

## NAFTA - NOTES

1. **Article 201 (Definitions of General Application)** : A good of a Party may include materials of other countries.
2. **Article 301 (Market Access - National Treatment)** : "goods of the Party" as used in paragraph 2 includes goods produced in the state or province of that Party.
3. **Article 302(1) (Tariff Elimination)** : this paragraph is not intended to prevent any Party from modifying its non-NAFTA tariffs on originating goods for which no NAFTA tariff preference is claimed.
4. **Article 302(1)** : this paragraph does not prohibit a Party from raising a tariff back to an agreed level in accordance with the NAFTA's phase-out schedule following a unilateral reduction.
5. **Article 302(1) and (2)** : paragraphs 1 and 2 are not intended to prevent a Party from maintaining or increasing a customs duty as may be authorized by any dispute settlement provision of the GATT or any agreement negotiated under the GATT.
6. **Article 303 (Restriction on Drawback and Duty Deferral)** : in applying the definition of "used" in Article 415 to this Article, the definition of "consumed" in Article 318 shall not apply.
7. **Article 305(2) (d) (Temporary Admission of Goods)** : where another form of monetary security is used, it shall not be more burdensome than the bonding requirement referred to in this subparagraph. Where a Party uses a non-monetary form of security, it shall not be more burdensome than existing forms of security used by that Party.
8. **Article 307(1) (Goods Re-Entered after Repair or Alteration)** : this paragraph does not cover goods imported in bond, into foreign-trade zones or in similar status, that are exported for repairs and are not re-imported in bond, into foreign-trade zones or in similar status.
9. **Article 307(1)** : for purposes of this paragraph, alteration includes laundering used textile and apparel goods and sterilizing previously sterilized textile and apparel goods.
10. **Article 318 (Market Access - Definitions)** : 10-digit items set out in the Tariff Schedule of Canada are included for statistical purposes only.
11. **Article 318** : with respect to the definition of "repair or alteration", an operation or process that is part of the production or assembly of an unfinished good into a finished good is not a repair or alteration of the unfinished good; a component of a good is a good that may be subject to repair or alteration.
12. **Annex 300-A (Trade and Investment in the Automotive Sector) , Appendix 300-A.1 - Canada** : paragraphs 1 and 2 shall not be construed to modify the rights and obligations set out in Chapter Ten of the *Canada - United States Free Trade Agreement* , except that the NAFTA rules of origin shall replace the *Canada - United States Free Trade Agreement* rules of origin for purposes of Article 1005(1).
13. **Annex 300-A , Appendix 300-A.2 - Mexico** : citations to the Auto Decree and the Auto Decree Implementing Regulations included in parentheses are provided for purposes of reference only.
14. **Annex 300-B (Textile and Apparel Goods) , Section 1 (Scope and Coverage)** : the general provisions of Chapter Two (Definitions), Chapter Three (Market Access), Chapter Four (Rules of Origin) and Chapter Eight (Emergency Action) are subject to the specific rules for textiles and apparel goods set out in the Annex.
15. **Annex 300-B , Section 2 (Tariff Elimination)** : with respect to paragraph 1, "as otherwise provided in this Agreement" refers to such provisions as Section 4, Article 802 (Global Actions) and Chapter 22 (General Exceptions).
16. **Annex 300-B, Sections 4 (Bilateral Emergency Actions (Tariff Actions) ) and 5 (Bilateral Emergency Actions (Quantitative Restrictions) )** : for purposes of Sections 4 and 5:
  - (a) "increased quantities" is intended to be interpreted more broadly than the standard provided in Article 801(1), which considers imports "in absolute terms" only. For purposes of these Sections, "increased quantities" is intended to be interpreted in the same manner as this standard is interpreted in the draft Agreement on Textiles and Clothing, contained in the *Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* (GATT document MTN.TNC/W/FA) issued by the Director-General of the GATT on December 20, 1991 ("Draft Uruguay Round Agreement on Textiles and Clothing"); and

(b) "serious damage" is intended as a less stringent standard than "serious injury" under Article 801(1). The "serious damage" standard is drawn from the Draft Uruguay Round Agreement on Textiles and Clothing. The factors to be considered in determining whether the standard has been met are set out in Section 4.2 and are also drawn from that Draft. "Serious damage" is to be interpreted in the light of its meaning in Annex A of the Multifiber Arrangement or any successor agreement.

17. **Annex 300-B , Section 5** : in paragraph 5(c), the term "equitable treatment" is intended to have the same meaning as it has in customary practice under the Multifiber Arrangement.

