



FREE TRADE AGREEMENT BETWEEN MEXICO AND THE EUROPEAN UNION

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OVERVIEW

- 1) Differences between NAFTA and FTEU.
- 2) Legal Framework of FTEU. Products and Services. Dispute Settlement Procedures
- 3) NAFTA Dispute Settlement Procedures
 - Between Countries
 - Between Investor and Country

BASIC DIFFERENCES BETWEEN FTEU / NAFTA

- **Objectives**
- **Dispute Settlement Procedure between Parties**
- **FTEU does not contemplate dispute resolutions between a Party and an Investor of another Party (like NAFTA)**
- **Technical Differences (i.e. Rules of Origin).**

OBJECTIVES - FTAEU

- The agreement has the purpose to strengthen the relationship between the Parties in the political and economical areas.
- The Parties agree to institutionalize the political discussions between them in connection with bilateral and international issues of interest.
- The Parties agree that the democratic principles and universal human rights are the basis of the internal and international policies of the parties.

FTEU- Specific Non-Economic Areas of Cooperation

- **Measures against drugs.**
- **Technical and scientific cooperation.**
- **Improvement of education (promote education among the people with less economic sources).**
- **Cultural cooperation**
- **Environmental measures**
- **Reduction of levels of poverty especially among farmers, indigenous people and other poor groups.**

OBJECTIVES - NAFTA

- **Eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;**
- **Promote conditions of fair competition in the free trade area;**
- **Increase substantially investment opportunities in the territories of the Parties;**

OBJECTIVES - NAFTA

- **Provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;**
- **Create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and**
- **Establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.**

NAFTA – SPECIFIC NON-ECONOMIC AREAS OF COOPERATION

- **Agreement on Environmental Cooperation.**
- **Each Party shall ensure that its laws and regulations provide for high levels of environmental protection, and shall strive to continue to improve those laws and regulations.**
- **Agreement of Labor Cooperation.**
- **Each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.**



LEGAL FRAMEWORK OF THE FREE TRADE AGREEMENT BETWEEN MEXICO AND THE EUROPEAN UNION

PRODUCTS AND SERVICES



PRODUCTS GENERAL PROVISIONS

Decision 2/2000

PRODUCTS CHAPTERS

- **General Provisions.**
- **Trade of Goods.**
- **Government Purchases.**
- **Antitrust.**
- **Intellectual Property.**
- **Dispute Settlement.**
- **Specific Commercial Obligations.**
- **Final Provisions.**

PRODUCTS OBJECTIVE

- *Objective.*

The Community and Mexico shall establish a Free Trade Area over a transitional period lasting a maximum of ten years starting from the entry into force of this Decision (Article 2 of the Decision 2/2000)

Date entered into force:

July 1, 2000

PRODUCTS

- **Products Included in the Decision:**
 - Applicable to all products originating in the territory of the Parties in the terms of Annex III, with exception of Agricultural and Fisheries products.
 - No later than 3 years after the entry into force of the Decision, the Parties shall consider further steps of liberalization for Agricultural and Fisheries Products

PRODUCTS

REQUIREMENTS OF THE PRODUCTS

- *Requirements of the Products for Preference Treatment (Annex III)*

1. Products must be considered as originating in the territory of the Parties. Rules of Origin.
2. The acquisition of originating status must be fulfilled without interruption in Mexico or the Community.
3. The Products must be transported directly between Mexico and the Community.

PRODUCTS RULES OF ORIGIN

- *Rules of Origin.*

The products shall be considered as originating in Mexico or the Community, respectively, when:

- (i) the products are wholly obtained either in Mexico or in the Community; or
- (ii) the products obtained either in Mexico or in the Community incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing (transformation) either in Mexico or in the Community as established in Appendix 2.

PRODUCTS

ELIMINATION OF CUSTOM DUTIES

CUSTOM DUTIES ON EXPORTS. DATE OF ELIMINATION: JULY 1, 2000

CUSTOM DUTIES ON IMPORTS. DATE OF ELIMINATION: TARIFF ELIMINATION SCHEDULE

**Customs Duties on Imports
Originating in Mexico**

Annex I

Category "A"

Category "B"

Other categories

**Custom Duties on Imports
Originating in the Community**

Annex II

Category "A"

Category "B"

Category "B+"

Category "C"

Other Categories

PRODUCTS

ELIMINATION OF CUSTOM DUTIES

Custom Duties on Imports Originating in Mexico

Annex I

- Category "A" Custom duties eliminated on July 1, 2000.
- Category "B" Custom duties shall be eliminated in four equal stages one, the first one, taking place on July 1, 2000, and the other three on 1st of January of each successive year, so that these custom duties are completely eliminated by 1st of January 2003.
- Other categories

