that “goods of a Party means...such goods as the parties may agree”, operators from non-NAFTA countries (and presumably those from NAFTA too) may have to face a serious problem concerning the stability, transparency and predictability of the NAFTA product coverage. Even if the NAFTA Parties refrain from having recourse to this provision, the fact is that the text of the NAFTA Treaty seems to enable them to do so. We would appreciate comments on these points.**

As is the case, to our knowledge, in all other similar agreements, the NAFTA partners may jointly agree to change any provision of the NAFTA.

- 3.-5. The answer to those questions does not tackle the basic issue raised in particular by question 3, which is not other than the actual impact of NAFTA as regards trade creation and trade diversion effects. Though the academic literature on those questions is fairly abundant and their findings seem to be on the lines of the IMF document quoted in this answer, we note that this document dates back to May 1993. The approach could only be theoretical, since no empirical verification could obviously be undertaken at that time. The empirical approach is, however, the one which is pertinent for our analysis. Would it be possible to have this aspect developed in detail by the NAFTA parties. Could we have their quantified analysis concerning the trade flows which are likely to have been created and diverted by the application of the Agreement until now?**

See answer to question 5.

- 5. Please provide the relevant data to support the views of the NAFTA Parties referred to in the fourth and fifth paragraphs.**

**Referring to "our view is that a number of factors suggest ..." in the fourth paragraph, please explain in a concrete manner the meaning of the word "factors".**

**Referring to the fifth paragraph, mention is only made of a Canadian assessment of the U.S.-Canada FTA in 1988. We would also like to have a similar assessment from the United States?**

Available data on total intra-NAFTA trade and NAFTA trade with the rest of the world seem to be consistent with the trade creation effects expected from NAFTA. For example, total intra-NAFTA trade increased from US\$288,117 million to US\$338,089 million between 1993 and 1994. This 17.3% increase in intra-NAFTA trade was accompanied by similarly high levels of importation into NAFTA countries from non-member countries, as indicated by the chart below:

Imports into NAFTA Countries from Non-NAFTA Sources, Percentage Change 1993-1994

Country of destination	Source of imports		
	World	Industrial Countries	Developing Countries
U.S.A.	14.9%	12.4%	18.4%
Canada	12.3%	12.6%	13.8%
Mexico	19.6%	19.6%	21.6%

Source: Direction of Trade Statistics, IMF 1995.

Third-country imports into Canada and the U.S. since the FTA in 1988 also illustrate these positive effects. For Canada, on average (1988-1994) these grew by 10.9% from developing countries, 11.8% from Asia, and 7.2% from industrial countries. For the U.S., the average increases were 9.2%, 10.1%, and 6% respectively.

The above data thus show that since 1994 NAFTA countries have begun to increase their imports from third countries at higher levels than the average import increases for the period 1988-1994. These early results are consistent with the view that NAFTA is likely to produce a positive effect on imports from third countries.

- 7./8. The answer to those questions seems to imply that trade diversion effects have been avoided because “in creating a free-trade area, rather than a customs union, NAFTA Parties have reduced barriers to member countries without raising them o others.” However, trade diverting effects will appear, independently from the stability of the ergo omnes tariffs, if a tariff differential is created because of the elimination or reduction of tariffs within the free-trade area. It is the tariff differential thus generated that really matters. The importance of the trade deviation effects will depend on the degree in which the tariff differential are translated into price differential and on the value of the price-elasticities of demand for the goods concerned. Since in the view of these considerations the answer given does not seem satisfactory, have the NAFTA Parties an alternative explanation to provide?**

**Could the NAFTA Parties further elaborate in their statement that “the rules of origin have been constructed so as to avoid trade diversion?”**

As envisioned in Article XXIV:4, the NAFTA was intended to facilitate trade between NAFTA members, not to raise barriers against third countries. Further, in accordance with Article XXIV:8(b), duties on substantially all the trade between NAFTA Parties have been or are in the process of being eliminated. If one follows the logic of the question, then by definition all agreements which provide a tariff differential are trade diverting. In fact, as we know from experience, this is simply not the case.

The rules of origin were designed to determine which goods were of North American origin for purposes of eligibility for NAFTA preferential tariffs.

- 12. The reply states that "It is premature to assess the impact on production inside the NAFTA area ...". However, Japan does not consider it premature to assess, as three years have already elapsed since the Agreement was substantially reached in August 1992. Bearing this in mind, please provide detailed explanations of the effects, based on data achieved and not just on simple speculation.**

[No reply received.]

- 13. In their answer to this question, the Parties mistakenly imply that free-trade areas, contrary to customs unions, could not become an instrument of managed trade. is our view that this aspects has to be examined on a case-by-case basis.**

**Do the parties consider, for example, that the “fibre first” rule of origin could lead to restrictions on some products in the textiles sector it might demonstrate that free-trade areas can also be significant factors of managed trade?**

**Could the Parties clarify their answer to the original question with specific reference to NAFTA?**

The NAFTA rules of origin are intended to define which goods are eligible for preferential treatment under the NAFTA.

**14. Please explain specific cases or examples which are pre-supposed under Article 103 of the NAFTA.**

**If the U.S.-Canada FTA contains a similar article, please provide specific cases or examples that have occurred or disputes raised under such article.**

**Referring to the contents of the reply, is our understanding correct that in the case where the NAFTA Agreement will prevail in pursuit of a solution among parties, that solution is pursued only to the extent that it does not violate the WTO Agreement.**

As Article 101 of the Agreement makes clear, the NAFTA Parties have established a free-trade area consistent with Article XXIV of the GATT. As such, the NAFTA countries are fully meeting all of their obligations to third parties, and to each other, under the GATT and the WTO.

Article 103(1) accordingly affirms the existing rights and obligations of the NAFTA Parties with respect to each other under the GATT and other agreements to which they are Parties. "Existing" is defined in Article 201 as in effect on the date of entry into force of the NAFTA (January 1, 1994).

Article 103(2), by providing that the NAFTA prevails in the event of any inconsistency between it and such other international agreements (except as otherwise provided in the NAFTA), in no way alters the WTO rights of obligations of the NAFTA Parties either with respect to third parties, or with respect to each other.

The Canada-U.S. FTA had a similar provision. FTA Article 104 provided as follows:

- "(1) The Parties affirm their existing rights and obligations with respect to each other, as they exist at the time of entry into force of this Agreement, under bilateral and multilateral agreements to which both are party.
- (2) In the event of any inconsistency between the provisions of this Agreement and such other agreements, the provisions of this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement."

No FTA disputes arose under this Article.

It is worth recalling the answer provided by the FTA Parties to a question by one of the GATT Contracting Parties about FTA Article 104(2):

"The GATT continues to apply in all respects between Canada and the USA except to the extent that the FTA accords to either Party treatment more favourable than that previously accorded under the GATT, in line with GATT Article XXIV. Article 104.2 relates only to questions at issue between the two Parties to the Agreement. It simply clarifies that, insofar as resolution of such questions is pursued under the provisions of the Agreement, the provisions of the Agreement prevail over the provisions of any other agreement. The FTA does not alter the rights and obligations of Canada or the United States under the GATT with respect to third countries. Nor does it alter the rights and obligations of Canada and the United States with respect to each other under the GATT. The FTA provides a separate set of rights and obligations that a free-trade partner may invoke in particular cases instead of pursuing a claim under the GATT." [L/6739, 29 October 1990]

This is fully consistent with the rights and obligations of the NAFTA Parties under NAFTA Article 103.

The replies to questions 208 and 211 reinforce the point that NAFTA does not affect the rights and obligations that the NAFTA Parties have under the WTO with respect to other WTO Members.

- 18. According to the reply, the U.S.-Canada FTA has been suspended, except where otherwise provided for in the NAFTA, as of the date of entry into force of the NAFTA. As there seems to be a substantial change in the U.S.-Canada FTA, has such change been officially notified to the WTO Secretariat?**

As noted in our earlier reply, the FTA was suspended on the date of the entry into force of the NAFTA for Canada and the United States, with the suspension to remain in effect for such time as the two countries are Parties to the NAFTA, subject to an Exchange of Letters that identified transitional arrangements with respect to dispute settlement proceedings under Chapters Eighteen and Nineteen of the FTA. Certain provisions of the FTA were incorporated by reference into the NAFTA, and continue to apply as between Canada and the United States to the extent specified by the terms of the incorporation. In addition, Canada and the United States agreed to the continuing application, as between the two countries, of a few provisions of the FTA that were not incorporated into the NAFTA.

## **II. TRADE IN GOODS**

### National Treatment and Market Access (Chapter 3)

- 19. It can be read in the answer to this question that the only significant exception listed in Annex 301.1<sup>1</sup> is the exclusion of trade in marine vessels. Why is this the case and the other exceptions are not significant? Could you please describe the nature of the restrictions currently being applied in respect of those specific cases, including trade in marine vessels.**

[No reply received.]

- 21. The answer to this question apparently means that, for all the matters covered by the “Agreement between Canada and the European community covering Trade and Commerce in Alcoholic Beverages,” dated February 28, 1989, Canada grants its NAFTA partners the same treatment applied to the Community, with the exception that “distilled spirits” are defined in a different manner. Is this interpretation correct? If not, please explain why. Which is the reason for the different definition of “distilled spirits.”**

The interpretation is correct that for all matters covered by the “Agreement between Canada and the European Community covering Trade and Commerce in Alcoholic Beverages”, dated 28 February 1989, Canada grants its NAFTA partners the same treatment applied to the Community, with the exception that “distilled spirits” are defined in a different manner. The Canada/EC agreement came into effect in 1989. Article II (distilled spirits) of the agreement requires Canada to provide national treatment for distilled spirits of the Community with respect to listing, de-listing, distribution and markup. Notwithstanding national treatment, Article II allowed Ontario a markup differential for Ontario brandy,

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<sup>1</sup>Would it not be Annex 301.3? Our efforts to identify Annex 301.1 have been fruitless and there is no reference to it, as one would expect, in Article 301. The same applies to Annex 301.2.

to be eliminated in stages by January 1, 1993. As the NAFTA agreement was being negotiated in 1993 and mirrored the Canada/EC agreement, Canada wished to make it clear that there would be no preference for Ontario brandy in the NAFTA agreement. Therefore, the definition of "distilled spirits" was treated differently under NAFTA.

- 22. The answer to this question seems to imply that the exceptions applied to dairy, poultry, egg products, sugar and sugar-type syrup products in trade between Canada and Mexico still leave unaffected "substantially all trade" between those two countries. This is an important point which would require, in our view, some further justification taking into account the fact that a simple consideration of current trade flows may not be relevant, account taken of the restrictions currently being applied to trade in those products.**

The NAFTA is fully consistent with Article XXIV:8 (b) because substantially all trade between the Parties will be free at or before the end of the transition period. No economic sector has been excluded from NAFTA. The few products that were excluded between certain NAFTA Parties represent a very minor proportion of total trade between NAFTA Parties.

- 23./ Although trade in products subject to the 15 year phase-out calendar represent a very low percentage of total trade between the NAFTA members, it is not clear whether this situation may reflect the effect of restrictions being currently applied. Could it be possible to have a detailed description of the current situation in this respect?**

The Understanding on the Interpretation of Article XXIV not only states that "the reasonable length of time...should exceed 10 years only in exceptional cases," it also emphasizes that "in cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of need for a longer period." Therefore could the parties provide a full and detailed explanation on the need to exceed the 10 year period for the products concerned?

See answer to question 24.

- 24. According to the Understanding on the Interpretation of Article XXIV of the GATT 1994, the "reasonable length of time" should exceed 10 years only in exceptional cases. The reasoning that the 15-year staging is an exceptional case due to the amount of trade being considerably small is not satisfactory, if we take into account that items to which 15-year staging is applied are normally extremely sensitive ones, therefore, in such a case some protective measures may be taken and, as a result, the amount of trade will normally become very small. We would appreciate further explanations as to why the 15-year staging is necessary.**

For the question related to "the effect of restrictions being currently applied", see answer 22.

For the question concerning the "reasonable length of time":

As explained in the original answer to question 29 in document WT/REG4/1: "Within ten years, more than 99% of US imports and virtually all Canadian imports into Mexico will be duty free." Therefore NAFTA as such, that is the Agreement as a whole, will cover "substantially all the trade" "within a reasonable length of time".



Even assuming that the term “within a reasonable length of time” applies at the product level, the relative importance of the products subject to the 15 year tariff phase out category is insignificant (less than 1% of total trade between Mexico and the United States, only 0.0003% between Mexico and Canada, and no trade between Canada and the United States).

In any case, from the point of view of their value or their quantity, it is obvious that the products with a 15 year period are “exceptional cases” within the meaning of paragraph 3 of the Uruguay Round Understanding on Article XXIV. These products (not the NAFTA as such) received a longer phase out in order to facilitate its incorporation within the North American Free Trade Area rather than to exclude them altogether with no time limits for their inclusion.

