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## Chapters 3 & 4 of the NAFTA

Dallas Addison

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# ***Member States Developments***

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## ***United States: Chapters 3 & 4 of the NAFTA***

### ***I. Introduction***

The North American Free Trade Agreement Implementation Act<sup>1</sup> (the Act) requires relatively few major changes in existing United States law or administrative practice.<sup>2</sup> Although not required to implement the North American Free Trade Agreement (NAFTA), many of the changes which have been made were deemed desirable by both the President and Congress.<sup>3</sup> The Act addresses the relationship between existing United States law and the NAFTA. Section 102(a)(2) of the Act states that provisions of United States law that are not addressed by the Act are left unchanged.<sup>4</sup> Thus, Congress refused to provide for a general preemption of federal statutory law by the NAFTA.<sup>5</sup>

This section will focus on Chapters Three and Four of the NAFTA. These chapters are the cornerstones of the NAFTA's provisions concerning trade in goods. Chapter Four lays out the unique and complex procedure utilized under the NAFTA to determine those goods which may receive special treatment (originating goods). Chapter Three provides one of the key principles of the NAFTA — the elimination of tariffs on "originating goods" traded within the North American free-trade area. Thus, these two chapters work together to create a preferential system for certain goods traded among Mexico, Canada, and the United States (the Parties).

When discussing the NAFTA, it often becomes confusing which source is being referenced. The agreement signed between the Parties has been codified into the United States Code. For the sake of clarity, all references will be made to provisions in the NAFTA, not to their equivalent U.S.C. sections. The NAFTA also contains annexes that are essential to understanding its workings.<sup>6</sup> The main text of each chapter states the general rules; the annexes which follow each chapter provide country specific information. When applicable, this section will discuss changes to United States' law required by NAFTA and any current United States' regulatory developments in these areas.

### ***II. Chapter Four: Rules of Origin***

Chapter Four of the NAFTA, along with the chapter's annexes, provide rules for

1. Pub. L. No. 103-182, 107 Stat. 2057 (codified as amended in scattered sections of U.S.C.A. (1995 Supp.). For complete classification of this Act to the United States Code, see Short Title note set out under 19 U.S.C.A. § 3301 (West Supp. 1995) and Tables.
  2. Statement of Administrative Action, H.Doc. 103-159, 103rd Congress, 2nd Sess. (1993), *microfilmed on* CIS No. H780-16, pp.450-680 (Congressional Info. Serv.) [*hereinafter* Statement].
  3. See Statement, *supra* note 2, at 451.
  4. 107 Stat. at 2062, 19 U.S.C. § 3312.
  5. See Statement, *supra* note 2, at 457.
  6. See R. Fisher & A. Shoyer, *National Treatment and Market Access*, in NAFTA: A NEW FRONTIER IN INTERNATIONAL TRADE AND INVESTMENT IN THE AMERICAS 15 (J. Bello et al. eds. 1994) [*hereinafter* Fisher] (discussing the relationship between NAFTA and its annexes, and the importance of reading both in conjunction with the NAFTA implementing bill and the Statement.).
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determining which goods are "originating goods" and thus qualify for preferential tariff treatment under Article 302.<sup>7</sup> The United States had a particular interest in these rules since it did not want the already established maquiladora industry in Mexico to be used as a platform for non-Parties to gain access to preferential treatment under the NAFTA. The rules also apply when determining tariff or quota treatment under Annex 300-A (automotive trade), Annex 300-B (textiles), Annex 310 (customs users fees) and Article 801 and Annex 801.1 (bilateral safeguards).<sup>8</sup>

Under Article 401, originating goods may be classified into four general categories: (1) goods which are "wholly obtained or produced" entirely in one or more NAFTA countries;<sup>9</sup> (2) goods whose non-originating materials qualify for a change in tariff classification<sup>10</sup> which is sometimes supplemented or replaced with a regional value-content requirement<sup>11</sup>; (3) goods produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials; and (4) goods that do not satisfy a change in tariff classification requirement but nevertheless qualify as "originating."<sup>12</sup>