18. **Annex 300-B , Section 7, paragraph 1(c) (Review and Revision of Rules of Origin)** : for subheading 6212.10, the rule and paragraph 1 shall not be applied if the Parties agree, prior to entry into force of this Agreement, on measures to ease the administrative burden and reduce costs associated with the application of the rule for headings 62.06 through 62.11 to the apparel in subheading 6212.10.

19. **Annex 300-B, Section 7, paragraph (2) (d) (ii)** : with respect to provisions (a) through (i) of the rule for subheadings 6205.20 through 6205.30, prior to the entry into force of this Agreement the Parties will extend cooperation as necessary in an effort to encourage production in the free trade area of shirting fabrics specifically identified in the rule.

20. **Annex 300-B, Appendix 3.1, paragraph 17 (Administration of Import and Export Prohibitions, Restrictions and Consultation Levels)** : for purposes of applying paragraph 17, the determination of the component that determines the tariff classification of the good shall be based on GRI 3(b) of the Harmonized System, and if the component cannot be determined on the basis of GRI 3(b), then the determination will be based on GRI 3(c) or, if GRI 3(c) is inapplicable, GRI 4. When the component that determines the tariff classification is a blend of two or more yarns or fibers, all yarns and, where applicable, fibers, in that component are to be considered.

21. **Annex 300-B, Schedule 3.1.3. (Conversion Factors)** : the conversion factors in this Schedule are those used for imports into the United States. Canada and Mexico may by mutual agreement develop their own conversion factors for trade between them.

22. **Article 401 (Originating Goods)** : the phrase "specifically describes" is intended solely to prevent Article 401(d) from being used to qualify a part of another part, where the heading or subheading covers the final good, the part made from the other part and the other part.

23. **Article 402 (Regional Value Content)** :

(a) Article 402(4) applies to intermediate materials, and VNM in paragraphs 2 and 3 does not include

(i) the value of any non-originating materials used by another producer to produce an originating material that is subsequently acquired and used in the production of the good by the producer of the good, and

(ii) the value of non-originating materials used by the producer to produce an originating self-produced material that is designated by the producer as an intermediate material pursuant to Article 402(10) ;

(b) with respect to paragraph 4, where an originating intermediate material is subsequently used by the producer with non-originating materials (whether or not produced by the producer) to produce the good, the value of such non-originating materials shall be included in the VNM of the good;

(c) with respect to paragraph 8, sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs included in the value of materials used in the production of the good are not subtracted out of the net cost in the calculation under Article 402(3) ;

(d) with respect to paragraph 10, an intermediate material used by another producer in the production of a material that is subsequently acquired and used by the producer of the good shall not be taken into account in applying the proviso set out in that paragraph, except where two or more producers accumulate their production under Article 404;

(e) with respect to paragraph 10, if a producer designates a self-produced material as an originating intermediate material and the Customs Administration of the importing Party subsequently determines that the intermediate material is not originating, the producer may

rescind the designation and recalculate the value content of the good accordingly; in such a case, the producer shall retain its rights of appeal or review with regard to the determination of the origin of the intermediate material; and

(f) under paragraph 4, with respect to any self-produced material that is not designated as an intermediate material, only the value of non-originating materials used to produce the self-produced material shall be included in VNM of the good.

**24. Article 403 (Automotive Goods) :**

(a) for purposes of paragraph 1, "first person in the territory of a Party" means the first person who uses the imported good in production or resells the imported good; and

(b) for purposes of paragraph 2,

(i) a producer may not designate as an intermediate material any assembly, including a component identified in Annex 403.2, containing one or more of the materials listed in Annex 403.2, and

(ii) a producer of a material listed in Annex 403.2 may designate a self-produced material used in the production of that material as an intermediate material, in accordance with the provisions of Article 402(10).

**25. Article 405(6) (De Minimis) :** for purposes of applying paragraph 6, the determination of the component that determines the tariff classification of the good shall be based on GRI 3(b) of the Harmonized System. If the component cannot be determined on the basis of GRI 3(b), then the determination will be based on GRI 3(c) or, if GRI 3(c) is inapplicable, GRI 4. When the component that determines the tariff classification is a blend of two or more yarns or fibers, all yarns and, where applicable, fibers, in that component are to be taken into account.

**26. Article 413 (Interpretation and Application) :** the rules of origin under Chapter Four are based on the 1992 Harmonized System, amended by the new tariff items created for rules of origin purposes.