- 25./ Please provide the statistics of 1993 as well.**  
**26. In what way are these figures likely to change?**

Regarding question 25, the 1993 figures are:

Mexican Imports from NAFTA partners:

1993 World Imports	US\$65,366.6 million	
1993 Imports from U.S.	US\$45,294.7 million	69.29% of total
1993 Imports from Canada	US\$1,175.3 million	1.79% of total
1993 Imports from NAFTA	US\$46,470.0 million	71.09% of total

U.S. Imports from NAFTA partners:

1993 World Imports	US\$580.6 billion	
1993 Imports from Canada	US\$111.2 billion	19.2% of total
1993 Imports from Mexico	US\$39.9 billion	6.9% of total
1993 Imports from NAFTA	US\$151.1 billion	26% of total

Canadian Imports from NAFTA partners:

1993 World Imports	Cdn\$172.3 billion	
1993 Imports from U.S.	Cdn\$114.1 billion	66.2% of total
1993 Imports from Mexico	Cdn\$3.7 billion	2.15% of total
1993 Imports from NAFTA	Cdn\$117.8 billion	68.35% of total

Regarding question 26, the 1993 figures are:

Mexican Imports from preferential partners (1993):

1993 World Imports	US\$65,366,534,000	
1993 Imports from NAFTA	US\$46,470,004,000	71.00% of total
1993 Imports from Colombia and Venezuela	US\$310,923,000	0.47% of total
1993 Imports from Bolivia	US\$16,236,000	0.024% of total
1993 Imports from Costa Rica	US\$21,801,000	0.033% of total
1993 Imports from Chile	US\$130,107,000	0.19% of total
1993 All Trade Agreements	US\$46,949,071,000	71.82% of total

U.S. Imports from preferential partners:

1993 World Imports	US\$580.6 billion	
1993 Imports from NAFTA	US\$151.1 billion	26% of total
1993 Imports from Israel	US\$4.4 billion	0.8% of total
1993 Total preferential	US\$155.5 billion	26.8% of total

Canadian Imports from NAFTA partners:

1993 World Imports	Cdn\$172.3 billion	
1993 Imports from NAFTA	Cdn\$117.8 billion	68.35% of total

These figures for trade with the U.S. are not likely to change substantial over time, as the U.S. and the Mexican, and U.S. and Canadian economies are already quite integrated. Since Mexican trade with Canada, Colombia, Venezuela, Costa Rica, Bolivia and Chile is currently relatively small, it is expected that this trade will become relatively more significant over time.

- 29. What proportion of trade between the Parties is subject to tariff quotas under NAFTA provisions other than Annex 302.2? Please enumerate those provisions and the products affected.**

Neither Mexico nor the United States have tariff quotas in NAFTA provisions other than those specified in Annex 302.2.

- 30. Could the Parties be more explicit on how they intend to comply with the requirements of Article XXVIII in determining the principal and substantial supplier status in the context of this article?**

- 30. In determining principal and substantial supplier status in the context of GATT Article 28, will the trade amount among NAFTA countries be excluded from the factors which determine the status?**

**If not, Japan requests that the trade among NAFTA countries be excluded as countries outside the NAFTA Parties face a disadvantage of higher tariffs over those preferential tariffs applied to products from the NAFTA countries.**

In the event that Article XXVIII is invoked by any NAFTA Party, the principal substantial interest of a member shall be determined by the Members in accordance with such Article and with the Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994.

- 32. The Parties failed to give a concrete answer to the question regarding the measures they will take to ensure that non-preferential suppliers' access would not be eroded through the very substantial margins of preference granted by Mexico in the NAFTA framework. In fact, Mexico seems to be further increasing the margins of preference, thus also increasing the likelihood of trade diversion. In May 1995, Mexico raised tariffs on textiles and footwear from the previously applied level to the maximum level permitted under its WTO commitments. This action was announced as a temporary measure to promote small and medium-sized enterprises. Could the Parties clarify the reasons for his measures?**

**Will the Parties be able to give a firm commitment on the date by which the tariffs will be returned to previous levels?**

**In their answer, the Parties referred to the further negotiation by Mexico of Preferential arrangements. What kind of preferential arrangements are envisaged in the answer to this question? How could these arrangements be compatible with the WTO provisions?**

Mexico's tariffs increases on leather manufactures, clothing and footwear are not only fully compatible with its rights and obligations under the WTO but have nothing to do with the NAFTA Agreement.

This measure was taken to help medium and small-sized enterprises that had been directly affected by massive imports in recent years. Imports of these products increased by 35% average annually from 1990 to 1994. From 1992 to 1994, Mexico's national production of footwear and apparel fell 5.5% and 4.3%, respectively.

WTO does not require a Party to give a "firm commitment on the date by which the tariffs will be returned to previous levels" when such levels are at or under the bound rate. Mexico's indication of the temporal application of this measure is of an autonomous nature.

**32. The application of CIF instead of FOB for the tariff evaluation of products from countries outside the NAFTA would have a similar effect as that of a tariff increase. Would this increase the gap between MFN tariffs and preferential tariffs applied among NAFTA countries?**

This question is not related to the National Treatment principle. Please see the answer to questions 103.-105.

**38. The answer to this question underlines that the provisions of Article 303 of NAFTA "do not alter the MFN tariffs applicable to imports from non-NAFTA countries. Though this is certainly true, the restriction on drawback and duty deferral programmes, is not without effect on the conditions under which goods are imported in the territories of the NAFTA members. Article XXIV:5(b) does not refer to the MFN rates in particular, but more generally to the "duties and other regulations of commerce..." which "...shall not be higher or more restrictive...." than those existing prior to the formation of the free-trade area or interim agreement. In the light of those considerations, we would appreciate further comments from the Parties.**

**39. The same remark applies, mutatis mutandis, to the statement in the answer to this question, that "since there is no increase in MFN tariffs that applies to goods imported into any NAFTA Party from any non-NAFTA country, the new system does not fall within the provisions of paragraph 5(b) of Article XXIV of the GATT." Further comments would also be appreciated.**

**41. Again, the question is in, in our view, whether MFN tariff are affected or not by the NAFTA Treaty, by rather whether the new "regulations of commerce" is "more restrictive" or not than the previous legal framework. What is the opinion of the Parties on this subject?**

Answer to questions 38, 39 and 41:

It is true that Article XXIV, 5(b) does not refer to the MFN rates in particular but, more generally, to “the duties and other regulations of commerce”. But it is also true that what has been said at the end of the original answer to question 38 in document WT/REG4/1 with respect to MFN tariffs for non-NAFTA countries is equally valid for drawback and duty deferral programmes.

Drawback and duty deferral programmes of a NAFTA Party vis-à-vis non-NAFTA parties are not affected by Article 303, since that article applies only to trade between NAFTA Parties. Therefore, the drawback and duty deferral programmes “to the trade of contracting parties not included in such area or not parties to such agreement” could not be considered to be higher or more restrictive than those existing prior to the formation of the North American Free Trade Area. By definition, a programme that is not affected could not be higher or more restrictive than it was before.

The “conditions under which goods are imported into the territories of the NAFTA members” will not be affected. What is going to change due to Article 303 are the conditions under which goods are imported/exported between the territories of the NAFTA members. In other words, not only the duties, but also the “other regulations of commerce” applicable to the trade of contracting parties not included in the NAFTA Agreement will be unaffected.

**42. We would appreciate the opinion of the Parties on the point raised in the second paragraph of this question.**

**Data presented in the answer to question 44 (to which reference is made) refer to the PITEX programme only. We would appreciate further information on other waiver or duty reduction schemes, including, in particular, the Mexican system of “operaciones específicas” (Decreto of 3 February 1982, published in the Diario Oficial of 11 February 1982).**

Although Mexico will not be able to grant waivers of customs duties subject to the fulfilment of a performance requirement as of January 1st, 2001 as set out in Article 304, Mexico can continue to grant waivers on customs duties without demanding the fulfilment of a performance requirement.

Imports of the Maquiladora

Year	Imports (millions of U.S. dollars)
1990	9,404
1991	12,101
1992	15,935
1993	16,442
1994	20,466

43. **Though it is certain that, as the answer reads, any NAFTA party may, in respect of a given products, “apply its MFN tariffs on imports from non-NAFTA countries up to the level of the rates bound under the GATT, this is a valid argument in the context of Article XXIV.6 which established the procedures to be followed when the increase of a bound rate is proposed. Our assessment of NAFTA takes place, however, within the context of Article XXIV.5 where the pertinent reference is to the applied duties and other regulations of commerce. In light of these considerations, we would appreciate further comments from the Parties.**

The pertinent reference under Article XXIV.5 is not to the “applied” duties and other regulations of commerce, but to the “applicable” duties and other regulations of commerce. The word “applied” does not appear one single time in Article XXIV.5. The term “applied rates of duty” was introduced in the Uruguay Round Understanding, and it refers to Article XXIV.5(a) only, that is to customs unions, not to free-trade areas.

44. **Is the PITEX programme still in force? Have amendments been made to it recently? If this is the case, in which sense?**

The PITEX program is still in force. On May 11, 1995, PITEX was amended in order to simplify international trade procedures so that suppliers, that is indirect exporters, could have access to benefits granted to final exporters. The amendment is also intended to grant administrative facilities to medium and small industries that supply materials to industries benefiting from the PITEX program.

45. **There seems to be some sort of logical contradiction between the answer to this question and the explicit exception of the measures set out in Annex 301.2 from the requirement to be in accordance with Article XI of the GATT (Article 309.5). Could the Parties further clarify this point?**

There is no logical or legal contradiction between the original answer to question 45 and measures set out in Annex 301.3. Article 309 provisions are not only GATT compatible, but their scope goes beyond GATT Article XI. Since Annex 301.3 does not affect the rights and obligations of the NAFTA Parties or of third countries under the WTO Agreement, the exceptions to Article 309 contained in such Annex refer to NAFTA-provisions and NAFTA-beyond-GATT-provisions only. The requirement to be in accordance with Article XI of the GATT continues to apply in the GATT context (that is taking GATT as a whole) while the requirement to be in accordance with Article 309 continues to apply in the NAFTA context (that is including Annex 301.3). Both requirements run in parallel and therefore do not contradict each other.

- 53./ 54. **Though notification Under Article 5-1 of the TRIMs Agreement has been made, request of the Council for Trade in Goods to extend transition period has not yet been made. The NAFTA Annex 300-A stipulates that the Automotive Decree is effective until year 2004. On the other hand, the transition period for LDC is five years. Can we understand that Mexico may not request the Council for Trade in Goods to extend the period, and that the Automotive Decree may be abolished before 2004?**

**Under the Automotive Decree, any trade surplus achieved by a vehicle manufacturer in Mexico can be used by that manufacturer to import vehicles. What happens in the case of non-manufacture or newcomer enterprises? Could you explain the scope of the application of the decree, the duration period of the decree, the method of determining the amount of imports allowed, and so forth?**

It is true that Mexico has not requested the Council for Trade in Goods to extend the transition period for the Mexican Automotive Decree. As it was stated in the original answer to question 53 contained in document WT/REG4/1, when the time comes, Mexico's final decision with respect to the Automotive Decree will depend on its financial, trade and development needs as well as on the rights and obligations accruing to it under the WTO.

All the information regarding the Automotive Decree, including its scope of application, its duration, the method for determining the amount of authorized imports and the Decree itself, is contained in documents G/TRIMS/N/1/Mex/1 and G/TRIMS/N/1/Mex/1. Rev 1 (English version) of the TRIMS Committee.

Rules of Origin (Chapter 4)

**General questions:**

- (a) **The answers by the NAFTA Parties regarding rules of origin reflect the basic idea that the NAFTA preferential rules are used to determine eligibility for preferential tariff treatment, and do not affect MFN tariffs or other policy instruments that apply to imports of goods from non-NAFTA countries. This idea does not reflect the reality. Rules of origin should function in an import restrictive manner and thus have been the main issue of this Working Party and the UR. We consider that it is in this context that special rules of origin with respect to automobiles and textiles, have been provided. What is the NAFTA viewpoint on this matter?**

**It is clear that the NAFTA's rules of origin regarding automobiles and textiles were made tougher so that they can function in an import-restrictive manner. What is the NAFTA viewpoint?**

As indicated in the answers to questions 61, 63, 64, 66, 68 and 92, the NAFTA viewpoint on the matter of preferential rules of origin is that they do not function in a restrictive manner with regard to MFN tariffs or other policy instruments that apply to imports of goods from non-NAFTA countries. We refer to the answer to question 63 with regard to the relationship of the NAFTA preferential rules of origin to the principles set out in the WTO Agreement on Rules of Origin.