7. See Statement, *supra* note 2, at 492.

8. *Id.*

9. The NAFTA rules of origin regulations were published in the Appendix to 19 C.F.R. § 181 (1994). Examples of goods which are "wholly obtained or produced" in a NAFTA country include crops harvested in the soil of one or more of the NAFTA countries, a mineral extracted from the soil of one or more NAFTA countries or a live animal born and raised in one or more NAFTA countries. To further illustrate the need to read the entire text of NAFTA along with its annexes, Annex 703.2 (governing market access for agricultural goods) treats certain agricultural goods as non-originating even when they meet the origin rules of Chapter Four and the Appendix to Part 181 of the C.F.R. See Statement, *supra* note 2, at 493.

10. The NAFTA utilizes the international Harmonized Tariff System (HTS) rule of origin. In the United States, "[t]he Harmonized Tariff Schedule is not published in the United States Code. A current version is maintained and published periodically by the United States International Trade Commission and is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402." Harmonized Tariff Schedule note, 19 U.S.C. § 1202 (1988). Under the HTS system, origin is conferred by a change in tariff category. The HTS has been adopted by the U.S. and most of the world's major trading nations in an attempt to provide uniformity in trade among these nations. See D. Gantz, *Maximizing the Regional Benefits of North American Economic Integration: Rules of Origin Under NAFTA*, in *MAKING FREE TRADE WORK IN THE AMERICAS*, 52, 57 (B. Kozolchik ed. 1993) (explaining briefly the Harmonized Tariff System).

11. The two methods for determining regional value content (RVC) under the NAFTA are (1) the transaction value method, and (2) the net cost method. See *infra* text accompanying notes 13-31.

12. The NAFTA Rules of Origin Regulations list two fairly technical instances where a good may qualify as "originating" even though it has not met a change in tariff classification requirement: (1)(a) the non-originating goods were imported as "an unassembled or disassembled good" under Rule 2(a) of the General Rules for the Interpretation of the Harmonized System and (b) the good is produced entirely in the territory of one or more of the NAFTA countries and (c) the regional value content of the good is not less than 60 percent using the transaction value method or 50 percent where the net cost method is used and (d) the good does not fall under Chapters 61 through 63; (2)(a) the requirements of (1)(b), (c) and (d) are met, (b) the non-originating materials are provided for under the Harmonized System as parts of the good, (c) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts, (d) the non-originating materials and goods involved are not both classified as parts of goods under the heading or subheading involved. See 19 C.F.R. § 181, App.

Categories (1) and (3) involve fairly straightforward determinations. Category (4) is a fairly narrow exception to the change in tariff classification requirement. The change in tariff classification/regional value-content analysis covers many of the most important instances where all materials and components are not obtained in the region.

#### A. REGIONAL VALUE-CONTENT ANALYSIS

The NAFTA subjects significantly less goods to a mandatory value-content calculation than the Canadian Free Trade Agreement.<sup>13</sup> Only automotive products, footwear, and cases where the final product and its components are classified under the same tariff subheading or under an undivided tariff heading are required to complete a regional value content analysis.<sup>14</sup> Use of the regional value content analysis is optional for various other goods.<sup>15</sup>

