

# NAFTA AND FREE TRADE IN THE AMERICAS

A PROBLEM-ORIENTED  
COURSEBOOK

Second Edition

Ralph H. Folsom  
Michael Wallace Gordon  
David A. Gantz

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# NAFTA AND FREE TRADE IN THE AMERICAS

## A PROBLEM-ORIENTED COURSEBOOK

**Second Edition**

By

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To our law faculty colleagues at Arizona, Florida, San Diego  
and other institutions who have generously supported  
our writing efforts and the production of the first  
and second editions of this NAFTA coursebook.

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## Preface

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Much has happened within and relating to NAFTA in the approximately five years since the first edition was published. However, NAFTA remains important and exciting after eleven years. No business lawyer practicing in North America, or representing foreign clients operating in North America, can escape NAFTA's significance. NAFTA also represents the future. After more than a decade, it is evident that NAFTA is the model for many newer free trade agreements, including but not limited to those concluded by the three NAFTA Parties with other nations both within and outside the Western Hemisphere.

Perhaps most significantly, in terms of NAFTA's general success, the vast majority of the originating goods traded within North America became duty-free and quota-free as of January 1, 2003; almost all the rest will follow suit by January 1, 2008. Extensive use of the Chapter 19 unfair trade dispute settlement mechanism has continued, with approximately one hundred actions having been filed with the NAFTA secretariats. Dispositive opinions have been issued in at least fifteen foreign investor-host state actions brought under Chapter 11, and many others are pending. The case load alone is adding significantly to the volume of jurisprudence with which a properly trained NAFTA lawyer must be familiar.

External factors are strongly affecting the continuing vitality of the Agreement. The full implementation of the Uruguay Round and Information Technology Agreement tariff reductions or eliminations by the United States in its "most favored nation" tariffs has narrowed the tariff advantage enjoyed by Mexico and Canada in the United States market. Mexico, in particular, is suffering from competition for foreign investment and jobs with China, India, Honduras and many other lower wage cost nations in the developing world. Mexico's NAFTA advantage has and will be further eroded under the regional free trade agreements being concluded by the United States and Canada with other countries in the Western Hemisphere and elsewhere, and by the expanded market access to the United States provided by the Caribbean Basin Initiative, the African Growth and Opportunity Act and the Andean Trade Preference Act. The current slow progress in the Doha Development Agenda at the WTO, and the virtual halt in the FTAA negotiations, seems likely to encourage further expansion of the United States' growing network of FTAs.

Similarly, the conclusion by Mexico of an FTA with the European Union in 2000, and with Japan in 2004, has reduced the competitive tariff advantage enjoyed by certain U.S. exporters to Mexico. Caterpillar, for example, no longer enjoys a 15% duty advantage when exporting tractors to Mexico; Volvo (in Sweden) now enjoys the same duty-free entry to the Mexican market, and Japanese competitors are not far behind.

While there has been some discussion among the NAFTA governments, private business interests and non-governmental organizations—principally relating to alleged deficiencies in the dispute settlement mechanisms, or in Mexico to deepening the level of regional integration—no proposals for amendment have achieved any significant level of consensus. Perhaps this is because formally amending NAFTA would be a very difficult process politically, requiring favorable actions by the Mexican and United States Congresses and the Canadian Parliament.

In this second edition, we have made a number of changes and additions, along with updating much of the original material. Most significantly, we have tried to expand the scope of the book to take into account other important regional trade agreements in the Western Hemisphere, including MERCOSUR, the Andean Group, the U.S.–Chile FTA, the U.S.–Central American FTA and the Mexico–European Union FTA, and to present an up-to-date view of the long-pending Free Trade Area of the Americas negotiations. We have also added many notes and comments throughout the book referring to the treatment of such issues as rules of origin, investment, labor rights and environmental protection in other FTAs. In the Documents Supplement, we have incorporated extensive excerpts from the United States–Chile FTA and the basic MERCOSUR instruments.

A new Chapter 1 has been added, focusing on the “globalism vs. regionalism” debate and GATT Article XXIV. This is followed by Chapters 2 and 3 with some background materials on the Canada–United States Free Trade Agreement of 1989 (CFTA) and its successor, the North American Free Trade Agreement of 1994 (NAFTA). We have added an historical introduction to economic integration in Central and South America (Chapter 4). Chapter 5 introduces four trade in goods problems: tariffs and rules of origin, non-tariff trade barriers, Canada’s cultural industries exclusion and Mexico’s energy sector. Chapter 6 concerns trade in services, with problems on legal services, trucking and buses, and financial services.

In Chapter 7, we move to NAFTA’s investment law with problems centered on investor rights, obligations and remedies, including the now-common arbitration of investor-state claims. Chapter 8 selectively explores intellectual property law issues under NAFTA. Chapter 9 contains dispute settlement problems derived from Chapters 19 and 20 of NAFTA: panelist selection and conflicts of interest; binational panels addressing antidumping and injury issues, including extraordinary challenges; Chapter 20 inter-governmental arbitrations; and resolution of private commercial disputes.

Chapters 10 and 11 provide problems relating to NAFTA’s “side” agreements, the North American Agreement on Labor Cooperation and the North American Agreement on Environmental Cooperation, respectively. These agreements deal with enforcement of the national laws of each NAFTA Party. They create unique regional procedures allowing individuals and non-governmental organizations to challenge the reality of environmental and labor enforcement.