As regards the comment that "NAFTA rules origin regarding automobiles and textiles were made tougher", the NAFTA Parties would note that the Working Party is examining the consistency of NAFTA, including its rules of origin, with Article XXIV, and not with the provisions of or in comparison with other FTAs.

- (b) **The responses to questions in the area of rules of origin, as contained in Document WT/REG4/1 seem to be based, inter alia, upon the premise that the NAFTA rules of origin create no new restrictions on trade opportunities for non-NAFTA countries, since these rules are used only to determine the eligibility of NAFTA tariff preferences and, thus, are not directly applied to outside the region.**

**However, apart from the indirect yet substantial adverse impact on trade opportunities of third countries, even "trade within NAFTA" can be adversely affected by the rules. This is especially relevant in the case of trade in automobiles.**

Let us take a hypothetical example of a foreign-invested automobile manufacturer located in one of the NAFTA member countries. This manufacturer may have been exporting automobiles to other countries in the region. Presumably, the decision to make such investment in the first place might have been motivated by the conclusion of the Canada-U.S. Free Trade Agreement. At the time of investment, this manufacturer could have reasonably expected that the "50% regional content rule" would be maintained. Accordingly, this manufacturer might have based its production process and sourcing strategy on that expectation, thus adopting a regional content of slightly over 50%. Now, with the increase of regional content requirements under NAFTA, this manufacturer is faced with the alternatives of either changing the production process (models) and sourcing strategy or stopping production entirely. If the first option is technically impossible, the NAFTA rules are, in fact, driving this manufacturer out of intra-regional trade for good.

This case illustrates that the NAFTA rules of origin can work to restrict, rather than liberalize, trade within the region as far as some sub-sectors of the economy are concerned. This apparently runs counter to the arguments of the NAFTA members that no economic sectors are excluded from NAFTA.

More importantly, such an adverse impact on intra-regional trade seems inconsistent with GATT Article XXIV:8(b) which prescribes that "... other restrictive regulations of commerce ... are eliminated on substantially all the trade between the constituent territories".

**How can these inconsistencies be explained? Do the Parties to the NAFTA intend to address this type of problem in one way or another?**

As indicated in the response to General Question (a), the NAFTA Parties would note that the Working Group is examining the consistency of NAFTA, including its rules of origin, with Article XXIV, not with the provisions of or in comparison with other FTAs.

With regard to the hypothetical automotive example, the NAFTA Parties would note that NAFTA rules of origin determine only whether the producer of the automobiles is entitled to trade at NAFTA preferential tariff rates. The NAFTA does not drive the manufacture out of intra-regional trade or exclude this or any other economic sector since this or any producer has the choice of either trading at the NAFTA preferential tariff rates by meeting the rules of origin or trading at the MFN rates in its trade between Canada, Mexico and the United States. As noted in the response to General Question (a), the NAFTA rules of origin do not affect the MFN rates or other regulations or trade; they only determine whether a good is eligible for NAFTA tariff preferences.

Article XXIV:8(b) prescribes that in such covered free-trade areas "...the duties and other restrictive regulations of commerce...are eliminated on substantially all the trade between the constituent territories in products originating in such territories." As noted in answer to question 29, the NAFTA applies to virtually all goods that meet the rules of origin. Consequently, the NAFTA rules of origin are in no way inconsistent with this provision, as suggested by the question.

**57. According to the answer to this question, it would seem that**

- (a) The NAFTA preferential rules of origin are not always equivalent to the NAFTA market rules.**

- (b) A good which complies with the NAFTA preferential rules of origin would automatically comply with the origin market rules.**

**It would follow from (a) and (b) that a good which complies with the NAFTA origin market rules does not always comply with the NAFTA preferential rules of origin.**

**In the light of this, it is difficult to understand that last paragraph of this answer, unless discrepancies between the two sets of rules affect only the Canadian imports of goods other than agricultural and textile? Could it be the case? Please explain.**

As noted in the original response to Question 57, the Marking Rules are used, pursuant to Annex 311, to determine the country of origin for purposes of country of origin marking under NAFTA. As such, the Marking Rules stipulate a number of hierarchical tests designed to establish the specific country of origin. The NAFTA preferential rules of origin are used to determine whether a good originated within the NAFTA region and hence qualifies for tariff preferences. The preferential rules are not required to determine in which NAFTA Party the goods originate.

For purposes of the tariff transition period, Mexico and the United States have chosen to use the marking rules in order to determine which NAFTA tariff preference applies to originating goods imported from another NAFTA Party -- that is to determine the country of origin for NAFTA originating good. Canada is also using the Marking Rules for agricultural and textile products. For other goods, Canada has chosen to use the provisions set out in paragraphs 4 through 6 of Annex 302.2. The decision by Canada to use these provisions, rather than the Marking Rules, was not related to any discrepancies between the Marking Rules and the preferential rules of origin that affected only Canadian imports. As a general rule, the Marking Rules are the same in the NAFTA Parties for most products.

- 58. The NAFTA rules of origin in the textiles sector continue to be a genuine source for concern. The introduction of the KNIFED rules of origin has resulted in serious trade distortion to the detriment of exporters of yarns and fabric from third countries. It is our view the “fibre first” policy in particular is excessively restrictive. Could the Parties clarify the reasons why this unduly restrictive “fibre first” approach has been introduced for certain products. Do the Parties intend to abolish this procedure in the light of the evidence of trade distortion? If this is not the case, which other measures will be taken to effectively prevent the trade distortion effects of the “fibre first” policy?**

**As the answer to question 58 indicates, there is a procedure whereby limited derogation can be granted to the restrictive NAFTA rules of origin in the textiles sector. Could the Parties explain whether they intend to extend this derogation procedure and for which products.**

As we have indicated in the answers to previous similar questions, the NAFTA viewpoint on the matter of preferential rules of origin is that they do not function in a restrictive manner with regard to MFN tariffs or other policy instruments that apply to imports of goods from non-NAFTA countries.

- 60. The NAFTA Parties have started to simplify the Rules of Origin. Please explain the scope, objectives, procedures, and the schedule for their implication, as well as the possibilities of asking the opinions of non-NAFTA Parties.**



The NAFTA Parties agreed to implement changes to the NAFTA rules of origin for chemical and allied products of HS Chapters 29 to 38 on January 1, 1996. The changes affected over half the goods covered in these chapters. With three exceptions, the rules were simplified by eliminating or reducing the instances when a regional value content test is required to be met under the NAFTA rules of origin. By doing so, the record-keeping burden on producers of these goods has been reduced significantly.

The Parties consulted closely with the chemical industries in the three NAFTA Parties throughout the process, both during the development of the proposals and later during the finalization of the proposals. The proposals were published for public comment during the Spring and Summer of 1995.

Similarly, the NAFTA Parties have recently amended (effective October 1, 1995; copy attached) the NAFTA Uniform Regulations for Chapter Four to provide more consistent treatment while allowing more flexibility to the trading community. As in the case of the chemical rules, the Parties closely consulted with the private sector in developing the amendments to improve the Uniform Regulations, and in releasing them for public comment in advance of their implementation. For example, Canada published the amendments for public comment in August, 1995.

As required under the WTO Agreement on Rules of Origin, both the amendments to the chemical rules of origin and the amendments to the Uniform Regulations have been notified to the WTO.

**62. Are there any specific cases where an evasion of AD/CVD duties has been made?**

**What is the relationship between the Mexican rules of origin, with respect to the evasion of AD/CVD duties and the NAFTA rules of origin? Is there any difference in standards or criteria? If so, why?**

**Please explain specifically how requirements have been loosened regarding the determination and certification of origin for those products originating in the U.S. and Canada?**

**The NAFTA Rules of Origin regarding the application of AD/CVD duties are basically the same as those of the WTO. With respect to the application of AD/CVD duties to imports from NAFTA countries, why are rules of origin under the Free Trade Agreement applied?**

The NAFTA rules of origin are not applicable to those of NAFTA Parties in respect of their antidumping and countervailing laws. That is, the rules of origin regarding the application of antidumping or countervailing duties (AD/CVD) and NAFTA rules of origin are not related to each other. The former are aimed at avoiding the elusion of AD/CVD, while the latter are applied for preferential purposes. Moreover, as stated in the original answer to question 62 in document WT/REG4/1, the rules of origin regarding the application of AD/CVD do not result from NAFTA but from Mexico's internal needs.

There are differences between both systems. The rules of origin to avoid the elusion of AD/CVD payment are less stringent than the NAFTA rules of origin.

Since the rules of origin for AD/CVD are aimed at preventing exporters from eluding such duties by utilizing the territory of a third party to disguise the real origin of their products, and since the rules of origin of the free trade agreements allow for the identification of the origin of the products, in the case of products covered by those agreements it is not necessary to double-check their real origin nor to apply to them the rules of origin for AD/CVD.

- 63. With regard to paragraph 1 of the reply, please provide us with a copy of "the Uniform Regulations for Chapter Four".**

**With regard to paragraph 2, please explain the activities and the present situation of the "Working Group on Rules of Origin".**

The three main activities of the NAFTA Working Group on Rules of Origin during 1994 and 1995 involved the substantive amendments to the Uniform Regulations and to the rules of origin applicable to the chemical sector (see answer to question 60), and non-substantive technical rectifications to the Annex 401 product-specific rules of origin.

The fourth major effort of the WG during this period involved converting Annex 401 product - specific rules of origin from the 1992 HS tariff classification to the 1996 HS classification nomenclature. The amendments to the chemical rules of origin, the technical rectifications to Annex 401 and the conversion of the Annex 401 rules of origin to the 1996 HS were implemented on January 1, 1996 by the three Parties. As required under the WTO Rules of Origin Agreement, these substantive and non-substantive amendments have been notified to the WTO.

The WG and its Customs Subgroup have also been involved in a number of other issues, including addressing differences in tariff classification between the three Parties and examining proposals from the private sector to amend substantively the rules of origin for other products.

- 61./ 65. Comparing the NAFTA rules of origin in general with that of the U.S.-Canada FTA, we do not deny that, for example, the scope of using the standard of tariff classification has been widened and that the predictability of the NAFTA rules of origin has been enhanced. Bearing this in mind, why are special complicated rules set out for automotive goods and other areas? What is the reason for such policy?**

**With regard to paragraph 3 of question 64, please explain the aim and application of "inventory control methods".**

- 65. With regard to paragraph 2 of the reply, please give more details concerning "In some cases".**

**The reply mentioned that "the degree of specificity in the NAFTA rules of origin for industry sectors is based on the degree of specificity in the HS for goods in a sector". However, it is difficult to understand from reports on the NAFTA negotiations that the degree of specificity in the NAFTA rules of origin for industry sectors was decided simply for technical reasons. Rather, is there not a problem that the degree of specificity was decided with the intention to protect sensitive areas by using technical methods?**

Answer to questions 61 and 65:

The NAFTA Parties developed the extensive use of tariff classification in the rules of origin because it provides predictability. The NAFTA Parties also sought to base the rules only on changes in tariff classification whenever possible in order to reduce record-keeping and administrative burdens on producers and traders and to reduce the verification burdens on the customs administrations. As for reasons for the specific rules related to automotive goods and other areas, please see the explanation provided in the answer to question 72. It is unclear to what other areas the question is addressing since the rules of origin for other goods are based on changes in tariff classification, with, in selected

cases, a supplementary regional value content test based on the general content calculation specified in Article 402 of the NAFTA.

Inventory control methods are used by producers in the trading community whose normal business practices entail the co-mingling of inputs and goods. The NAFTA rules allow agreed-upon methods and facilitate their use, therefore reducing and even eliminating burdens that would be related to the specific identification of such inputs and goods by the trading community.

With regard to the reference to “in some cases” in paragraph 2 of the original response, examples of goods for which the NAFTA Parties created 8-digit tariff items to identify specific inputs in order to avoid imposing a regional value content test including, among others, household refrigerators, dishwashers, washing machines, most industrial machine tools, photocopiers, gas turbines, and fax machines. These 8-digit tariff items specifically identify the major parts or inputs of these goods. Since these parts or inputs would be required to be sourced within the NAFTA region in order to meet the regional value content test, the NAFTA Parties were able to dispense with the value content test in these cases. As a result, producers that import other parts of the good classified under the same parts heading or subheading are spared the administrative and record-keeping burdens of complying with a regional value content test. A regional value content test would require the producer to keep track of the sourcing and value of all its inputs, while the tariff shift rules based on these specially-identified inputs require the producer only to keep track of sourcing of these specific inputs.

In certain cases, the NAFTA Parties identified by description the specific input in order to provide greater clarity as well as avoiding the use of a regional value content test. An example of this is the rules of origin for telecommunications equipment.

At the same time, 8-digit tariff items were created to specifically identify products as a means of avoiding the inclusion of such products under a regional value content test that applied to other products under the same heading or subheading. An example of this is the rule of origin for television picture tubes.