Article 402 sets forth alternative methods for calculating the regional value content (RVC) of a good, and the rules for determining the value of materials used in the production of a good. An exporter or producer can generally determine the RVC using either the transaction value method or the net cost method. Under the transaction value method,

$$RVC = [(TV-VNM)/TV]*100$$

where "TV" means the transaction value of the good adjusted to a F.O.B. basis, and "VNM" means the value of non-originating materials used by the producer in the production of the good. The "transaction value of the good" is determined by reference to Schedule II of the Appendix to 19 C.F.R. § 18. Schedule II basically defines "transaction value of the good" to be the price actually "paid or payable for the good" with adjustments to be made in accordance with Sections 3 and 4 of Schedule II.<sup>16</sup> In most cases using this method, the RVC must not be less than 60 percent for a good to qualify as "originating."<sup>17</sup> Under the net cost method,

$$RVC = [(NC-VNM)/NC]*100$$

where "NC" means the net cost of the good, and "VNM" means the value of non-originating materials used by the producer in the production of the good.<sup>18</sup> The regulations define "net cost" as "total cost"<sup>19</sup> minus certain "excluded costs," which include non-allowable interest costs.<sup>20</sup> The net cost method is mandatory in several circumstances: (1) automotive products,<sup>21</sup> (2) when a transaction value cannot be reliably determined, (3) when the

13. U.S. Canada Free Trade Agreement, Jan. 2, 1988, U.S.-Can., 27 I.L.M. 281 (*hereinafter* CFTA).

14. See Statement, *supra* note 2, at 493.

15. *Id.*

16. Sections 3 and 4 provide that the "transaction value of the good" would include such sums as commissions, the costs of transportation to the producer's point of direct shipment, certain royalties related to the good, and the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer. 19 C.F.R. sec 181, App. (1994).

17. 19 C.F.R. § 181, App. (1994).

18. *Id.* The appendix also contains examples of calculating RVC using the transaction value method and the net cost method.

19. "Total cost" is generally defined to mean "all product costs, period costs and other costs that are recorded ..." with several further qualifications. 19 C.F.R. sec 181, App. (1994).

20. 19 C.F.R. § 181, App. at 902 (1994) (stating that the calculation of non-allowable interest costs shall be made in accordance with Schedule XI of the Appendix).

21. See *infra* notes 32-35 and accompanying text (discussing NAFTA's special automotive provisions).

transaction value is unacceptable, (4) when a producer reaches a certain level of sales of identical or similar goods to a related person (85 percent) during the six month period preceding the month of the sale in question, (5) goods provided for in subheadings 6401.10 - 6406.10, (6) a good provided for in tariff item 8469.10.40 (word processing machines), (7) the producer or exporter chooses to accumulate,<sup>22</sup> and (8) the good is an intermediate material subject to a regional value-content requirement.<sup>23</sup> Generally, when this method is used, the RVC must not be less than 50 percent for a good to qualify as "originating."<sup>24</sup>

Both the net cost method and the transaction value method utilize the value of non-originating goods (VNM) in their calculations. The general section regarding non-originating materials provides with certain exceptions that the value is alternatively the customs value or the transaction value.<sup>25</sup> This definition specifically excludes: (1) light-duty and heavy-duty automotive goods,<sup>26</sup> (2) indirect materials,<sup>27</sup> (3) intermediate materials,<sup>28</sup> and (4) packing materials and containers and self-produced packaging materials and containers.<sup>29</sup>

While the NAFTA generally allows a producer or exporter of a good the option of using either the transaction value method or the net cost method, limitations to this flexibility exist. Specifically, the regulations state that an exporter or producer cannot first use the net cost method and then change to the transaction value method once notified that the good does not meet the applicable regional value requirement.<sup>30</sup> However, an

22. See *infra* notes 36-37 and accompanying text (discussing accumulation under the NAFTA).

23. 19 C.F.R. § 181, App. at 900 (1994).

24. See Statement, *supra* note 2, at 494. Automotive goods are the primary example of goods which require higher than a 50 percent RVC using the net cost method. *Id.*

25. 19 C.F.R. § 181, App. at 906 (1994). The transaction value is determined in accordance with section 2(1) of Schedule VII of the Appendix to 19 C.F.R. § 181. *Id.* Where there is no transaction value or the transaction value is unacceptable, the value is determined in accordance with sections 6-11 of Schedule VII. *Id.*

26. 19 C.F.R. § 181, App. at 906 (1994). The value of non-originating materials used by the producer in the production of a light-duty automotive good is the sum of the values of the non-originating materials that are traced materials and are incorporated into the good. *Id.* at 916. The value of non-originating materials used in the production of a heavy-duty automotive involves a somewhat different kind of tracing and can become quite complex. See *id.* at 925-29.