Lastly, in Chapter 12, we look beyond NAFTA to other efforts to create free trade in the Western Hemisphere. The problems include issues relating to the long-delayed free trade relationship between the United States and Chile due to delays in Congressional authorization of "Trade Promotion Authority" (formerly "fast-track"); to the now-stalled negotiations toward a Free Trade Area of the Americas; and to other regional integration efforts in the region, with a focus on MERCOSUR.

NAFTA, however, remains the focus of our efforts. It continues to dominate Western Hemisphere trade. NAFTA has been the basis for more recent U.S. FTAs (as well as the FTAA drafts), with changes reflecting not only the different economic situations of the other parties, but also eleven years' experience applying the NAFTA legal provisions. This means, among other things, that a lawyer who is fully familiar with the operation of the NAFTA provisions should be able to understand and apply the parallel provisions of these more recent agreements without great difficulty.

The Documents Supplement especially prepared for use with this book has been revised and expanded to reflect developments in the past five years and to provide resources for the study of the United States-Chile Free Trade Agreement and MERCOSUR. References are made in each problem to those parts of the Documents Supplement which are essential to an analysis of the problem.

NAFTA and Free Trade in the Americas remains intended for a two or three semester-hour course. We expect some professors may want to expand upon Chapters 2 and 3, which are a very condensed introduction to CFTA and NAFTA, or the coverage of investment disputes (Chapter 7). The more than 20 problems that follow can be covered one per class session, but many could easily be extended to additional class hours. This is particularly true of those problems containing several parts, such as problem 12.2. The book is designed to facilitate faculty selection of those problems that fit their teaching goals, and enhancement with other readings of the problems which they feel are most important. We elaborate on different approaches to teaching from this coursebook in its revised Teacher's Manual.

As in the past, the authors welcome your comments, as lawyers, students or teachers, and suggestions for future editions.

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- Anheuser-Busch Brewing Ass'n v. United States, 207 U.S. 556, 28 S.Ct. 204, 52 L.Ed. 336 (1908), 77
- Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1, 99 S.Ct. 1551, 60 L.Ed.2d 1 (1979), 383
- Case Concerning Elettronica Sicula S.p.A. (ELST) (United States v. Italy), 1989 WL 139016 (I.C.J.1989), 377
- Case Concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), 1970 WL 1 (I.C.J.1970), 377
- Compagnie Européenne des Petroles S.A. v. Sensor Nederland B.V., Case 82/716 Rechtspraak van de Week 167 (Dist. Ct. Neth.), 580
- Cross-Border Trucking Services, In the Matter of**, File no. USA-Mex-98-2008-1 (Feb. 6, 2001), 254
- Department of Transp. v. Public Citizen**, 541 U.S. 752, 124 S.Ct. 2204, 159 L.Ed.2d 60 (2004), 261
- Feldman v. Mexico, 42 I.L.M. 625 (2003), 414
- Fireman's Fund Insurance Co. v. United Mexican States, Decision on the Preliminary Question ICSID Case No. ARB(AF)/02/01 (2003), 304
- Fruehauf Corp. v. Massardy, Court of Appeals of Paris, 14th Chamber (1965 France), 580
- Gray Portland Cement and Clinker from Mexico**, File no. USA-95-1904-2 (Sept. 13, 1996), 505
- Gray Portland Cement and Clinker from Mexico**, File no. USA-97-1904-01 (June 18, 1999), 535
- Hilton v. Guyot, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895), 600
- Kewanee Oil Co. v. Bicron Corp.**, 416 U.S. 470, 94 S.Ct. 1879, 40 L.Ed.2d 315 (1974), 396
- K Mart Corp. v. Cartier, Inc.**, 486 U.S. 281, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988), 410
- LCF, Inc. v. N.L.R.B.**, 129 F.3d 1276, 327 U.S.App.D.C. 164 (D.C.Cir.1997), 651
- Matter of a Reference by the Governor in Council Concerning Certain Questions Relating to the Secession of Quebec from Canada**, 2 Can.S.C.R. 217 (1998), 23
- Opinion and Order of the Extraordinary Challenge Committee—Gray Portland Cement and Clinker from Mexico**, File no. ECC-2000-1904-01USA (Oct. 30, 2003), 541
- Parfums Givenchy, Inc. v. Drug Emporium, Inc., 38 F.3d 477 (9th Cir.1994), 414
- Pope & Talbot v. Canada (Interim Award, 2000), 341
- Quality King Distributors, Inc. v. L'anza Research Intern., Inc.**, 523 U.S. 135, 118 S.Ct. 1125, 140 L.Ed.2d 254 (1998), 407
- Scotch Whiskey Ass'n v. Barton Distilling Co., 489 F.2d 809 (7th Cir.1973), 381
- S.D. Myers, Inc. [SDMI] v. Canada** (2000), 40 ILM 1408 (2001), 341, 357
- Southwest Livestock and Trucking Co., Inc. v. Ramon**, 169 F.3d 317 (5th Cir.1999), 602
- Thieffry v. Conseil de l'Ordre des Avocats à la Cour de Paris (Case 71/76), 234

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