The specificity of the rules for each product reflect the ability of the NAFTA Parties to develop rules of origin that minimized the recourse to supplementary tests such as regional value content tests when specifying the desired degree of transformation of non-originating inputs and parts for each good. It was not possible in all cases to eliminate the use of the regional value content test.

**66./ We do not intend to challenge the existence of the rules of origin themselves. However,  
67. the essence is to distinguish between products originating in the NAFTA region and products originating outside the NAFTA. Thus depending on the criteria and application of those rules, there could be a problem of applying them in a protective way.**

**In the case of local content requirements on automotive goods, the NAFTA content level will eventually become 62.5 per cent, an increase from 50 per cent in the U.S.-Canada FTA. This could be considered as a case of violation to the rules in paragraph 5(b) of Article XXIV of the GATT, which stipulates that regulations of commerce shall not be more restrictive than those prior to the formation of the free-trade area. We would like to request a detailed explanation on this point by using the case of automobiles as an example.**

Reference is made to the answers in the general questions to this section, as well as the answer to question 88. As noted previously, the NAFTA viewpoint on the matter of preferential rules of origin is that they do not function in a restrictive manner with regard to MFN tariffs or other policy instruments that apply to imports of goods from non-NAFTA countries.

**72. This reply is extremely important and we would like to clarify in particular on the following points:**

- (a) Paragraph 1 and 2 of the reply explain that automobiles and products for motor vehicles are comprised of hundreds and thousands of components and parts, and thus require a more accurate calculation of local content. Another example could be aircraft, which also has similar characteristics. Are special rules of origin, including local content, applied to aircraft? If not, why?**
- (b) If a detailed calculation method of local content is set up for industries with a wide range of components, it would put a great burden on such industries. Would this not be contradictory with the work set out to simplify the rules of origin, as explained by the NAFTA members?**

(A) The NAFTA Parties agreed to develop, to the largest extent possible, rules of origin devoid of a value content percentage methodology, and were successful in achieving this objective for many product sectors, including aircraft. However, this objective was not met in the automotive sectors, and a value contents percentage methodology is utilized.

(B) An overall concern as to administrative burdens is manifested in the Uniform Regulations, which provide flexibility to the private sector in choosing the most efficient and simple manner to meet the agreement's requirements. This is particularly true with regard to recent amendments to the Uniform Regulations, as discussed in the responses to questions 60 and 63.

**76. The reply does not answer the question about the "burdens on companies". What is the actual effect on companies?**

**An international harmonization of rules of origin is necessary. Take the example of the United States where there are three different methods to calculate the local content, namely, the NAFTA, the Labelling Act and the CAFF Act, which together put greater burdens on companies. Are there any plans for domestic harmonization? If so, what is the specific schedule?**

Through ongoing efforts, such as the recent amendments to the Uniform Regulations, the NAFTA Parties are responsive to actual effect on companies of the requirements of various origin regimes. It is also for this reason that the NAFTA Parties are active participants in the ongoing work program in the WTO, which will lead to the harmonization of rules of origin used in the application of non preferential trade policy instruments.

**79. We understand that for the retention of NAFTA records, a five-year period in the case of Mexico and the United States, and a six-year period in the case of Canada, are specified in each member's internal law. Please provide details as to which laws or notices these are actually specified.**

**The NAFTA requires exporters or producers "to maintain all records related to the origin of a good for five years, or longer than five years as the NAFTA Party may specify". What kind of situation could arise where an extension to the five-year period is required?**

Such requirements exist because of NAFTA Parties' individual domestic legislation relating to accounting records for certain business transactions. With regard to the requirements relative to imports, such requirements would apply to all imports, and not just imports entering under NAFTA tariff preferences.

With specific reference to Mexico, Article 30 of the Mexican Federal Fiscal Code (Código Fiscal de la Federación) provides for a ten year requirement for the retention of accounting records for all fiscal purposes, not only those related to NAFTA. Furthermore, according to the NAFTA specific regulations, all exporters or producers that complete a certificate of origin covering goods exported to the territory of another Party under preferential tariff treatment, shall keep all records related to the origin of the good, in the terms of the Federal Fiscal Code, while importers of originating goods under preferential tariff treatment, shall keep the certificate of origin and other documents related to the importation in accordance with the Customs Act (Ley Aduanera) and the Federal Fiscal Code. That is, according to Mexican internal law, all Mexican exporters, producers and importers must keep their NAFTA records for a ten year period.

In Canada, subsection 40(1) of the Customs Act requires every person who imports goods to keep for six years all records in respect to the imported goods' origin, marking, purchase, importation, cost and value of commercial goods, the payment for commercial goods in Canada and any application for advance ruling made under subsection 43.1(1) of the Customs Act in respect of commercial goods. The legal requirement applies to all imports, and not just imports entering under NAFTA tariff preferences

**82. Our question was intended to ask about the case of a company exporting goods "from the U.S. to Mexico" and not "from Mexico to the U.S.". We would appreciate a new reply on this basis.**

Only one certificate is required by Mexican Customs:

- (a) Goods exported from US and Canada to Mexico under NAFTA preferential treatment are waived from the certificate of origin for AD/CVD purposes because they already have a certificate of origin: the NAFTA certificate of origin (see answer to question 62).
- (b) Goods exported from US and Canada to Mexico under MFN treatment require a certificate of origin for AD/CVD purposes because they do not have a NAFTA certificate of origin (see answer to question 62).

**88. The Parties state they "expect the NAFTA to have a positive impact on imports of all goods from all regions of the world because of the trade creation effects arising from higher incomes in the NAFTA territories" (reply to question 88 - WT/REG4/1).**

**Could the Parties explain how they expect imports of sensitive sectors (autos, textiles) will increase when NAFTA rules for these sectors would tend to limit free trade even within the NAFTA?**

**MFN rates are not increased, but the *status quo* remains.**

**Do the Parties believe that trade in the sensitive sectors will increase in the NAFTA given the tighter rules for these sectors?**

**What percentage of total NAFTA trade is in the sensitive sectors?**

**Will there be a phased incorporation/reduction of these different rules for sensitive sectors; i.e. will the rules for sensitive sectors be brought into line (coverage) with the rules for other NAFTA sectors?**

**How does the phased elimination of Canada's prohibitions on used vehicles from Mexico, which expires by 2019, comply with GATT 1947, Article XXIV:5(c)?**

Every sector may be sensitive to a particular element of the trading community, and it is not clear what sector would be universally understood to be "sensitive." And, as previously noted, the NAFTA did not result in any increased barriers to imports of goods from non-NAFTA regions. As for the textile sector -- a very broad category-- the rules of origin largely reflect the high North American content which many products have. Similarly, the rules applicable to automotive products also largely reflect the current and expected (as reflected in the eight-year transition period) North American content levels as reported by most automotive producers.

Canada and Mexico agreed, as an exception to the phase-out of other trade barriers, to eliminate the prohibition on imports of used vehicles from each other in 2019 in recognition of the special circumstances in Mexico regarding importation of used vehicles.

Customs Procedures (Chapter 5)

- 103.- Our understanding from Mexico's reply in the case of the United States and Canada, changes to the CIF system are not relevant because even if the taxable tariff base were to change from the FOB system to the CIF system, substantially there is no great change. For a non-NAFTA member, however, the change of the system will have an effect equal to a *de facto* increase of tariffs, and it is clear that the change to the CIF system will be discriminatory to non-NAFTA members. What is your view on this point?**

**A second problem could arise in the sense that it would change the content of Mexico's schedules of concession arrived at the tariff negotiations when Mexico acceded to the GATT (and at the subsequent tariff negotiations).**

- 103.- Though the use of either a CIF or a FOB system is compatible with the Customs Valuation Agreement, the point raised in connection with these questions is the use of different valuation systems depending on whether the imported goods have NAFTA or non-NAFTA origin. We can see no logic in the argument that "when the goods conform to the rules of origin provisions contained in NAFTA, such goods are considered to come not from the United States or Canada but from the North American Free Trade Area, and therefore treated under the FOB system".**

**The use of different customs valuation systems is not a reasonable implication of the creation of a free-trade area, though the same practical results could have been obtained by a marginal acceleration of the time-table for Mexican tariff reductions. The arguments given in the answer to this question to underline the marginal and temporary nature of the discrimination introduced by this measure reinforce the idea that this differentiation is, apart from arbitrary, unnecessary. Could the Parties, in view of those considerations, give their views on the subject?**

If the argument according to which the CIF system has an effect equivalent to a de facto increase of tariffs were correct, it would also be correct that all WTO Members who use the CIF system have increased their tariffs or have tariffs relatively higher than those of WTO Members who use the FOB system. This is not the case. As stated in the original answer to question 103 of the document WT/REG4/1, the use of both the CIF system or the FOB system is compatible with Article 8 of the Customs Valuation Agreement. Otherwise, Article 8 of that Agreement would give preference to one system over the other.

The application of the CIF system instead of the FOB system is not related to tariffs. If it were so, the issue would be part of the binding obligations under Article II of GATT 94, which is not the case. Thus, it is not correct to state that the use of CIF will result in greater differences between the MFN tariffs and NAFTA preferential tariffs. Mexico's MFN tariffs (which in most cases are inferior to the bound level) have not been affected by the application of the CIF system. The only tariff changes introduced in Mexico's schedule of concessions since its accession to the GATT were the reductions in bound tariffs agreed during the Uruguay Round.

Finally, it is important to bear in mind as stated in the original answer to question 103 of document WT/REG4/1, that Mexico's CIF regime applies to the products of all Contracting Parties, including the United States and Canada, in a non-discriminatory manner. Nevertheless, when the goods comply with NAFTA provisions on rules of origin, it is considered that those goods do not come from the United States or Canada, and thus they are treated under the FOB system.

Energy and Basic Petrochemicals (Chapter 6)

- 106. As stated in the answer to this question, Article 603.3 ensures that, when import or export restrictions on energy products from or to third countries are applied by a NAFTA Party, this Party may require other NAFTA Contracting Parties to apply export restrictions as it may be necessary in order to prevent circumvention of such measures. In the case of non-conformity with the WTO rules of the measures applied by the requesting Party, a conflict may arise for the requested Party between its NAFTA and WTO obligations. Could the Parties explain how the NAFTA Treaty would be applied in such hypothetical situation?**

NAFTA Parties have no intention to take WTO inconsistent measures. In any case, Article 603(3) does not oblige the NAFTA Parties to take measures that are inconsistent with their WTO obligations.

Agriculture (Chapter 7)

**General question:**

**Why have the member countries adopted a different approach to the relationship (or computation) of intra-NAFTA tariff quotas with respect to their WTO quota commitments? Is there not the risk that, in some cases, the access opportunities of third countries to WTO quotas will be impaired? Please provide more extensive information on how this matter is regulated in each of the three countries, as well as details on the way in which the quotas are administered.**

(Canada) - With respect to Canada/Mexico trade, the relevant provision is Annex 703.2, Section B, Paragraph 5, which allows each party to count the in-quota quantity under a tariff rate quota applied to a qualifying good in accordance with its Schedule to Annex 302.2 toward the satisfaction of an in-quota quantity of a tariff rate quota or level of access under the GATT. Canada did not establish tariff rate quotas pursuant to its Schedule to Annex 302.2. Therefore, this question is not applicable with respect to Canada.

(United States and Mexico) This question is not clear. In particular, the reference to a “different” approach is unclear with respect to what the approach is being compared (that is, different from what?). The United States and Mexico have not impaired the access opportunities of third countries to WTO tariff-rate quotas. If the reference is to paragraph 6 of Section A of Annex 703.2, then it may be useful to understand that that provision is intended to ensure that there is no “double counting” of access. That is, it makes clear that, between the United States and Mexico, a NAFTA party is not entitled to the quantity of access provided under the NAFTA plus the quantity provided under the Uruguay Round. (For example, if the NAFTA access commitment is for 100 tons, and the WTO commitment is for 50 tons, the access due the NAFTA party is 100 tons, not 150 tons.)

- 109. With reference to question and reply 109, which talks about the provisions of NAFTA which allow each party to count the in-quota quantity under the tariff rate quota in the agricultural sector towards the satisfaction of commitments made under the Uruguay Round. This is a very important question for New Zealand, because it involves whether countries are able to maintain their rights of access - tariff-quota access - to the markets of a free-trade area.**

**What were the criteria used to determine the tariff rate quota quantities under NAFTA and to that extent the amount that could be counted against Uruguay Round commitments?**

- 109. The reply to question 109 does not answer the question. Could the parties elaborate further on the reply?**

See answer to “general question” above.



- 113. In view of the absence of any reference in the text of the NAFTA Treaty itself to the necessary conformity with the WTO (and in particular with Part VII of the Agreement on Agriculture), of any measure taken following the provisions of Article 705, the Community wishes to underline the importance it attaches to the statement contained in the answer to this question that "any measures adopted by a NAFTA Party pursuant to Article 705 of NAFTA would also need to be fully in conformity with provisions in the WTO Agreement".**

[No reply received.]