27. 19 C.F.R. § 181, App. at 908-09. When determining whether a good is an originating good, indirect goods used in the production of the good are to be considered originating material. If the good is subject to a regional value-content requirement, the value of the material shall be the costs of the material that are recorded on the books of the producer of the good when using the net cost method. *Id.*

28. *Id.* at 906. "Intermediate material" means a self-produced material (a material that is produced by the producer of a good and used in the production of that good) that is designated as an intermediate material. *Id.* at 886. With certain exceptions, "for purposes of calculating the regional value-content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that where an intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material." *Id.* at 907.

29. 19 C.F.R. § 181, App. at 906 (1994). The origin of packaging materials and containers is generally disregarded for purposes of the tariff change rules. *Id.* at 909.

30. *Id.* at 901.

exporter or producer may switch from the transaction value method to the net cost method in certain circumstances.<sup>31</sup>

## **B. AUTOMOTIVE PRODUCTS**

The special importance of the automotive industry to the economies of the Parties led to the formulation of special rules of origin for this sector. Specifically, the regional value-content must be determined using the net cost method.<sup>32</sup> In addition, automotive products are subject to an upwardly sliding RVC requirement.<sup>33</sup> Specific tracing rules were developed for automotive products, with the applicable rule depending on whether the good is classified as a "light-duty automotive good" or a "heavy duty automotive good." The net cost and the value of non-originating materials may be averaged for vehicles produced in the territory of a single Party.<sup>34</sup> Averaging is permitted over the same model line of vehicles in a single class produced in the same plant, or over the same class of motor vehicles produced in the same plant.<sup>35</sup>

## **C. ACCUMULATION**

Article 404 of the NAFTA and the accompanying regulations allow accumulation where there is more than one producer involved in the production of a good.<sup>36</sup> Using this, producers may combine their respective processing efforts when determining whether a good meets a required tariff classification change or regional value-content.<sup>37</sup>

## **D. DE MINIMUS RULE FOR GOODS THAT DO NOT UNDERGO A REQUIRED TARIFF CHANGE**

This rule allows certain goods to qualify as "originating" even though they have not met a required tariff classification.<sup>38</sup> Generally, if material constituting less than seven percent of the transaction value or total cost of the good fails to undergo a change in tariff classification, the good may be classified as "originating."<sup>39</sup> The rule lists a variety of instances where it is inapplicable, including certain agricultural products and home appliances.<sup>40</sup>

## **E. CONCLUSION**

This section has served as only a brief introduction to the complexities of the NAFTA rules of origin scheme. The Appendix to 19 C.F.R. § 181 provides numerous examples

31. *Id.* at 900-01. Generally, the net cost method may be subsequently utilized where the transaction value of the good or the value of any non-originating material used in the production of the good is required to be adjusted, or where the value of the good or material is unacceptable or where there is no transaction value for the good or the material, or where the producer exceeds the 85 percent limit for identical or similar goods sold to a related person. *Id.*

32. *Id.* at 900.

33. *Id.* at 938.

34. 19 C.F.R. sec 181, App. at 936 (1994).

35. *Id.* at 940.

36. *Id.* at 940.

37. *Id.* at 940-41.

38. *Id.* at 894.

39. *Id.* at 894-96.

40. *Id.* at 895.

illustrating how these rules work in practice. Since the promulgation of section 181 and the Appendix, there have not been significant regulatory actions affecting this portion of the NAFTA.

