

THE NORTH AMERICAN FREE TRADE AGREEMENT

The North American Free Trade Agreement, signed by the leaders of Canada, the United States and Mexico on December 17, 1992, represents a significant new contribution to global trade liberalization. The NAFTA builds upon and significantly expands the scope of the FTA, and creates new norms for international trade agreements.

NAFTA incorporates the trade-liberalizing disciplines of the GATT and the FTA, including such fundamental principles as national treatment, most favoured nation, and transparency. It builds upon the GATT and the FTA by setting out more sophisticated, precise and predictable regulations in a variety of areas, including rules of origin and customs administration. NAFTA contains specialized provisions to apply to a number of individual sectors, such as automotives, textiles, energy, and agriculture. The NAFTA is fully consistent with Article 24 of the GATT, which explicitly permits the formation of free trade areas between constituent territories.

NAFTA goes beyond any trade agreement negotiated to date in its regulation of such areas as investment, services, and procurement. For example, NAFTA contains several new investment obligations which were not included in the FTA, including most favoured nation treatment, minimum standard of treatment in accordance with international law, and provisions related to senior management and boards of directors. The definition of "investment" under NAFTA is broad, including controlled enterprises, minority equity interests, intra-corporate loans, and loans and debt securities with terms of at least three years. NAFTA also extends the list of performance requirements prohibited under the FTA to include trade balancing, technology transfer, and exclusive supplier requirements. The NAFTA prohibition on performance requirements applies to all investments, whether by domestic investors, NAFTA investors, or non-NAFTA investors. These performance requirement provisions are broader than the prohibitions contained in the draft GATT Code on Trade Related Investment Measures (TRIMs). Moreover, while the FTA provided for the resolution of investment disputes on a state-to-state basis, NAFTA goes further by also allowing for direct investor-state arbitration.

A wide range of services are covered under NAFTA, which will help to