- 118./ 120. More detail is required in relation to questions 118-120. It is not clear from the responses that NAFTA will be administered in a manner that will ensure that, in the longer term, there is no detrimental effect on Australia's share of the U.S. quota and, more broadly, on the possibility of a sugar trade developing between Australia and Mexico.**

As noted in the first response to these questions, the concerns of other suppliers will be taken into account in making any allocations under the tariff-rate quota. The United States has continued to accommodate imports from its NAFTA partners within the sugar tariff-rate quotas that the United States has now bound under the Uruguay Round, including with respect to the allocations for the current quota period.

Therefore, there has been no effect on other suppliers. In fact, this year's in-quota quantity is substantially in excess of the bound Uruguay Round amount, and consequently Australia's share is higher as well.

Trade in sugar between Mexico and Australia has been non existent during the last five years. Mexico is complying and will continue to comply with the terms agreed in its Uruguay Round LXXVII schedule.

- 121. Whilst the response to question 121 indicates that the U.S. will continue to allocate quota shares on an historical basis, it also reserves the right to change this practice and makes no mention of its commitment in the letter of 22 March 1994 that it would consult Australia prior to taking such action. Confirmation of this commitment should be sought.**

The United States confirms its commitment, as stated in the March 22, 1994, letter, that if it modifies or suspends the allocation of market shares in accordance with GATT Article XIII, it would promptly enter into consultations with Australia.

- 122. With regard to question 122, could the U.S. explain why it is appropriate to include NAFTA sugar imports in the Uruguay Round global quota.**

See response to questions 119-120 above. Prior to the conclusion of the NAFTA, the United States had been allocating a share of 7,258 metric tons, raw value, of sugar to Mexico under its tariff-rate quota, and that share has continued under the NAFTA.

**123. How is Mexico going to apply preferences to the U.S. given that under the Uruguay Round outcome, Mexico's in-quota tariff rate for skim milk powder is zero for the U.S. and others?**

In skim milk powder, Mexico grants a zero tariff rate under the quota both in NAFTA and WTO. But as stated in the "general question", the in-quota quantities of the NAFTA quotas count under the tariff rate quota in the agricultural sector towards the satisfaction of commitments made in the Uruguay Round.

Emergency Action (Chapter 8)

- 128. (a) The response to question 128, contained in Document WT/REG4/1, states that the provisions of NAFTA Article 802, under which imports from a NAFTA Party may be excluded from another Party's application of a global safeguard action under certain circumstances, do not conflict with GATT Article XIX or the WTO Agreement on Safeguards in the context of a free trade agreement under GATT 1994 Article XXIV. However, GATT Article XXIV does not necessarily provide a carte blanche from all obligations under the WTO Agreements.**

**A case in point is the possibility that non-member countries may be burdened with a disproportionate amount of trade restriction because of the non-application of a global safeguard action among NAFTA members.**

**Under Article 5.2(a), a member may allocate quotas based upon the proportion supplied during a previous representative period. Since NAFTA members can be exempted from the quota, it may entail that the share of supply originating from non-members will be set at a smaller amount than it would have been in the case of proportional reduction of the shares of both member and non-member countries.**

**This result seems to run counter to the letter and spirit of GATT Article XXIV, paragraph 5(a), which provides that "duties and other regulations' ... shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of a free-trade area]".**

**In the light of the above, how is the safeguard mechanism of NAFTA considered to be compatible with the WTO Agreement?**

- (b) If a NAFTA member takes a safeguard measure, would it not violate the MFN rules should it exclude imports from other NAFTA members?**

The question refers to the application of a global safeguard measure by NAFTA members and the exemption provisions of NAFTA Article 802 vis-à-vis GATT Articles XIX and XXIV:5 (a). It is assumed that the question is meant to deal with Article XXIV:5 (b), which deals with free-trade areas; XXIV:5 (a) applies to customs unions.

The relationship between Articles XIX and XXIV has been raised in past working party examinations of free trade arrangements, including the examination of the Canada-United States Free Trade Agreement.<sup>2</sup> It has also been discussed in the Uruguay Round negotiating groups on GATT Articles and Safeguards.

The position of the NAFTA parties remains that the exclusion from another NAFTA Party's application of a global safeguard action, under certain circumstances, does not conflict GATT Article XIX or the WTO Agreement on Safeguards in the context of a free trade agreement under GATT Article XXIV. The provisions of NAFTA Article 802 are consistent with the requirement of GATT Article XXIV to eliminate duties and other regulations of commerce on substantially all the trade between the constituent territories in products originating in such territories, a practice maintained by other WTO members that provide for the exemption of Parties to a free trade agreement from global safeguard actions.

### **III. TECHNICAL BARRIERS TO TRADE**

- 129. Though it is true that Article 907.2 of NAFTA contains provisions to balance the otherwise unlimited right for a NAFTA Party to establish the level of protection that it considers appropriate in respect of the legitimate objectives listed in Article 904.2 those balancing provisions refer only to trade between NAFTA Parties or to the possible discrimination of goods or service providers of another NAFTA Party. We have found no reference in the NAFTA Treaty to the international obligations of NAFTA Parties under the WTO in this respect, and the statement in the answer to this question that "Chapter 9 does not require the Parties to discriminate against third countries" is hardly a consolation in this sense. The question on the guarantee that third countries will not be discriminated against remains in our view completely open and pertinent.**

Chapter 9 is not intended to address the question of non discrimination with regard to third countries. The NAFTA is an agreement among the NAFTA Parties: it cannot affect the WTO rights and obligations of non-Parties. The provision set forth in Article 904 (2) of NAFTA applies as between the Parties; as for our obligations with respect to other WTO Members, the NAFTA Parties will abide by the WTO's relevant provisions.

- 130. Please clarify what is specifically meant by the word "measures" in "standards-related measures".**

**The reply mentions: "All consultations about standards-related measures are channelled through the NAFTA Committee on Standards-Related Measures and the Subcommittees operating under Chapter 9."**

**What is the procedure for a NAFTA member to hold such "consultations"? Are such consultations restricted to NAFTA members? If they are not restricted, is there any difference between the procedures of a NAFTA member and a non-NAFTA member?**

The term "standards-related measure" is a defined term under the NAFTA (Article 915) and means a standard, technical regulation or conformity assessment procedure.

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<sup>2</sup>See paragraph 43, GATT Working Party on the Free Trade Agreement between Canada and the United States, Spec(91) 18, May 28, 1991.

The reference to "all consultations about standards-related measures are channelled through the NAFTA Committee on Standards-Related Measures and the Subcommittees operating under Chapter 9" was in response to a question about consultations under paragraph 7 of Article 906. There is no set procedure for holding these consultations.

NAFTA consultations are applicable to the NAFTA members, as WTO consultations are applicable to WTO Members.

#### **IV. GOVERNMENT PROCUREMENT**

**137./ 140. The reply given by Mexico only mentions about its general disciplines, and does not explain the extent of why Mexico, while committing itself to the government procurement provisions in the NAFTA, does not commit itself to the WTO Agreement on Government Procurement. We would like to ask for further explanation.**

**Will each Party provide the following statistics?**

**(After entry into force of the NAFTA)**

- (a) The total amount of government procurement above the NAFTA threshold by each Member after its entry into force.**
- (b) The sectoral break-down (Goods, Services, Construction) of figures.**
- (c) The ratio of foreign products or services in the total procurement.**
- (d) The ratio of products or services originating from the NAFTA-member countries in the total procurement.**

**(Before entry into force of the NAFTA)**

- (a) The total amount of government procurement above the current NAFTA threshold by each Member going back seven years before its entry into force.**
- (b) The sectoral break-down (Goods, Services, Construction) of figures.**
- (c) The ration of foreign products or services in the total procurement.**
- (d) The ratio of products or services originating from the NAFTA-member countries in the total procurement.**

Statistics on government procurement prior to the NAFTA are attached.<sup>3</sup> Statistics for government procurement after entry into force of the NAFTA are currently being processed.

That Mexico subscribes or not the WTO Agreement on Government Procurement has no relation whatsoever with the consistency of Mexico's commitments under NAFTA and the GATT 94. As it is well known, the Agreement on Government Procurement is part of the Plurilateral Trade Agreements in Annex 4 of the WTO Agreement, and not of GATT 94.

#### **V. INVESTMENT, SERVICES AND RELATED MATTERS**

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<sup>3</sup>See Annex 1.

Investment (Chapter 11)

- 145.- The reservations and exceptions provision contained in Article 1108 of NAFTA appear to be significantly wider and generous than the exceptions provided for in Article 3 TRIMs and the phase-out periods contained in Article TRIMs. Could the NAFTA Parties clarify these apparent discrepancies?**

[No reply received.]

**VI. INTELLECTUAL PROPERTY**

- 191.- No replies have been received by the NAFTA members. We would like to ask for concrete replies to these questions.**

Canada and the United States submitted responses to all of these questions to the Secretariat at the last meeting of the NAFTA Working Party. However, these responses have not been circulated by the Secretariat.<sup>4</sup>

No replies have been submitted by Mexico on TRIPs because they are outside the mandate of the Working Groups on Trade in Goods and Trade in Services. Mexico submitted its NAFTA-TRIPs notification under Article 4(d) of the TRIPs Agreement to the TRIPs Council on December 29, 1995.

- 194./ 204.- With regard to cases in which provisions in the NAFTA have a higher level of standards enforcements than those in the TRIPs Agreement, we would like to ask the NAFTA parties to apply measures in question on an MFN basis to Japan as well as other WTO members, pursuant to Article 4 of the TRIPs Agreement.**

NAFTA does not provide a higher level of intellectual property rights enforcement than the TRIPs Agreement.

**VII. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS**

Review and Dispute Settlement in Anti-Dumping and Countervailing Duty Matters (Chapter 19)

- 207. Could the Parties update, if and as appropriate, the answer to this question to take into account any recent developments?**

The United States has requested a NAFTA panel to consider the application by Canada of tariffs to certain U.S.-origin agricultural products. This is a dispute involving NAFTA rights, and so it could not have been handled under the WTO dispute settlement mechanism. Mexico is participating as a third party in this dispute.

- 209.- The same remarks made in respect to question 154 seem to apply to the answers to these questions.**

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<sup>4</sup>These responses are found in Annex 2 to this document.

We agree that the answer to question 154 applies to the answers given to questions 209, 210 and 211.

**212. According to the provisions of Article 1903.3(b)(i), a Party has the right to enact comparable legislation if a Party fails to enact corrective legislation after a nine month period from the panel decision. The Parties stated in their answer that "any decisions on whether to take comparable legislative or executive action will be made following an analysis of the potential impact of that action on the Party's WTO obligations. In this respect we would like clarification on the following issues:**

- **Who will conduct this analysis?**
- **What specific criteria will be applied in assessing this analysis?**
- **Will the WTO be informed of the decision to enact corrective legislation?**

Article 1903.3(b)(i) provides that a complaining Party may take comparable legislative or equivalent executive action 12 months after an affirmative finding by a binational panel pursuant to Article 1903(1), if no other mutually satisfactory solution to the matter has been found. The decision to take such action, and what it will consist of, will be made by the complaining government on the advice of its responsible officials.

In determining what comparable legislative or equivalent executive action to take, the government would look, inter-alia, at the nature of the non-conformity, and the extent to which the amending statute affects national interests under the NAFTA, including the impact of the amending statute on its legitimate exports.

Should the Party complained against enact corrective legislation following the issuance of an affirmative finding by a panel, Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and Article 32.6 of the Agreement on Subsidies and Countervailing Measures obligates member countries to inform the Committees of any changes to their laws and regulations relevant to the applicable Agreement. Canada, the United States and Mexico, as parties to the WTO would respect their WTO obligations and report any such enactment.

**Additional Questions:**

**Q.1: According to the provisions of Article 1904(2) a Party may request a panel review to determine whether a final anti-dumping or countervailing duty determination was in accordance with the anti-dumping law of the importing Party. Article 1904(3) provides that the panel review shall be conducted according to the standard of review and the general legal principles that a court of the importing Party would apply. Is the standard of review in Article 1904(3) the same as the "appropriate" standard of review in Article 1904(13(iii)). Would it be possible to elaborate on these concepts?**

Yes, the standard of review in Article 1904(3) is the same as the "appropriate" standard of review in Article 1904(13)(a)(iii). The term "appropriate" means that the standard of review applied by a panel in a given case is the standard of review of the importing Party as defined in Annex 1911. Pursuant to Article 1904(3), the panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

**Q.2: Article 1904(9) states that the decision of a Panel shall be binding on the involved Parties. How will this be enforced if a Party does not abide by the rules of a Panel decision?**

Each Party has provided for the binding effect of a panel decision within its domestic law. In Canada s. 77.016(1) of the SIMA provides that an investigating authority shall take action not inconsistent with a panel decision. Subsection 77.02(1) of the SIMA provides that panel decisions are binding. In the United States, section 516A(g)(7) of Tariff Act of 1930, as amended, contains similar provisions. By virtue of Article 97 of the Mexican Foreign Trade Law (Ley de Comercio Exterior) and the self-executing nature of international agreements in Mexico, any panel decision shall be binding under Mexican Law.

