

**North America Food and Agriculture Trade Group**  
*NAFTA Chapter-by-Chapter Review*

NAFTA Chapter	Preserve	Modernize	Add
Chapter 1: Objectives			
Chapter 2: General Definitions			
Chapter 3: National Treatment and Market Access for Goods	<ul style="list-style-type: none"> <li>- Maintain all current tariff preferences and duty-free access, including for commercial samples.</li> <li>- Eliminate export subsidies throughout the NAFTA region.</li> <li>- Limit selective taxation on specific commodities or types of goods.</li> <li>- Normalize trade in sweeteners, allowing the market, not government, to determine import levels of raw, semi-refined and refined sugar.</li> </ul> <p>Mexico and Canada:</p> <ul style="list-style-type: none"> <li>- No additional tariffs and quotas.</li> </ul>		<ul style="list-style-type: none"> <li>- Prohibit price controls;</li> <li>- Remove current limitations on duty drawback and deferral;</li> <li>- Add agriculture goods chapter per TPP 2.19-2.27.</li> </ul> <p>Canada:</p> <ul style="list-style-type: none"> <li>- Dairy: Remove Special Class 6 and 7; Address pattern of NTB concerns; eliminate tariffs and TRQs;</li> <li>- Poultry;</li> <li>- Wine: equal access to Canadian groceries and distribution; prohibit markup exemptions; Remove NAFTA provision allowing Ontario and British Columbia private wine sells in existence in 1987 to sell only wines from that province; Remove the NAFTA provision allowing Québec to require that wine sold in grocery stores must be bottled in Québec.</li> <li>- Beer:</li> </ul>
Chapter 4: Rules of Origin	Industry Basis:	Industry Basis:	

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	<ul style="list-style-type: none"> <li>- Maintain trade facilitative rules of origin requirements.</li> <li>- Maintain sector specific rules of origin where appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>- Enhanced yarn-forward rules of origin.</li> </ul> <p>Sectoral basis (where appropriate):</p> <ul style="list-style-type: none"> <li>- Adopt de minimis content rule of 10 percent.</li> <li>- Promote product specific rules of origin that are trade facilitating.</li> </ul>	
Chapter 5: Customs Procedures		<ul style="list-style-type: none"> <li>- Simplify record keeping and auditing procedures.</li> <li>- Include TRQ administration based on TPP, including provisions that administer most TRQs on a first come, first served basis and would not count toward WTO limit.</li> </ul>	
Chapter 6: Energy and Basic Petrochemicals			<p>Canada:</p> <ul style="list-style-type: none"> <li>- Increase regulatory alignment of biodiesel markets.</li> </ul> <p>Mexico:</p> <ul style="list-style-type: none"> <li>- Take advantage of ongoing Mexican regulatory changes to converge fuel standards for ethanol blends at E-10.</li> </ul>
Chapter 7: Agriculture and Sanitary and Phyto Sanitary Measures		<p>Build upon TPP SPS language with an agreement that includes:</p> <ul style="list-style-type: none"> <li>- Recognition and adoption of WTO SPS Agreement;</li> <li>- Reinforcement of science based regulation;</li> </ul>	<ul style="list-style-type: none"> <li>- Move Agriculture section to Chapter 3: National Treatment and Market Access for Goods per TPP structure.</li> <li>- Rename this chapter SPS or create a separate SPS Chapter.</li> </ul>

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		<ul style="list-style-type: none"><li>- Adoption of expanded WTO-plus SPS standards;</li><li>- Creation of a rapid response mechanism, including tighter standards and deadlines for adverse import checks;</li><li>- Adoption of cooperative technical consultations and increased reporting, transparency and record keeping among CTC members;</li><li>- Creation of a more robust single inquiry point standard for SPS contacts (including increased transparency of SPS requirements, data bases for SPS regulations etc.);</li><li>- High standards for risk assessment and risk management, including language that elaborates on current WTO provisions (TPP language);</li><li>- Adopt trade facilitative residue levels and adventitious presence mechanisms.</li><li>- Include low level tolerance principles;</li><li>- Enhanced enforcement mechanism for unjustified SPS barriers, including a potential compensation, three strikes policy or retroactive damages.</li></ul>	
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Chapter 8: Emergency Action	- Preserve current language.		
Chapter 9: Standards-Related Measures		<ul style="list-style-type: none"> <li>- Reinforcement of science based regulations to prevent NTBs that lack scientific merit.</li> <li>- Require parties to comply with provisions governing “less trade restrictive measures” and adopt “alternative measures that are less trade restrictive” that have been demonstrated to achieve the intended policy objective when they exist.</li> <li>- Adopt confidentiality of food formulations when disclosure is required.</li> <li>- Seek alignment in food quality regulations in the area of ingredient approvals, fortification requirements (enriched flour), and additives used in processed products.</li> </ul>	- Create a separate TBT Chapter.
Chapter 10: Government Procurement			
Chapter 11: Investment		<p>Create an insurance policy against anti-American trade policy attacks on U.S. agriculture by including ISDS provisions that:</p> <ul style="list-style-type: none"> <li>- Are modeled on the TPP’s Chapter 9 ISDS mechanism;</li> <li>- Improve the speed of the current ISDS process;</li> </ul>	