### **III. Chapter 3: National Treatment and Market Access For Goods**

While the previous section provided a brief overview of the rules determining which goods are eligible for special treatment under NAFTA, this section concerns the NAFTA's effect on various goods, principally those identified in NAFTA Chapter Four (originating goods). Chapter Three of the NAFTA embodies three main principles: (1) national treatment from the NAFTA countries with regards to products from other NAFTA countries; (2) the phase-out of tariffs on originating goods traded between the NAFTA countries; and (3) the elimination of a wide variety of non-tariff trade barriers.

#### **A. NATIONAL TREATMENT**

Article 301 of the NAFTA achieves the goal of non-discrimination with respect to the trade in goods by adopting the "national treatment" standard enunciated in the General Agreement on Tariffs and Trade (GATT).<sup>41</sup> When a country affords "national treatment" to imported goods, it may not treat those goods in a less favorable manner than it treats like goods of domestic origin. The inclusion of "national treatment" in the NAFTA ensures that any actions of the contracting parties not in accord with this standard will be actionable under the NAFTA's more extensive dispute resolution framework.<sup>42</sup> State and provincial governments are also subject to the national treatment requirement for goods from another NAFTA country.<sup>43</sup> This national treatment standard applies to "goods of a Party" or "goods of another party," more inclusive terms than "originating goods."<sup>44</sup>

Article 301 determines the applicability of the national treatment standard to states and provinces. The standard requires state and provincial governments to afford goods of a NAFTA party the best treatment it offers goods of a Party within the area of the party.<sup>45</sup> Thus, if a state or province offered any preferences to in-state goods, it would be required to afford the same preferences to goods of another Party.<sup>46</sup>

The NAFTA provides certain exceptions to the national treatment obligation of Article 301 in Annex 301.3. For Canada and the United States, the exceptions are essentially the same as those under the GATT and the Canadian Free Trade Agreement (CFTA).<sup>47</sup> Mexico, however, has far fewer exemptions under the NAFTA than it enjoys under the GATT.

41. Statement, *supra* note 2, at 467.

42. *Id.*

43. *Id.*

44. NAFTA art. 301. See Fisher, *supra* note 6, at 17 n.7 (explaining that Article 201 defines "goods of a Party" to include originating goods of that Party; in addition, a good of a party may include materials of their countries).

45. NAFTA art. 301.

46. See Fisher, *supra* note 6, at 18-19 (stating that this is "sometimes characterized as requiring the best of in-state or out-of-state treatment").

47. See Statement, *supra* note 2, at 467.

## B. TARIFF ELIMINATION

Article 302 of the NAFTA concerns the elimination of tariffs among the Parties for originating goods. The Article begins by stating that no Party may raise existing duties or adopt new duties on originating goods.<sup>48</sup> For originating goods traded between the United States and Mexico and between Canada and Mexico, dutiable products in the Harmonized Tariff System (HTS) are assigned a particular phase-out category.<sup>49</sup> The general categories are: (1) immediate elimination of duties; (2) five equal, annual cuts (20 percent per year); (3) ten equal, annual cuts (10 percent per year); (4) fifteen equal, annual cuts (6.67 percent per year).<sup>50</sup> The relevant phase-out category for a certain product is listed in each country's tariff schedule, which are annexed to the NAFTA text.<sup>51</sup> The elimination of tariffs for originating goods between the United States and Canada will be completed by January 1, 1998, in accordance with the schedule in the CFTA; however, the NAFTA rules of origin will now be applied instead of the CFTA rules.<sup>52</sup>

## C. TARIFF ACCELERATION

Article 302 of the NAFTA provides for the acceleration of duty reductions when agreed upon by at least two Parties.<sup>53</sup> In the United States, section 201 of the implementing legislation<sup>54</sup> permits the President to proceed with tariff acceleration using the proclamation authority provided that the consultation and lay-over requirements of section 103(a) of the implementing legislation are met.<sup>55</sup> Currently, the President has set the wheels in motion to further this tariff acceleration process.<sup>56</sup>

## D. RESTRICTIONS ON DRAWBACK

Article 303 of the NAFTA concerns duty drawbacks, duty waivers and reductions for foreign trade zones, and bonded warehouses or maquiladora programs. This was of special importance to the United States since it did not want to allow structures already in place (particularly the maquiladora industry) to be utilized by non-Parties to take unfair

48. NAFTA art. 302.

49. See Statement, *supra* note 2, at 468.

50. *Id.*

51. *Id.* See *supra* note 10 (discussing the Harmonized Tariff Schedule of the United States).

