

**U.S. Senate
Republican Policy
Committee**

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Talking Points

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NAFTA In Brief

NOTE: Please replace the previous "NAFTA In Brief" paper, dated September 17, 1993, with this publication, dated September 20, 1993.

Scope of NAFTA

Building on the U.S.-Canada Free Trade Agreement, the North American Free Trade Agreement (NAFTA) is a trade accord between Canada, the United States, and Mexico. Beginning on January 1, 1994, the three countries, over a fifteen-year span, would lower tariffs and other trade barriers to each other to create a 370-million person, \$6.5 trillion marketplace.

Broadly, the agreement covers the following sectors: industrial products (including automobiles), agricultural goods, transportation, investment and insurance. Currently, approximately 65 percent of American exports are subject to up to a 10 percent tax in Mexico, which will be eliminated within five years. New rules of origin insure that goods made with materials or labor from outside North America could only receive treatment under NAFTA if they undergo "substantial transformation" in any of the three countries.

Surge-protection provisions would allow any of the three countries, after review, to temporarily reimpose tariffs if imports rise too quickly.

How NAFTA Treats Various Sectors

Because the agreement incorporates much of the 1988 U.S.-Canada Free Trade Agreement, the description of NAFTA's treatment of various U.S. economic sectors focuses mainly on U.S. and Mexico reciprocity.

AGRICULTURE: Upon the NAFTA's promulgation, Mexico will immediately waive import licenses on many U.S. agricultural products; numerous U.S. quotas and tariffs would also immediately be eliminated. Other products, including Mexican peanuts, sugar, and orange juice, and U.S. corn, would see gradual phaseouts of tariffs and quotas over fifteen years.

AUTOMOBILES: Tariffs on U.S. automobiles and spare parts will be eliminated within five years on those whose North American content equals 50 percent in the first four years, 56 percent for the second four years, and 62.5 percent thereafter. Limits on Mexican imports of trucks would be lifted when the NAFTA enters into effect. After 10 years, U.S. automakers would no longer have to produce any portion of a car in Mexico to sell it there.

ENERGY: U.S. and Canadian investment in most Mexican petrochemical and electric generation sectors would be allowed, in stages. Foreign investment in oil exploration, production, and refining would be prohibited.

FINANCIAL SERVICES: By 2000, the Mexican financial services market will be open, allowing U.S. banks and securities firms to charter wholly-owned subsidiaries in Mexico. Currently, they are prohibited from doing so.

GOVERNMENT PROCUREMENT: Major government purchases would be open to firms from all three countries. Over ten years, the Mexican government would phase out its limits for government energy companies.

INSURANCE: U.S. firms which already have a stake in Mexican insurance firms would be allowed to own a majority share by 1996; in 1998, those who had obtained shares in the interim would be allowed the same privileges. In 2000, all restrictions on U.S. ownership would be eliminated.

TELECOMMUNICATIONS: By July 1995, U.S. firms would have access to the Mexican telecommunications market.

TEXTILES: Tariffs will ultimately be eliminated only on goods made from North American-spun yarn or from fabric made from North American fibers. Barriers on textile exports totalling \$250 million will be immediately eliminated when the NAFTA takes effect; barriers on another \$700 million worth of exports would be eliminated within six years; all restrictions would be eliminated within a decade. Surge-protection features would be employed if imports cause "serious damage" to the textile industry.

TRANSPORTATION: In two phases, limits on cross-border trucking would be lifted, in 1995 and then, totally, in 1999. Truckers coming into the United States would be subject to U.S. safety, minimum-wage, size, and other U.S. laws covering the trucking industry.

Side Agreements Cover Labor Standards, the Environment, and Import Surges

In simultaneous signing ceremonies on September 14, the leaders of Canada, the United States, and Mexico endorsed three supplementary NAFTA agreements negotiated over the past several months.

LABOR: Commits each country to uphold its own, existing labor standards in areas of occupational safety and health, child labor, minimum wage, collective bargaining, strike rights, forced labor, discrimination, compensation for occupational injuries and illnesses, protection of migrant workers, and equal pay for men and women. Creates a Commission for Labor Cooperation composed of members from each country, a secretariat, and a National Administrative Office (the NAO) in each country. Each country would determine how its NAO works.