PRODUCTS

ELIMINATION OF CUSTOM DUTIES

Custom Duties on Imports Originating in the Community

Annex II

Category "A"	Custom duties eliminated on July 1, 2000.
Category "B"	Custom duties shall be eliminated in four equal stages one, the first one, taking place on July 1, 2000, and the other three on 1st. of January of each successive year, so that these custom duties are completely eliminated by 1st of January 2003.
Category "B+"	Custom duties shall be gradually eliminated until its complete elimination on January 1, 2005.
Category "C"	Custom duties shall be gradually eliminated until its complete elimination on January 1, 2007.
Other categories	

PRODUCTS

ELIMINATION OF CUSTOM DUTIES

Annex I - Example

Item	Description	Base Rate	Category
	XII. GLYCOSIDES AND VEGETABLE ALKALOIDS, NATURAL OR REPRODUCED BY SYNTHESIS, AND THEIR SALTS, ETHERS, ESTERS AND OTHER DERIVATIVES:		
29 38	Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:		
2938 10 00	- Rutoside (rutin) and its derivatives	0.0	A
2938 90	- Other:		
2938 90 10	- - Digitalis glycosides	0.0	A
2938 90 30	- - Glycyrrhizic acid and glycyrrhizates	0.0	A
2938 90 90	- - - Other	0.0	A
29 39	Vegetable alkaloids, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:		
2939 10 00	- Alkaloids of opium and their derivatives; salts thereof - Alkaloids of cinchona and their derivatives; salts thereof	0.0	A
2939 21	- - Quinine and its salts:		
2939 21 10	- - - Quinine and quinine sulphate	0.0	A
2939 21 90	- - - - Other	0.0	A
2939 29 00	- - - - Other	0.0	A

PRODUCTS PRINCIPLES APPLICABLE

- *National Treatment for Tax and Regulatory Purposes*

The imported products of the territory of the other Party shall be accorded treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

PRODUCTS PRINCIPLES APPLICABLE

● *Safeguard Clause*

Where any product of one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:

- (a) serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party; or
- (b) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region of the importing Party, the importing Party may take appropriate measures under the conditions and in accordance with the procedures laid down in the Treaty.

Safeguard measures shall consist in the suspension of the further reduction of any applicable rate of custom duty. Characteristics: (i) temporary (from 1 to 3 years), and (ii) the Party shall compensate the other party with substantially equivalent liberalization in other sector.



SERVICES

GENERAL PROVISIONS

SERVICES CHAPTERS

- **General Provisions.**
- **Trade in Services.**
- **Investment and Related Property.**
- **Intellectual Property.**
- **Dispute Settlement.**
- **Specific Obligations.**

SERVICES LIBERALIZATION PROCESS

- *Liberalization Process:*

No later than three years following the entry into force of the Decision, the Parties shall adopt a decision providing the terms and schedule of the liberalization process.

The liberalization process shall take place in the following ten years.

SERVICES OBJECTIVE

- *Objective.*

Reach the necessary arrangements for implementing the following:

- (a) the progressive and reciprocal liberalization of trade in services.
- (b) the progressive liberalization of investment and related payments.
- (c) ensuring an adequate and effective protection of the intellectual property rights, in accordance with the highest international standards; and
- (d) establishing a dispute settlement mechanism.

Date entered into force:

October 1, 2000

SERVICES

- *Type of Services Included in the Treaty:*

Applies to trade in services in all sectors with the exception of:

- (a) audio-visual services.
- (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service,
 - (ii) the selling and marketing of air transport services,
 - (iii) computer reservation system (CRS) services, and
- (c) maritime cabotage

Financial Services were liberalized at the moment of the treaty's execution.

SERVICES PRINCIPLES APPLICABLE

- *National Treatment:*

Each Party shall grant to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and services suppliers.

- *Most Favored Nation Treatment:*

Subject to some exceptions, treatment accorded to services suppliers of the other Party shall be no less favorable than that accorded to like services suppliers of any third country.

DISPUTE SETTLEMENT PROCEDURES

- **Consultations with Joint Committee for 30 days**
- **Arbitration**

APPOINTMENT OF ARBITRATORS

Country A → 1 arbitrator

Proposes 3 persons as
Chairman

Country B → 1 arbitrator

Proposes 3 persons as
Chairman

- Chairman appointed by agreement of the Parties (15 days). If not, Chairman will be chosen by lot among the 6 candidates.
- Decisions are taken by majority vote.

PROCEDURE AND RESOLUTION

- Panel will provide the parties with a preliminary report containing conclusions in a term of 3 to 5 months following the creation of the panel.
- 30 days after the preliminary report, the panel will issue its final resolution.