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		<ul style="list-style-type: none"> <li>- Reduce costs of the current ISDS mechanism;</li> <li>- Provide a mechanism for resolving inconsistencies among panels.</li> </ul>	
Chapter 12: Cross-Border Trade in Services			
Chapter 13: Telecom			
Chapter 14: Financial Services			
Chapter 15: Competition Policy, Monopolies and State Enterprises			
Chapter 16: Temporary Entry for Business Persons	<ul style="list-style-type: none"> <li>- Preserve current language.</li> </ul>		
Chapter 17: Intellectual Property		<ul style="list-style-type: none"> <li>- Enhanced language that protects confidential business information.</li> <li>- Protect lawfully registered and legally trademarked brands, brand names, icons, logos, mascots, and other identifying marks and labels.</li> <li>- Prevent marketing, promotion, and branding restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>- Building upon the TPP language on this issue, address and prevent the misuse of geographical indicators to erect de facto NTBs to the use of common names of agriculture products.</li> </ul>
Chapter 18: Publication, Notification and Administration of Laws			
Chapter 19: Review and Dispute Settlement in Antidumping/countervailing duty matters	<ul style="list-style-type: none"> <li>- Preserve current language for AD/CVD cases by Mexico or Canada.<sup>i</sup></li> </ul>		

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Chapter 20: Institutional Arrangements and Dispute Settlement Procedures	<ul style="list-style-type: none"> <li>- Preserve alternative dispute resolution procedures.</li> </ul>	<p>Create an insurance policy against anti-American trade policy attacks on U.S. agriculture by:</p> <ul style="list-style-type: none"> <li>- Improving the speed of the ISDS process;</li> <li>- Reducing costs for ISDS mechanism;</li> </ul>	
Chapter 21: Exceptions			
Chapter 22: Final Provisions		<ul style="list-style-type: none"> <li>- Enhance withdrawal protocols to make withdrawal from the agreement equivalent to accession. All three countries will follow the same procedures for withdrawal as they followed for ratification and implementation.</li> </ul>	
Chapter XX: Regulatory Cooperation			<ul style="list-style-type: none"> <li>- Draw from regulatory coherence provisions in TPP, APEC, KORUS and TTIP to build a model good regulatory practices chapter.</li> <li>- Promote regulatory cooperation outcomes, with sector specific regulatory outcomes modeled on TBT KORUS and TPP Annexes.</li> <li>- Find a way to facilitate trade in specific sectors and on specific issues.</li> <li>- Make RCC, HLRCC and trilateral regulatory cooperation bodies permanent.</li> <li>- Add in a regulatory coherence and cooperation chapter.</li> </ul>

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			<p>[additional details on regulatory coherence forthcoming.]</p> <p>Regulatory Cooperation Chapter should include:</p> <ul style="list-style-type: none"> <li>- Risk based approach;</li> <li>- Post-market surveillance;</li> <li>- Transparency;</li> <li>- Mutual recognition of standards;</li> <li>- Avoid duplication;</li> <li>- Labeling;</li> <li>- Inclusion of bilateral regulatory achievements;</li> <li>- Good manufacturing practices;</li>   <li>- Where appropriate, promote remove certificate of free sales requirements.<sup>ii</sup></li> </ul>
Chapter XX: Biotechnology			- Create a Biotechnology Chapter.
Chapter XX: E-Commerce			- Create an E-commerce chapter.

<sup>i</sup> The US has been the defendant in 54 Chapter 19 cases and has won 14, lost 18, and split decision in 9. More important, of the 54 panel decisions, 32 were unanimous[meaning either 2 or 3 of the 5-member panel were Americans named by USTR who voted against the US decisions]. And no Chapter 19 panel has split on 3-2 nationality lines. So there is no basis for claiming the panels are ‘unfair’ to the US. Losing the Chapter 19 option against Mexico or Canada means that some tariffs will be raised on US agricultural exports, despite the commitment by the Administration to avoid any loss of market access for US farmers and ranchers.

<sup>ii</sup> Regulatory Cooperation Chapter Details:

- **Risk Based Approach:** Sound science and a risk-based approach should always serve as the basis for regulations that address hazard/risk analysis. International standards and scientific data should be considered when developing new regulations.
- **Post-market Surveillance:** Authorities shall use Post Market Surveillance rather than registration systems. Manufacturers should have primary responsibility to assure the safety products. Simple notification to authorities can be useful, but in-market supervision and enforcement is the most effective system of regulation.

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- **Transparency:** Approval processes should be transparent and equitable, with mutual recognition of other authoritative bodies' risk assessments and/or demonstrated safety based on history of use.
- **Mutual Recognition of Standards:** Harmonization and/or mutual recognition/reliance of standards and regulations that provide the same level of protection.
- **Avoid Duplication:** Regulations should avoid duplicative testing or approval requirements for products or ingredients that have already been evaluated based on sound science. Acceptance of a manufacturer's or supplier's Declaration of Conformity will increase efficiency and reduce costs and strains on industry and government resources.
- **Labelling:** Labeling regulations, including front of pack labeling regulations, should be clear, concise, and consistent and allow consumers to receive meaningful information about the safe use of products, while avoiding unnecessary requirements that provide little value to consumers.
- **Inclusion of bilateral regulatory achievements:** Adopt regulatory achievements made in the Regulatory Cooperation Council of Canada (RCC) and the High Level Working Group for Mexico.
- Mutual recognition of **Good Manufacturing Practices (GMPs)** where required.
- **Certificate of Free Sales** shall not be required.

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