Article 1905(1)(c) provides that where a Party alleges that the application of another Party's domestic law has prevented the implementation of the decision of a panel or denied it binding force and effect, such Party may initiate the Special Committee process. Where the Special Committee makes an affirmative finding in respect of the complaining Party's allegations, and no satisfactory resolution is reached, Article 1905(8) provides that the complaining Party may suspend:

- (a) the operation of Article 1904 with respect to the Party complained against; or
- (b) the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

**Q.3: The Parties are required to amend their existing anti-dumping and countervailing duty legislation in order to achieve the goals of Article 1904. Article 1904(15) enumerates the precise purpose of these modifications. However, the rules of Article 1904(15) do not refer expressly to the provisions of Article 1902(d)(i), i.e. the consistency with the GATT. Will these amendments reflect the principle of Article 1902(d)(i)?**

All amendments enacted to achieve the goals of Article 1904(15) are in conformity with the WTO Anti-dumping Agreement and the WTO Subsidies and Countervailing Duties Agreement. In addition, Canada and the United States have taken steps to amend their existing anti-dumping and countervailing duty legislation in order to implement the WTO Anti-dumping Agreement and the WTO Subsidies and Countervailing Duties Agreement. The Agreements are incorporated into Mexico's domestic law by virtue of its own legal system.

**Q.4: According to the provisions of Article 1904, a Party may request a Panel in order to determine whether the final determination of the investigating authority of the importing Party is in accordance with the applicable legislation of the importing Party. Pursuant to Article 1904(8) a Party may uphold a final determination or remand it for action not inconsistent with the Panel's decision. Please explain how the second option will be applied in practice.**

Under each Party's applicable law, the investigating authority shall take action not inconsistent with a panel decision. In practice, the panel sets a time period for remand action. The investigating authority then files a determination on remand setting out its findings made in accordance with the panel decision. The participants to the panel review may file submissions in support or in opposition to the action taken by the investigating authority on remand. The panel normally issues a final decision within 90 days of the date such remand action is submitted to it.

**Q.5: According to the provisions of Article 1905, a complaining Party may request the establishment of a Special Committee if another Party's domestic law fails to meet the criteria of Article 1905(1)(a) through to (d). If the Party complained against has not demonstrated that it corrected the problem, the complaining Party may pursuant to Article 1905(8)(b) suspend the application of such benefits under the NAFTA Agreement "as may be appropriate under the circumstances". Could the Parties elaborate on this concept and also explain whether such suspension is compatible with the requirements under the WTO Agreement? In this respect, could the Parties clarify what is understood under the phrase that "suspension of benefits is manifestly excessive" in Article 1905(10)?**

Article 1905(8) provides that where a Special Committee has made a determination that the application of a NAFTA country's domestic law has interfered with the binational panel process and the matter remains unresolved sixty days following the issuance of the Special Committee's report, the complaining Party may either suspend the application of Article 1904 of the NAFTA or such benefits under the Agreement as may be appropriate under the circumstances.

What is "appropriate under the circumstances" will be determined by the complaining government on the advice of its responsible officials.

In determining what action to take under Article 1905(8), the complaining Party may take into account such factors as the severity of the breach, its impact on the binational panel process and the effect, both of the breach and of the remedial action contemplated, on the country's interests and its exporters.

If the Party complained against regards the level of benefits suspended by the complaining Party as "manifestly excessive", it may reconvene the Special Committee to make a determination in this regard, or a determination that the party complained against has corrected the problem or problems.

The benefits to be suspended are limited to benefits under the NAFTA, therefore, these provisions do not affect the rights and obligations that NAFTA Parties have under the WTO in respect of other WTO Members.

## **VIII. OTHER PROVISIONS**

**215.- Could the Parties update as appropriate the answers given to these questions? Could the  
218. Parties further elaborate, in particular, on the relationship between the NAFTA and FTAA initiative?**

The FTAA is a separate initiative from the NAFTA. The FTAA is not a substitute for NAFTA accession. In more general terms, all the three partners see NAFTA as an important contribution to the objective of building an FTAA by the year 2005.



ANNEX 1Statistics on Government Procurement Prior to the NAFTAMEXICO

Summary  
(Million US dollars)  
1990

	Goods	Services	Construction services	Total
TOTAL	8,715	4,879	4,846	18,440
FEDERAL GOVERNMENT ENTITIES	1,038	1,058	722	2,818
GOVERNMENT ENTERPRISES	7,677	3,821	4,124	15,622

Entities	Goods	Services	Construction services	Total
Total procurement	8,715	4,879	4,846	18,440
Total Federal Government Entities	1,038	1,058	722	2,818
Secretaría de Agricultura y Recursos Hidráulicos	153	177	300	630
- Instituto Mexicano de Tecnología del Agua				
- Instituto Nacional de Investigaciones Forestales y Agropecuarias				
Secretaría de Comunicaciones y Transportes	88	80	285	453
Secretaría de la Defensa Nacional	304	76	1	381
Secretaría de Salud	103	63	24	190
- Administración del Patrimonio de la Beneficencia Pública				
- Centro Nacional de la Transfusión Sanguínea				
- Gerencia General de Biológicos y Reactivos				

Entities	Goods	Services	Construction services	Total
<ul style="list-style-type: none"> <li>- Instituto de la Comunicación Humana Dr. Andrés Bustamante</li> <li>- Instituto Nacional de Medicina de la Rehabilitación</li> <li>- Instituto Nacional de Ortopedia</li> <li>- Consejo Nacional para la prevención y control del SIDA</li> </ul>				
Secretaría de Educación Pública <ul style="list-style-type: none"> <li>- Instituto Nacional de Antropología e Historia</li> <li>- Instituto Nacional de Bellas Artes y Literatura</li> <li>- Radio Educación</li> <li>- Centro de Ingeniería y Desarrollo Industrial</li> <li>- Consejo Nacional para la Cultura y las Artes</li> <li>- Comisión Nacional del Deporte</li> </ul>	64	115	4	183
Secretaría de Marina	96	46	8	150
Secretaría de Hacienda y Crédito Público <ul style="list-style-type: none"> <li>- Comisión Nacional Bancaria</li> <li>- Comisión Nacional de Valores</li> <li>- Comisión Nacional de Seguros y Fianzas</li> <li>- Instituto Nacional de Estadística, Geografía e Informática (INEGI)</li> </ul>	39	103	6	148
Secretaría de Gobernación	37	68	20	125

Entities	Goods	Services	Construction services	Total
<ul style="list-style-type: none"> <li>- Centro Nacional de Estudios Municipales</li> <li>- Comisión Calificadora de Publicaciones y Revistas Ilustradas</li> <li>- Consejo Nacional de Población (CONAPO)</li> <li>- Archivo General de la Nación</li> <li>- Instituto Nacional de Estudios Históricos de la Revolución Mexicana</li> <li>- Patronato de Asistencia para la Reincorporación Social</li> <li>- Centro Nacional de Prevención de Desastres</li> <li>- Consejo Nacional de Radio y Televisión</li> <li>- Comisión Mexicana de Ayuda a Refugiados</li> </ul>				
Secretaría de Desarrollo Social	15	42	36	93
Procuraduría General de la República	47	35	4	86
Secretaría de Relaciones Exteriores <ul style="list-style-type: none"> <li>- Sec. Mex. Com. Int. Límites y Aguas Mex-EE.UU.</li> <li>- Sec. Mex. Com. Int. Límites y Aguas Mex-Guatemala</li> </ul>	5	76	5	86
Comisión Nacional de Libros de Texto Gratuito	39	9	-	48
Secretaría de Turismo	3	44	-	47
Secretaría de la Reforma Agraria	11	21	12	44
- Instituto de Capacitación Agraria				

Entities	Goods	Services	Construction services	Total
Secretaría de Pesca - Instituto Nacional de Pesca	8	19	11	38
Secretaría de Comercio y Fomento Industrial	10	22	2	34
Secretaría del Trabajo y Previsión Social - Procuraduría Federal de la Defensa del Trabajo	9	23	-	32
Consejo Nacional de Fomento Educativo	3	21	-	24
Secretaría de Energía Minas e Industria Paraestatal - Comisión Nacional de Seguridad Nuclear y Salvaguardias	2	9	-	11
Secretaría de la Contraloría General de la Federación	1	8	-	9
Comisión Nacional de Zonas Áridas	1	1	4	6
Comisión Nacional de Derechos Humanos	-	-	-	-
Total Government enterprises	7,677	3,821	4,124	15,622
Industry				
- Petróleos Mexicanos (PMEX)	1,652	1,282	1,818	4,752
- Comisión Federal de Electricidad (CFE)	1,786	164	1,531	3,481
- Consejo de Recursos Mineros	10	5	1	16
- Consejo de Recursos Minerales	3	1	7	11

Entities	Goods	Services	Construction services	Total
Social security				
- Instituto Mexicano del Seguro Social (IMSS)	994	1,122	97	2,213
- Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE)	225	369	198	792
- Sistema Nacional para el Desarrollo Integral de la Familia (DIF)	87	12	6	105
- Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas	12	10	41	63
- Instituto Nacional para la Educación de los Adultos	9	11	-	20
- Servicios Asistenciales de la Secretaría de Marina	11	1	-	12
- Instituto Nacional Indigenista (INI)	4	4	-	8
- Centros de Integración Juvenil	1	1	-	2
- Instituto Nacional de la Senectud	1	1	-	2
Commerce				
- Compañía Nacional de Subsistencias Populares (CONASUPO)	1,882	505	4	2,391
- Leche Industrializada Conasupo S.A. de C.V. (LICONSA)	279	41	1	321
- Bodegas Rurales Conasupo S.A. de C.V.	5	7	2	14
- Procuraduría Federal del Consumidor	4	6	-	10
- Instituto Nacional del Consumidor	2	4	-	6
- Distribuidora e Impulsora Comercial S.A. de C.V. (DICONSA)	1	3	-	4

Entities	Goods	Services	Construction services	Total
- Servicio Nacional de Información de Mercados	2	1	-	3
- Laboratorios Nacionales de Fomento Industrial	1	1	-	2
Communications and Transportation				
- Ferrocarriles Nacionales de México (FERRONALES)	323	57	99	479
- Caminos y Puentes Federales de Ingreso y Servicios Conexos (CAPUFE)	18	10	43	71
- Servicio Postal Mexicano	19	37	11	67
- Aeropuertos y Servicios Auxiliares (ASA)	15	36	15	66
- Telecomunicaciones de México (TELECOM)	39	21	2	62
Printing and Editorial				
- Productora e Importadora de Papel S.A. de C.V. (PIPSA)	244	5	1	250
- Talleres Gráficos de la Nación	6	1	-	7
Others				
- Comisión Nacional del Agua (CNA)	-	-	-	-
- Comité Administrador del Programa Federal de Construcción de Escuelas	4	4	246	254
- Lotería Nacional para la Asistencia Pública	20	35	1	56
- Pronósticos Deportivos	3	51	-	54
- Consejo Nacional de Ciencia y Tecnología (CONACYT)	8	4	-	12

Entities	Goods	Services	Construction services	Total
- Comisión para la Regularización de la Tenencia de la Tierra	2	4	-	6
- Notimex S.A. de C.V.	1	4	-	5
- Instituto Mexicano de Cinematografía	4	1	-	5

CANADA

Federal Entities Subject to NAFTA whose Contracts  
are Part of their Reporting Departments

1. Immigration and Refugee Board
2. Canada Employment and Immigration Commission
3. Atomic Energy Control Board
4. National Energy Board
5. Canadian International Development Agency (on its own account)
6. Department of Finance
7. Office of the Superintendent of Financial Institutions
8. Canadian International Trade Tribunal
9. Municipal Development and Loan Board
10. Department of Fisheries and Oceans
11. Science Council of Canada
12. National Research Council of Canada
13. Natural Sciences and Engineering Research Council of Canada
14. Canadian Human Rights Commission
15. Statute Revision Commission
16. Supreme Court of Canada
17. Canada Labour Relations Board
18. Medical Research Council
19. Social Sciences and Humanities Research Council
20. Office of the Co-ordinator, Status of Women
21. Public Service Commission
22. Correctional Service of Canada
23. National Parole Board
24. Canadian General Standards Board
25. Veterans Land Administration
26. Auditor General of Canada
27. Federal Office of Regional Development (Quebec)
28. Canadian Centre for Management Development
29. Canadian Radio-Television and Telecommunications Commission
30. Canadian Sentencing Commission
31. Civil Aviation Tribunal
32. Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario
33. Commission Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance
34. Commissioner for Federal Judicial Affairs
35. Competition Tribunal Registry