**27. Article 415 (Rules of Origin - Definitions) :** the phrase "except for the application of Article 403(1) or 403(2) (a) " in the definition of "transaction value" is intended solely to ensure that the determination of transaction value in the context of Article 403(1) or (2) (a) shall not be limited to the transaction of the producer of the good.

**28. Article 514 (Customs Procedures - Definitions) :** the Uniform Regulations will clarify that "determination of origin" includes a denial of preferential tariff treatment under Article 506(4), and that such denial is subject to review and appeal.

**29. Article 603, paragraphs 1 through 5 (Energy - Import and Export Restrictions) :** these paragraphs shall be interpreted consistently with Article 309 (Import and Export Restrictions).

**30. Article 703 (Agriculture - Market Access) :** the most-favored-nation rate as of July 1, 1991 is the over-quota tariff rate specified in Annex 302.2.

**31. Annex 703.2, Section A (Mexico and the United States) :** this quota replaces Mexico's current access under the "first tier" of the U.S. tariff rate quota as described in Additional Note 3(b)(i) of Chapter 17 of the Harmonized Tariff Schedule of the United States prior to the date of entry into force of this Agreement.

**32. Annex 703.2, Section A (Mexico and the United States) :** the United States operates a re-export program under Additional U.S. Note 3 to Chapter 17 of the U.S. Harmonized Tariff Schedule and under 7 C.F.R. Part 1530 (subparts A and B).

**33. Annex 703.2, Section B (Canada and Mexico) :** the incorporation in paragraph 6 is not intended to override the exceptions to Articles 301 and 309 set out in Canada's and Mexico's respective Schedules to Annex 301.3.

**34. Article 906(4) and (6) (Compatibility and Equivalence) :** these paragraphs are not intended to restrict the right of the importing Party to revise its measures.

**35. Article 908(2) (Conformity Assessment) :** this paragraph does not treat the issue of membership in the Parties' respective conformity assessment bodies.

**36. Article 915 (Standards-Related Measures - Definitions) :** the definition of "standard" shall be interpreted to mean --

- (a) characteristics for a good or a service,
- (b) characteristics, rules or guidelines for
  - (i) processes or production methods relating to such good, or
  - (ii) operating methods relating to such service, and
- (c) provisions specifying terminology, symbols, packaging, marking or labelling for
  - (i) a good or its related process or production method, or
  - (ii) a service or its related operating method,

for common and repeated use, including explanatory and other related provisions, set out in a document approved by a standardizing body, with which compliance is not mandatory.

37. **Article 915** : the definition of "technical regulation" shall be interpreted to mean --

- (a) characteristics or their related processes and production methods for a good,
- (b) characteristics for a service or its related operating methods, or
- (c) provisions specifying terminology, symbols, packaging, marking, or labelling for
  - (i) a good or its related process or production method, or
  - (ii) a service or its related operating method,

set out in a document, including applicable administrative, explanatory and other related provisions, with which compliance is mandatory.

38. **Annex 1001.2c (Country Specific Thresholds)** : Canada and the United States will consult regarding this Annex before the entry into force of this Agreement.

39. **Article 1101 (Investment - Scope and Coverage)** : this Chapter covers investments existing on the date of entry into force of this Agreement as well as investments made or acquired thereafter.

40. **Article 1101(2) and Annex 602.3** : to the extent that a Party allows an investment to be made in an activity set out in Annex III or Annex 602.3, the investment shall be entitled to the protection of Chapter Eleven (Investment).

41. **Article 1106 (Performance Requirements)** : Article 1106 does not preclude enforcement of any commitment, undertaking or requirement between private parties.

42. **Article 1305 (Monopolies)** : for purposes of this Article, "monopoly" means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is maintained or designated as the sole provider of public telecommunications transport networks or services.

43. **Article 1501 (Competition Law)** : no investor may have recourse to investor-state arbitration under the Investment Chapter for any matter arising under this Article.

44. **Article 1502 (Monopolies and State Enterprises)** : nothing in this Article shall be construed to prevent a monopoly from charging different prices in different geographic markets, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions in those markets.

45. **Article 1502(3)** : a "delegation" includes a legislative grant, and a government order, directive or other act transferring to the monopoly, or authorizing the exercise by the monopoly of, governmental authority.

46. **Article 1502(3) (b)** : differences in pricing between classes of customers, between affiliated and non-affiliated firms, and cross-subsidization are not in themselves inconsistent with this provision; rather, they are subject to this subparagraph when they are used as instruments of anticompetitive behavior by the monopoly firm.

47. **Article 2005(2) (GATT Dispute Settlement)** : this obligation is not intended to be subject to dispute settlement under this Chapter.