Compliance of Resolution

- The affected Party must inform about its intention to comply with the resolution in a 30 days term (“Term”) after the final resolution is issued.
- If the affected Party does not comply or reach an agreement with the complaining party 20 days after the Term, then the complaining Party may temporarily suspend the application to the affected Party of benefits of equivalent effect.

Compliance of Resolution

- Complaining Party should first seek to suspend benefits in the same sector affected by the measure. If it is not effective, the complaining Party may suspend benefits in other sectors.

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NAFTA

**DISPUTE SETTLEMENT
PROCEDURES**

NAFTA Dispute Settlement Procedures

- Dispute Settlement between Parties (Arts. 2003-2019)
- Settlement disputes between a Party and an Investor of another Party (Arts. 1115 – 1139)
- Dispute Settlement in anti-dumping and countervailing duty matters (Arts. 1901 – 1911)

Dispute Settlement Between Parties

- Consultation (15, 30 and 45 day period) Art. 2007.
- Request for meeting with the Free Trade Commission (“FTC”) to mediate and make recommendations (30 days period).
- Any consulting Party may request an arbitral panel.

Panel Selection When There Are Two Disputing Parties

- 5 Members panel
- Parties appoint the Chair in 15 days. If no agreement, the disputing Party chosen by lot shall select in 5 days as chair an individual who is not a citizen of that Party.

- 15 days after the selection of the Chair, each disputing Party shall select 2 panelists who are citizens of the other disputing Party.