36. Copyright Board
37. Emergency Preparedness Canada
38. Federal Court of Canada
39. Grain Transportation Agency
40. Hazardous Materials Information Review Commission
41. Information and Privacy Commissioners
42. Investment Canada
43. Department of Multiculturalism and Citizenship
44. The National Archives of Canada
45. National Transportation Agency
46. Northern Pipeline Agency
47. Patented Medicine Prices Review Board
48. Petroleum Monitoring Agency
49. Canadian Intergovernmental Conference Secretariat
50. Commissioner of Official Languages
51. Economic Council of Canada
52. Public Service Staff Relations Office
53. Office of the Secretary to the Governor General
54. Office of the Chief Electoral Officer
55. Federal Provincial Relations Office
56. Procurement Review Board
57. Royal Commission on Electoral Reform and Party Financing
58. Royal Commission on National Passenger Transportation
59. Royal Commission on New Reproductive Technologies
60. Royal Commission on the Future of the Toronto Waterfront
61. Statistics Canada
62. Tax Court of Canada, Registry of the
63. Agricultural Stabilization Board
64. Canadian Aviation Safety Board
65. Canadian Centre for Occupational Health and Safety
66. Canadian Transportation Accident Investigation and Safety Board
67. Director of Soldier Settlement
68. Director, the Veterans' Land Act
69. Fisheries Prices Support Board
70. National Battlefields Commission
71. Royal Canadian Mounted Police
72. Royal Canadian Mounted Police External Review Committee
73. Royal Canadian Mounted Police Public Complaints Commission

CANADA

Supply and Services Contracts by Federal Departments/Agencies  
by Goods and Services 1989

Thousands of Canadian Dollars

Department/ Agency	Goods		Services		Total		Construction estimated expenditures
	Number of contracts	Value \$000	Number of contracts	Value \$000	Number of contracts	Value \$000	
Agriculture	5,613	39,665	1,669	29,559	7,282	69,224	51,665
Atlantic Canada Opportunities Agency	141	1,354	119	5,385	264	6,739	-
Communications*	5,461	39,763	2,296	88,682	6,757	122,445	3,367
Consumer and Corporate Affairs	958	7,763	967	5,161	1,325	12,924	-
Employment and Immigration	3,009	56,605	2,481	74,908	6,490	191,513	-
Energy, Mines and Resources	4,504	30,088	2,134	104,370	6,698	143,467	6,979
Environment	9,015	77,169	3,083	64,849	12,008	142,018	40,367
External Affairs	1,954	23,920	204	17,146	1,648	41,066	44,211
Finance	469	6,910	193	13,394	662	20,304	-
Fisheries and Oceans*	6,169	54,675	3,021	83,733	9,164	138,408	87,511
Forestry	744	4,594	416	5,480	1,100	10,074	1,800
Indian and Northern Affairs	1,636	13,827	495	10,899	2,030	24,726	29,832
Industry, Science and Technology	8,002	170,087	1,052	194,876	9,954	304,963	6,248
Justice	897	8,072	224	4,949	1,121	19,021	-

Department/ Agency	Goods		Services		Total		Construction estimated expenditures
	Number of contracts	Value \$000	Number of contracts	Value \$000	Number of contracts	Value \$000	
Labour	421	5,042	73	1,396	494	6,438	-
National Defence**	69,040	2,520,920	11,963	968,213	101,003	3,489,193	249,990
National Health and Welfare	3,068	64,925	1,100	47,007	4,758	111,932	31,822
National Revue	3,218	70,189	1,652	53,521	4,870	123,710	4,487
Privy Council	131	881	593	9,274	664	10,165	-
Public Works	3,750	62,492	643	22,491	4,393	84,983	636,110
Secretary of State	694	4,803	1,727	25,656	2,421	30,459	-
Solicitor General**	13,658	167,408	2,456	69,400	10,112	220,815	154,235
Supply and Services (a)	6,392	243,882	3,651	605,732	9,043	840,614	-
Transport*	17,521	238,257	3,581	627,358	21,102	763,615	388,205
Treasury Board	202	2,202	100	4,117	371	6,919	-
Veterans Affairs	1,574	11,875	429	32,018	2,003	43,693	-
Western Diversification Office	210	1,659	104	1,270	314	2,929	-
TOTAL	165,452	9,920,028	46,759	3,070,659	232,211	6,090,867	1,715,079

\* Excluded from GATT/FTA.

\*\* Partially excluded from GATT/FTA.

(a) Includes Multi-customer Contracts which could not be apportioned to individual departments.

CANADA

The Estimated Market Size of Canadian Federal Crown Corporations Under NAFTA, FY 1991-92 in Millions of Canadian Dollars

Crown corporations	Total \$M	Goods	Services	Construction
1. Canadian National Railways	1,991.20	525.90	1,173.30	292.00
2. Canada Post	1,331.40	297.00	815.10	219.30
3. VIA Rail Canada Inc.	285.10	45.20	194.80	45.10
4. Royal Canadian Mint	265.70	234.10	27.10	4.50
5. St. Lawrence Seaway Authority	61.00	27.50	21.40	12.10
6. National Capital Commission	59.20	11.00	14.50	33.70
7. National Gallery of Canada	20.80	6.80	14.00	-
8. Canadian Museum of Civilization	20.70	7.30	13.40	-
9. National Museum of Science and Technology	8.40	2.20	4.70	1.50
10. Canadian Museum of Nature	8.10	2.60	6.60	-
11. Defence Construction (1951) Ltd.	3.30	0.50	2.80	-
Total	4,054.90	1,160.10	2,266.60	608.20

Source: Estimates are derived from the Public Accounts of Canada, and from corporation's annual report where available.

UNITED STATES

1989 United States Procurements  
Total Procurements, Totals by Agency  
(No Exclusions)  
Values in Thousands of SDRs

Agency	Total
Action	632
Administrative Conference of the United States	337
Agency for International Development	318,647
Agriculture, Department of	1,901,393
American Battle Monuments Commission	3,368
Arms Control and Disarmament Agency	1,076
Board for International Broadcasting	93
Commerce, Department of	409,616
Commission of Civil Rights	347
Commodity Futures Trading Commission	5,973
Consumer Product Safety Commission	2,917
Defense, Department of	100,675,796
Department of Veterans Affairs	2,189,915
Education, Department of	161,854
Energy, Department of	12,663,287
Environmental Protection Agency	122,640
Equal Employment Opportunity Commission	8,879
Executive Office of the President	10,043
Federal Communications Commission	2,724
Federal Election Commission	418
Federal Emergency Management Agency	130,527
Federal Maritime Commission	444
Federal Mediation and Conciliation Service	222
Federal Trade Commission	3,338
General Services Administration	2,742,977
Health and Human Services, Department of	1,415,743

Agency	Total
Housing and Urban Development, Department	88,280
Interior, Department of the	1,200,598
International Trade Commission	1,578
Interstate Commerce Commission	1,574
Justice, Department of	1,023,695
Labor, Department of	440,361
National Aeronautics and Space Administration	7,892,519
National Archives and Records Administration	1,430
National Capital Planning Commission	25
National Foundation on the Arts and the	649
National Labor Relations Board	2,219
National Mediation Board	1,576
National Science Foundation	59,950
National Transportation Safety Board	33
Nuclear Regulatory Commission	31,439
Office of Personnel Management	16,947
Peace Corps	28,817
Pennsylvania Avenue Development Corporation	573
Railroad Retirement Board	4,210
Securities and Exchange Commission	14,584
Selective Service System	542
Small Business Administration	2,252
Smithsonian Institution	33,769
State, Department of	297,602
Tennessee Valley Authority	2,158,809
Transportation, Department of	1,311,253
Treasury, Department of the	665,992
United States Army Corps of Engineers - Civil Pro.	972,386
United States Information Agency	78,868
Total	139,105,736

UNITED STATES

1989 United States Procurements  
Below \$25,000. Totals by Agency  
(No Exclusions)  
Values in Thousands of SDRs

Agency	Total
Action	502
Administrative Conference of the United States	312
Agency for International Development	19,023
Agriculture, Department of	656,245
American Battle Monuments Commission	3,368
Arms Control and Disarmament Agency	641
Commerce, Department of	105,740
Commission of Civil Rights	347
Commodity Futures Trading Commission	1,655
Consumer Product Safety Commission	1,792
Defense, Department of	8,813,388
Department of Veterans Affairs	1,153,348
Education, Department of	11,680
Equal Employment Opportunity Commission	4,250
Executive Office of the President	5,036
Federal Communications Commission	2,402
Federal Maritime Commission	267
Federal Mediation and Conciliation Service	222
Federal Trade Commission	2,158
Health and Human Services, Department of	521,531
Housing and Urban Development, Department	12,896
Interior, Department of the	331,129
International Trade Commission	1,112
Interstate Commerce Commission	784
Justice, Department of	407,615
Labor, Department of	25,060

Agency	Total
National Aeronautics and Space Administration	141,504
National Labor Relations Board	1,171
National Mediation Board	223
National Science Foundation	4,783
Nuclear Regulatory Commission	6,199
Office of Personnel Management	14,807
Peace Corps	19,859
Railroad Retirement Board	2,306
Securities and Exchange Commission	3,477
Selective Service System	422
Smithsonian Institution	18,393
State, Department of	47,512
Treasury, Department of the	175,836
United States Information Agency	29,740
Total	12,548,735



UNITED STATES

1989 United States Procurements  
Above \$25,000, Totals by Agency  
(No Exclusions)  
Values in Thousands of SDRs

Agency	Total	Products	Services
Action	130	0	130
Administrative Conference of the United States	6,265	264	6,000
Agriculture, Department of	1,245,148	905,493	339,655
Arms Control and Disarmament Agency	435	0	435
Commerce, Department of	303,876	124,860	179,015
Consumer Product Safety Commission	1,125	125	1,000
Defense, Department of	91,862,408	53,828,141	38,034,267
Department of Veterans Affairs	1,036,567	354,561	682,007
Education, Department of	150,174	71	150,103
Energy, Department of	12,663,287	507,095	12,156,191
Environmental Protection Agency	122,640	1,620	121,020
Equal Employment Opportunity Commission	4,629	507	4,122
Executive Office of the President	313,589	16,379	297,210
Federal Communications Commission	322	95	227
Federal Emergency Management Agency	130,527	42,267	88,259
Federal Maritime Commission	177	0	177
Federal Trade Commission	1,180	286	895
General Services Administration	2,742,977	1,346,326	1,396,651
Health and Human Services, Department of	894,212	244,780	649,432
Housing and Urban Development, Department	75,384	6,572	68,812
Interior, Department of the	869,469	89,774	779,695
International Trade Commission	466	66	400
Interstate Commerce Commission	790	0	790
Justice, Department of	616,080	217,362	398,717
Labor, Department of	415,301	10,846	404,455
National Aeronautics and Space Administration	7,751,015	1,627,837	6,123,178
National Archives and Records Administration	1,430	367	1,063

Agency	Total	Products	Services
National Foundation on the Arts and the	649	0	649
National Labor Relations Board	1,048	0	1,048
National Science Foundation	55,167	2,108	53,059
Nuclear Regulatory Commission	25,240	713	24,527
Office of Personnel Management	2,140	0	2,140
Pennsylvania Avenue Development Corporation	573	0	573
Railroad Retirement Board	1,904	294	1,610
Securities and Exchange Commission	11,107	233	10,874
Selective Service System	120	0	120
Small Business Administration	2,252	0	2,252
Smithsonian Institution	15,376	1,709	13,667
State, Department of	250,090	63,703	186,388
Tennessee Valley Authority	2,158,809	2,078,518	80,291
Treasury, Department of the	490,156	395,157	94,999
United States Army Corps of Engineers - Civil Pro.	972,386	50,087	922,299
United States Coast Guard	1,311,253	514,115	797,138
United States Information Agency	49,128	19,679	29,448
Total	126,557,000	62,452,011	64,104,989

UNITED STATES

1989 United States Procurements  
Below Threshold, Totals by Agency  
(No Exclusions)  
Values in Thousands of SDRs

Agency	Total
Action	632
Administrative Conference of the United States	337
Agency for International Development	49,176
Agriculture, Department of	838,433
American Battle Monuments Commission	3,368
Arms Control and Disarmament Agency	789
Board for International Broadcasting	93
Commerce, Department of	144,943
Commission of Civil Rights	347
Commodity Futures Trading Commission	2,331
Consumer Product Safety Commission	2,794
Defense, Department of	11,668,542
Department of Veterans Affairs	1,419,872
Education, Department of	19,204
Energy, Department of	40,271
Environmental Protection Agency	3,071
Equal Employment Opportunity Commission	6,807
Executive Office of the President	6,591
Federal Communications Commission	2,724
Federal Election Commission	66
Federal Emergency Management Agency	7,414
Federal Maritime Commission	267
Federal Mediation and Conciliation Service	222
Federal Trade Commission	2,381
General Services Administration	242,915
Health and Human Services, Department of	593,183
Housing and Urban Development, Department	15,459