Individuals can make complaints about labor standards to their NAO. If that NAO believes the complaint has merit under NAFTA — non-enforcement in occupational safety and health, child labor, or minimum wage standards, when such complaints are trade-related and are covered by mutually recognized labor laws — various remediation procedures could be employed by the Secretariat, up to and including arbitration, which could create an action plan and assess fines against a complaining country. For the first year, fines could be no greater than \$20 million (or equivalent); subsequently, fines could be no greater than 0.007 percent of the total trade in goods between the parties for the most recent year. (In the case of Canada, due to its governmental structure, penalties assessed under the NAFTA will become the order of the court of the relevant territory or province.) Sanctions can also include tariff increases to the pre-NAFTA level.

ENVIRONMENT

General rule: According to the side agreement, a North American Commission on Environment will be created, with a Council overseeing a Secretariat. The Secretariat will have an Executive Director. "Non-governmental organizations" of any of these countries can file a complaint with the Secretariat alleging under-enforcement of any of that country's environmental laws or regulations relating to any trade affected by the NAFTA. The Commission can undertake a fact-finding process if agreed upon by two of three countries, and, if needed, a dispute settlement process for complaints, again if agreed upon by two of three countries. If complaints meet certain threshold criteria, the Secretariat can conduct a separate investigation.

Protections: If the Secretariat discovers that there is an ongoing domestic legal case or legal proceeding concerning the alleged non-enforcement, the Secretariat must drop its inquiry. If the government indicates that the accuser has not sought a remedy through the country's own legal system, the Secretariat could drop the inquiry. As well, an inquiry could be halted due to a lack of resources for a government to enforce. A Party does not need to make available information requested by the Secretariat if such request is "excessive or otherwise unduly burdensome." If two governments agree, a fact-finding study could be commissioned and publicized.

Sanctions: However, if a government believes (and the Secretariat agrees) that another government is engaging in a persistent pattern of failure after January 1, 1994, to effectively enforce its own environmental laws that involves workplaces, firms, companies, or sectors that produce goods or services traded between the parties or that compete with goods produced or services provided by another party, various remediation procedures could be employed, up to and including arbitration and fines of up to \$20 million the first year and, subsequently, 0.007 percent of the value of goods traded between the two countries for the preceding year. Only if a country fails to pay its fine or carry out its remedy plan can another NAFTA country resort to tariffs to collect the value of the fine. If possible, the tariffs are

to be levied on the goods or services that were subjects of the case. The tariffs can be no higher than the pre-NAFTA levels. Sanctions and fines can be appealed. (In the case of Canada, due to its governmental structure, penalties assessed under the NAFTA will become the order of the court of the relevant territory or province.)

SURGES: Creates a Working Group on Emergency Action to oversee the surge protection process in the NAFTA.

NAFTA Approval Process

Under U.S. law, Congress can grant the executive branch the authority to negotiate certain trade agreements with broad discretion, with the requirement that such agreements reached be implemented by legislative action. The NAFTA falls under a category called "fast-track," which establishes certain procedures for legislative consideration.

Based on previous fast-track procedures, the Administration would begin this process by briefing Hill staffers on general concepts contained in the final agreement and the changes in U.S. laws needed to implement the NAFTA.

Then congressional committees coordinated by the Senate Finance Committee and the House Ways and Means Committee (and including several other committees which may have jurisdiction over relevant provisions) will begin the so-called "mock mark-up" process. Members, in coordination with the Administration, will develop the legislation needed to implement the NAFTA. If needed, Members would also hold a "mock conference" to reconcile differing versions of the implementing legislation.

When complete, the so-called "consolidated text" would be given to the Administration. The Administration can review this text, make any changes it desires, and then officially submit to Congress the NAFTA, the implementing legislation, and a Statement of Administrative Intent informing Congress of what actions the executive branch will take on its own to implement the NAFTA. The Administration, in various press statements, has presented November 1 as the deadline for these submissions.

The Senate Finance Committee, and the House Ways and Means Committee, then would vote on reporting out the implementing legislation. The legislation, under "fast track" procedures, would be unamendable in the committees. Further, the implementing legislation could not be amended on the floor of either house.

Under "fast track" procedures, the implementing legislation must be voted upon within 90 session days of its submission by both houses of Congress.