52. *Id.*

53. In accordance with the provisions of Section B to the Annex to Presidential Proclamation 6579, January 1, 1994, the effective date of the NAFTA, also marked the effective date for accelerating the duty elimination with respect to goods from Canada under terms of General Note 12 to the Harmonized Tariff Schedule of the United States. 59 Fed. Reg. 10451 (1994).

54. 19 U.S.C. § 3331(b).

55. 19 U.S.C. § 3313(a).

56. The Office of the United States Trade Representative (USTR) has published a notice listing those articles the U.S. government and the governments of Mexico and Canada have agreed to consider for accelerated elimination of duties. 59 Fed. Reg. 26686 (1994). In addition, the U.S. International Trade Commission (ITC) conducted an investigation on the probable economic effect on United States industries and consumers of accelerated elimination of U.S. duties on these products. 59 Fed. Reg. 30952 (1994). The USTR indicated that all or part of the ITC's report might be classified. *Id.* Since there has been no notice in the Federal Register concerning this investigation as of the date of writing, presumably the report was classified.



advantage of the preferential treatments conferred by the NAFTA. The Article limits the amount of drawbacks or reductions or waivers which may be claimed on goods from outside North America (non-originating goods) that are traded between the NAFTA countries.<sup>57</sup> The restrictions go into effect on United States exports to and imports from Canada on January 1, 1996, and on United States exports to and imports from Mexico on January 1, 2001.<sup>58</sup> Once the restrictions are in effect, drawbacks and deferrals will be allowed up to an amount that is the lesser of (1) the total amount of customs duties paid or owed on the good initially imported; or (2) the total amount of customs duties paid to another NAFTA government on the good, or the product into which the good is incorporated, when it is subsequently exported.<sup>59</sup>

The implementing legislation makes several amendments to current United States law to implement the drawback provisions of Article 303 of the NAFTA.<sup>60</sup> Section 203(a) of the Act provides that all goods imported into the United States are subject to the NAFTA drawback provisions, except for the categories specifically identified in section 203(a).<sup>61</sup> The categories are the same as those listed in paragraph six of Article 303 of the NAFTA. Section 203(b) of the Act amends the applicable provisions of the Tariff Act of 1930 and the Foreign Trade Zones Act to conform with the NAFTA drawback principles.<sup>62</sup>

#### **E. DUTY WAIVER PROGRAMS**

Article 304 of the NAFTA limits the ability of NAFTA countries to grant duty waivers that are tied to performance requirements.<sup>63</sup> Article 304(2) states that all such duty waiver programs must be eliminated in accordance with the schedule printed in Annex 304.2. For the United States and Canada, the CFTA provides that these programs must be eliminated by January 1, 1998. Mexico has until January 1, 2001 to eliminate its waiver programs.<sup>64</sup>

#### **F. TEMPORARY ADMISSION OF GOODS**

Article 305 concerns the temporary admission of goods, and requires each government to grant temporary, duty-free admission of the following: (1) professional equipment imported by a business person from a NAFTA country, (2) equipment for print, film or broadcasting media, (3) goods intended for sports purposes and goods intended for display or demonstration, and (4) commercial samples and advertising films.<sup>65</sup> This Article merely aligns Mexico and Canada with pre-existing U.S. practice under Chapter 98 of the Harmonized Tariff Schedule.<sup>66</sup>

57. *Id.*

58. See Statement, *supra* note 2, at 469.

59. 19 U.S.C. § 3333. The applicable regulations may be found at 19 C.F.R. § 181.41-181.54 (1994).