Agency	Total
Interior, Department of the	438,880
International Trade Commission	1,578
Interstate Commerce Commission	832
Justice, Department of	458,173
Labor, Department of	34,492
National Aeronautics and Space Administration	236,661
National Archives and Records Administration	708
National Capital Planning Commission	25
National Foundation on the Arts and the	201
National Labor Relations Board	2,219
National Mediation Board	1,576
National Science Foundation	7,925
National Transportation Safety Board	33
Nuclear Regulatory Commission	12,162
Office of Personnel Management	15,057
Peace Corps	21,651
Pennsylvania Avenue Development Corporation	137
Railroad Retirement Board	2,899
Securities and Exchange Commission	3,808
Selective Service System	542
Small Business Administration	975
Smithsonian Institution	22,816
State, Department of	66,670
Tennessee Valley Authority	46,922
Transportation, Department of	70,726
Treasury, Department of the	188,560
United States Army Corps of Engineers - Civil Pro.	65,108
United States Information Agency	34,832
Total	16,808,400

UNITED STATES

1989 United States Procurements  
Above Threshold, Totals by Agency  
(No Exclusions)  
Values in Thousands of SDRs

Agency	Total	Products	Services
Administrative Conference of the United States	3,994	0	3,994
Agriculture, Department of	1,062,960	840,575	222,385
Arms Control and Disarmament Agency	286	0	286
Commerce, Department of	264,672	111,791	152,881
Consumer Product Safety Commission	123	0	123
Defense, Department of	89,007,253	52,172,570	36,834,683
Department of Veterans Affairs	770,043	308,472	461,570
Education, Department of	142,650	0	142,650
Energy, Department of	12,623,016	501,581	12,121,435
Environmental Protection Agency	119,569	1,468	118,101
Equal Employment Opportunity Commission	2,072	172	1,900
Executive Office of the President	280,089	11,390	268,699
Federal Emergency Management Agency	123,113	40,444	82,669
Federal Maritime Commission	177	0	177
Federal Trade Commission	957	179	778
General Services Administration	2,500,062	1,260,650	1,239,412
Health and Human Services, Department of	822,560	239,839	582,721
Housing and Urban Development, Department	72,821	6,454	66,367
Interior, Department of the	761,718	70,552	691,166
Interstate Commerce Commission	741	0	741
Justice, Department of	565,522	186,228	379,294
Labor, Department of	405,869	9,983	395,886
National Aeronautics and Space Administration	7,655,858	1,600,327	6,055,531
National Archives and Records Administration	722	367	355
National Foundation on the Arts and the	448	0	448
National Science Foundation	52,025	1,844	50,181
Nuclear Regulatory Commission	19,277	499	18,778

Agency	Total	Products	Services
Office of Personnel Management	1,890	0	1,890
Pennsylvania Avenue Development Corporation	436	0	436
Railroad Retirement Board	1,311	204	1,107
Securities and Exchange Commission	10,776	170	10,606
Small Business Administration	1,277	0	1,277
Smithsonian Institution	10,953	485	10,468
State, Department of	230,932	60,243	170,690
Tennessee Valley Authority	2,111,888	2,038,100	73,788
Treasury, Department of the	477,433	390,612	86,820
United States Army Corps of Engineers - Civil Pro.	907,278	39,537	867,741
United States Coast Guard	1,240,527	496,945	743,582
United States Information Agency	44,036	18,552	25,484
Total	122,297,336	60,410,234	61,887,102

ANNEX 2

Intellectual Property Questions and Replies (Nos. 191-205)

*Canada and the United States are providing the attached responses to the questions on intellectual property-related matters without prejudice to their respective views on the appropriate mandate of the GATT working party on goods, the GATS working party on services and the TRIPS Council in respect of this subject. This submission of these responses should not, in any way, be interpreted to prejudge positions that might be taken by any NAFTA Party or by WTO bodies in this regard.*

- 191. How do the NAFTA Parties, in view of Article 19(1) of the TRIPs Agreement, intend to remedy the fact that under Article 1708.8 of the NAFTA the registration of a trademark may be cancelled for the reason of non-use after an uninterrupted period of two years?**

There is no inconsistency between the requirements of TRIPS, Article 19(1), and NAFTA, Article 1708(8). A NAFTA Party cancelling a trademark registration only after the minimum TRIPS period of three years of non-use would not be inconsistent with the NAFTA minimum period of two years' non-use.

- 192. Where a trademark of a foreign supplier cannot be used by that supplier in one NAFTA member, is its use in other NAFTA members affected?**

No.

- 193. Does the fact that Article 1709.5(a) does not mention the right of the owner of a product patent to prevent other persons from offering for sale or importing the product mean that these acts are not subject to the patent owner's authorization, as required under Article 28(1)(a) of the TRIPs Agreement?**

Because NAFTA merely sets out minimum international standards, there is no inconsistency between NAFTA and TRIPS on these points. With respect to "offering for sale" and "importing", there are differences between NAFTA, Article 1709(5)(a), and TRIPS, Article 28(1)(a), but NAFTA does not prohibit the higher level of protection required by TRIPS Article 28(1)(a).

- 194. Does the fact that Article 1709.5(b) does not mention the right of the owner of a process patent to prevent other persons from offering for sale the product obtained directly by that process mean that this act is not subject to the patent owner's authorization, as required under Article 28(1)(b)?**

Again, NAFTA sets out minima of protections and does not preclude the higher level of protection required by TRIPS Article 28(1)(b). With respect to "offering for sale", there is the textual difference between NAFTA, Article 1709(5)(b), and TRIPS, Article 28(1)(b).

- 195. What are the implications of the choice of patent term between 20 years from the date of filing and 17 years from the date of grant, notably in view of Article 33 of the TRIPs Agreement which provides that the term of protection available shall not end before the expiration of a period of 20 years counted from the filing date?**

There is no inconsistency between the requirements of TRIPS, Article 33, and NAFTA, Article 1709(12). Canada already provides a patent term of 20 years from filing as will the USA with respect to prospective applications. For existing subject matter, the USA will be providing a term which is the greater of 17 years from grant and 20 years from filing.

**196. Do the Parties to the NAFTA consider that the protection granted under Articles 1712.1(a) and 1712.2 fully meets the requirements under Articles 23(1) and 23(2) of the TRIPs Agreement?**

TRIPS, Article 23(1) and 23(2), contain specific obligations which are absent from NAFTA, Article 1712(1)(a) and 1712(2). The relevant NAFTA obligation focuses on whether or not the public would be misled. In this regard, no changes to Canada's domestic law were necessary. However, Canada's WTO Agreement Implementation Act contains specific provisions to implement the obligations under TRIPS, Articles 23(1) and 23(2).

To implement Article 1712, changes were made to the U.S. trademark law. Additional changes were made to the U.S. trademark law to implement TRIPs Articles 23(1) and 23(2), which become effective on January 1, 1996.

**197. How do the Parties to the NAFTA interpret the reference in Article 17.12.4 to use of a geographical indication in a continuous manner "for at least 10 years" or "in good faith" notably in view of the fact that the TRIPs Agreement specifically refers in Article 24(4) to use "for at least 10 years preceding 15 April 1994" or "in good faith preceding that date"? How is the compatibility with the TRIPs Agreement going to be assured?**

NAFTA, Article 1712(4), and TRIPS, Article 24(4), are grandfathering exceptions which Parties may choose to use with regard to the specific obligations in the respective instruments. Because of the purely optional character of the two provisions, there is no question of inconsistency between NAFTA, Article 1712(4) and TRIPS, Article 24(4).

In view of the different obligations in the two instruments, while an exception based on TRIPS, Article 24(4), is contained in Canada's WTO Agreement Implementation Act, Canada has not found it necessary to rely on the facility provided by NAFTA, Article 1712(4). Consequently, there is no possibility of making a comparison between Canada's treatment of foreign rightholders under NAFTA, Article 1712(4), and TRIPS, Article 24(4).

The United States implemented the grandfather clause contained in NAFTA Article 1712(4) in connection with its amendment to its trademark law to implement Article 1712 of NAFTA. Additionally, the grandfather provisions of TRIPs Article 24(4) are incorporated in the U.S. changes to its trademark law to implement TRIPs Article 23(1) and 23(2).

**198. What is the meaning of Article 1712.8 and what are the situations the Parties wish to cover in this paragraph?**

NAFTA, Article 1712(8), originated with TRIPS, Article 24(8), as embodied in the 1991 draft Dunkel text. NAFTA, Article 1712(8), and TRIPS, Article 24(8), share the same rationale, i.e. a limited exception permitting the use of a trade or business name that happens to be similar or identical to a geographical indication.



- 199. Does the fact that Article 1713.3 does not mention the right of the owner of the industrial design to prevent other persons from importing articles bearing or embodying that design mean that this act is not subject to the design owner's authorization, as required under Article 26(1) of the TRIPs Agreement?**

With respect to importation, there is a difference between the level of protection required by NAFTA, Article 1713(3), and TRIPS, Article 26(1). While NAFTA does not require this higher level of protection, it does not preclude it.

- 200. Could the NAFTA Parties explain the exact significance and implications of Article 1715.7?**

NAFTA, Article 1715(7) is related to TRIPS, Article 44(2), on "injunctions" in the sense that discussion of NAFTA, Article 1715(7), originated with the relevant TRIPS provision in the 1991 draft Dunkel text. NAFTA, Article 1715(7), permits NAFTA Parties to maintain a domestic legal system in which injunctive relief is not available against the State with respect to its infringement of an intellectual property right.

- 201. How do the United States of America intend to extend, by virtue of Articles 4, 9, 14(6) and 70(2) of the TRIPs Agreement, the protection granted under Articles 1705.7, 1720.1 and 1720.3 of the NAFTA?**

Article 1705.7

Article 1705.7 requires the United States to restore copyright in certain motion pictures produced in Canada or Mexico that had been declared to be in the public domain pursuant to 17 U.S.C. 405. Section 514 of the Uruguay Round Agreements Act (URAA) restores copyright in all works (including sound recordings) originating in WTO members that have fallen into the public domain in the United States for failure to comply with formalities or for the lack of copyright relations between the United States and the country of origin. The United States thus provides to nationals of WTO members far more protection than is required in Article 1705.7 of NAFTA.

Article 1720.1

Article 1720.1 provides that the NAFTA does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions. Article 70.1 of TRIPs contains a similar provision. The United States is in compliance with both provisions, neither of which requires any action by the United States.

Article 1720.3

Article 1720.3 states that, except as required under Article 1705.7, a party does not have to restore protection for subject matter that has fallen into the public domain in its country of origin. As noted, section 514 of the URAA restores copyright protection to the entire range of copyrightable works (including sound recordings) that have fallen into the public domain in the United States for failure to comply with formalities or for the lack of copyright relations between the United States and the country of origin.

- 202. Is the possibility to accept, from the entry into force of the NAFTA, applications from plant breeders for plant varieties and subsequently protection, limited to nationals or domiciliaries of a NAFTA Party?**

The ability to apply for such protection in Canada and the United States is not limited to nationals or domiciliaries of a NAFTA Party.

- 203. How do the United States and Mexico intend to extend, by virtue of Article 4 of the TRIPs Agreement, the protection granted under Article 1709.4 to nationals of and patents granted in other WTO members? What is the exact procedure that these nationals have to follow in order to obtain such protection?**

Because the United States provided product patent protection for pharmaceuticals and agricultural chemicals commensurate with Article 1709.1 at the time the NAFTA was signed, Article 1709.4 imposes no substantive obligations on the United States.

- 204. The NAFTA requires protection and enforcement stricter than those provided by the TRIPs Agreement. Do the NAFTA parties apply these measures on an m.f.n. basis to non-parties to the NAFTA? If not, why not?**

Once the intellectual property provisions in Canada's WTO Agreement Implementation Act and the United States' Uruguay Round Agreement Act, are in force, the protection and enforcement measures in Canadian and U.S. intellectual property statutes, respectively, will apply equally to WTO Members and NAFTA Parties

- 205. Have the intellectual property standards, including those which establish protection greater than or different from that provided in the future TRIPS Agreement, been reflected in the three national legislations?**

In Canada's view, all our intellectual property obligations under NAFTA were fully satisfied on 1 January 1994, the day the NAFTA Implementation Act came into force.

Changes needed to U.S. legislation in order to implement NAFTA chapter 17 were accomplished through the provisions of sections 331-335 of the North American Free Trade Agreement Implementation Act.