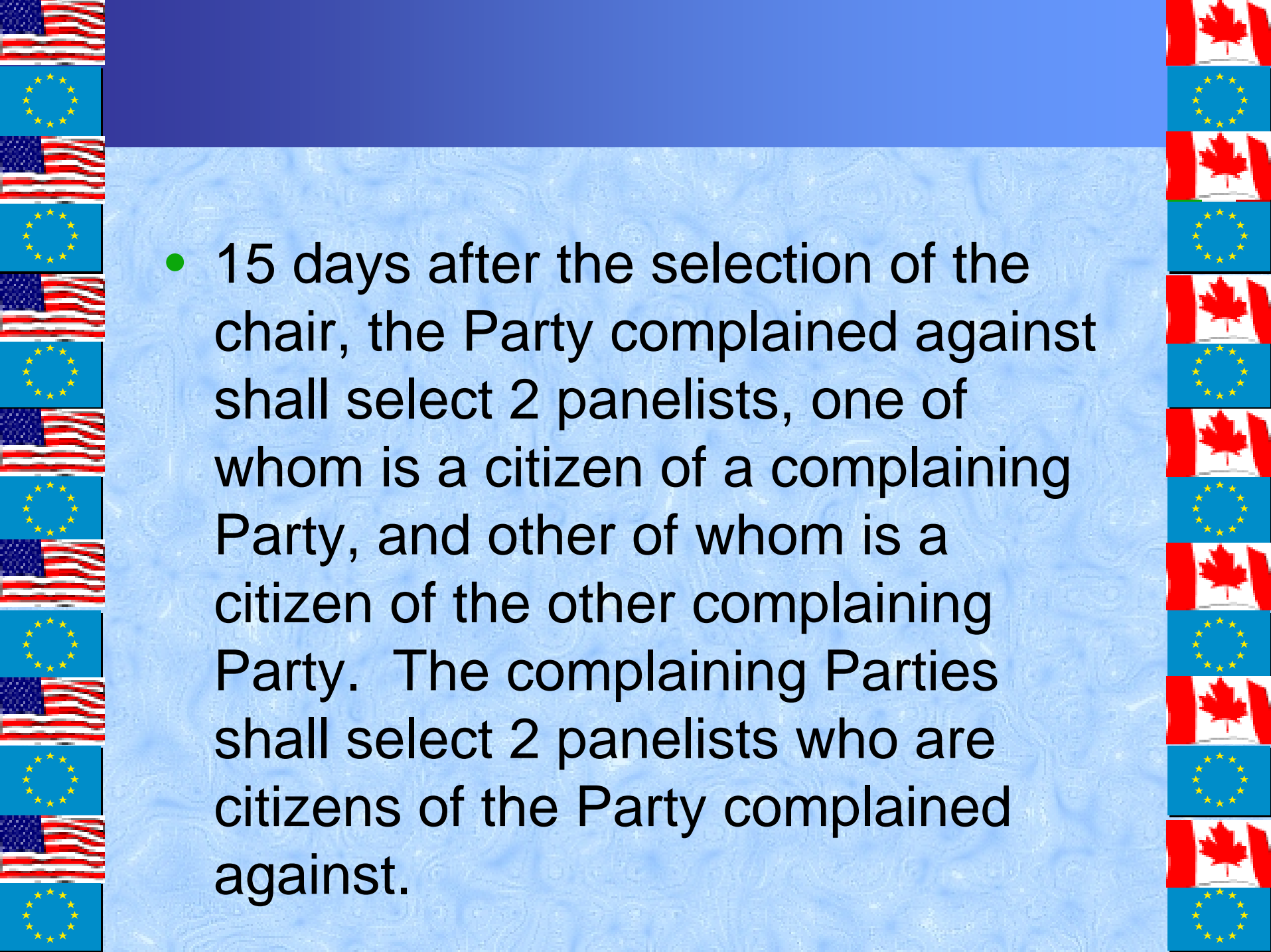
Mexico/U.S. —————> Chair

Mexico —————> 2 American panelists

U.S. —————> 2 Mexican panelists

Panel selection when there are more than 2 disputing parties

- 5 members panel
- Parties appoint the chair in 15 days. If no agreement, the Party or Parties on the side of the dispute chosen by lot shall select in 10 days a chair who is not a citizen of such Party or Parties.

- 
- 15 days after the selection of the chair, the Party complained against shall select 2 panelists, one of whom is a citizen of a complaining Party, and other of whom is a citizen of the other complaining Party. The complaining Parties shall select 2 panelists who are citizens of the Party complained against.

Example:

Mexico and U.S. complain against Canada.

- Mexico/U.S./Canada → Chair
- Canada → 1 Mexican
→ 1 American
- Mexico/U.S. → 2 Canadians

Arbitral Panel Procedure

- Within 90 days after the last panelist is selected, the panel shall deliver an initial report.
- 30 days after the presentation of the initial report, the panel shall deliver a final report.

Implementation of Report

- Report must be implemented in 30 days. If not, the complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached an agreement on a resolution of the dispute.
- Article 2021

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SETTLEMENT DISPUTES BETWEEN A PARTY AND INVESTOR OF ANOTHER PARTY

NAFTA

Chapter Eleven - Investment

Section A. Investment

Section B. Settlement Disputes Between a Party and Investor of Another Party

**vs. Chapter Twenty:
Dispute Settlement Between Parties**

SECTION A / INVESTMENT

- **Concept**
- **National Treatment** **Investor/ Investment**
- **Most Favored Nation Treatment**
- **Minimum Standard** **International Law**
**Fair, Equitable,
Protection, Security**
- **Reservations** **Specific Areas (State Enterprises)**
- **Expropriation** **Fair Market Value**
vs. Fair Value (Mexico)

INVESTMENT CONCEPT

- Enterprise
- Equity Security of an Enterprise
- Debt security of an Enterprise (conditions)
- Loan to an Enterprise (conditions)
- An Interest in an Enterprise that Entitles Owner to Share Income or Profits/or Assets in Dissolution
- Real Estate, Tangible and Intangible Property used for Business
- Interests of Capital, including Turn-key contracts / Risk K (Excluding Sale of Goods/Services)
- Other Claims to Money

Section B / Settlement Dispute Procedures

- **Cause of Action Section A**

State Enterprises/ Monopolies

Statue of Limitations – 3 years

- **Negotiation** —————→ **At least 90 days**

- **Arbitration:**

- **Conditions Precedent / 1121**

- **Consent 1122**

- **Waiver to initiate or continue a local action**

ARBITRATION (Continued)

Procedure - 3 arbitrators

**Under ICSID Convention / its Additional
Facilities Rules / UNCITRAL Arbitration Rules**

Another Party may Participate

Governing Law: International Law

Annexes Interpreted by Commission

Enforcement Award - Procedure (Party vs. Party)

Enforcement as Private Award

No punitive Damages

1136 vs. 2019

IMPORTANT WEBSITES

- *Private Institutions*

The British Chamber of Commerce

<http://www.britishchambers.org.uk/>

The Canadian Chamber of Commerce

<http://www.chamber.ca/english/main.htm>

The Chile Chamber of Commerce

<http://www.ccs.cl/english/index.htm>

Association of European Chamber of Commerce
and Industry

<http://www.dad.be/eurocoach/>

International Chamber of Commerce

<http://www.iccwbo.org/>

World Chambers of Commerce Network

<http://www.worldchambers.com/>

United States Hispanic Chamber of Commerce

<http://www.usbcc.com/>

IMPORTANT WEBSITES

- *Official Institutions*

Asia Pacific Economic Forum

<http://www.apec.org/>

European Union

<http://www.europa.eu.int/>

Free Trade Area of the Americas

http://www.alca-ftaa.org/Alca_e.asp

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