60. See Statement, *supra* note 2, at 477.

61. 19 U.S.C. § 3333(a).

62. The notes after 19 U.S.C. § 3334 state that section 203 of the Act amended sections 81c(a), 1311, 1312(b), (d), 1313(j), (n), (o) and 1562 of title 19.

63. See Statement, *supra* note 2, at 469.

64. *Id.* at 470.

65. See Statement *supra* note 2, at 470. The applicable regulations are found at 19 C.F.R. sections 181.62 (commercial samples of negligible value), and 181.63 (printed advertising materials).

66. *Id.* at 471.

### G. GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

Article 307 states that no government may impose customs duties on a good imported temporarily from another NAFTA country for purposes of repair or alteration, and that no government may impose customs duties on a good when it is re-imported after having been repaired or altered in another NAFTA country. Annex 307.1 provides exceptions to this rule. The United States regulations implementing this section provide that goods returning from being repaired or altered in Mexico, whether or not under warranty, and goods returning after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment provided that the goods were not incomplete when exported from the U.S. and processed as a matter of course in the preparation or manufacture of finished goods while in Canada or Mexico.<sup>67</sup> Goods returning from Canada after having been repaired or altered outside of a warranty are subject to duty upon the value of the repairs or alterations using the applicable duty rate under the CFTA.<sup>68</sup>

### H. MOST-FAVORED-NATION RATES OF DUTY

Under Article 308 and Annex 308.1, the Parties will reduce their most-favored-nation (MFN) rates of duty and phase in a common external tariff over the next ten years. Annex 308.1 also provides that the Parties shall reduce their MFN rates for certain semiconductor products.<sup>69</sup> The parties also agreed that they would consult before reducing any MFN rate on 14-inch and larger color picture tubes during the first ten years of the NAFTA.<sup>70</sup>

### I. IMPORT AND EXPORT RESTRICTIONS

Article 309 prohibits minimum import and export price requirements and incorporates GATT Article XI rights and obligations concerning quantitative restrictions on imports and exports. This is primarily to ensure that any violations of these GATT standards will also be subject to the NAFTA dispute settlement mechanisms.<sup>71</sup>

### J. COUNTRY OF ORIGIN MARKING

Annex 311 sets up a framework to prevent Parties from using marking requirements as a hidden barrier to trade. The NAFTA represents a loosening of marking requirements in accordance with the spirit of free trade. Each country also agrees to establish by January 1, 1994, rules for determining whether a good is a "good of a Party" for purposes of Annex 311.<sup>72</sup>

### K. EXPORT TAXES

Article 314 establishes a prohibition on export taxes, subject to a Mexican exception for critical basic foodstuffs set out in Annex 314. Mexico insisted on this exception so that

67. 19 C.F.R. sec 181.64 (1994).

68. *Id.*

69. See Statement, *supra* note 2, at 471-72.

70. *Id.* See Fisher, *supra* note 6, at 30-31 (stating that the common external tariff is one of the most pioneering elements of the market access section, as it could lead to the creation of a common external tariff covering trade in general).

71. See Statement, *supra* note 2, at 472.

72. *Id.* For the United States, see 59 Fed. Reg. 110 (1994).

government subsidized consumer foodstuffs would remain in Mexico.<sup>73</sup>

#### **L. CONCLUSION**

Chapter Three of the NAFTA establishes the fundamental notions of a free trade area by creating the framework for the elimination of duties and other barriers to trade in goods. When combined with the rules of origin provided in Chapter Four, the NAFTA has created a comprehensive system for the creation of a free trade area. The success of the NAFTA initially will likely determine its prospects for future expansion, as regional trade pacts continue to grow in scope and power.

—Dallas Addison

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73. See Fisher, *supra* note 6, at 35-36.