

NAFTA: Legal Text and Interpretive Materials

Edited by
Barry Appleton

Volume 1

THOMSON
—★—™
WEST

For Customer Assistance Call 1-800-328-4880

Mat #40426198

March 29, 1996

Ambassador Michael A. Kantor
United States Trade Representative
600 Seventeenth Street N.W.
Washington, D.C. 20606
U.S.A.

Dear Ambassador Kantor:

I refer to our exchange of letters of December 21 and 27, 1995 with respect to Articles 1108 and 1206 of the North American Free Trade Agreement, (hereinafter referred to as "NAFTA"). Pursuant to that exchange of letters, I have the honour to confirm that:

The attached Canadian Schedule to Annex I of the NAFTA sets out the reservation of existing non-conforming measures of the provinces and territories, in accordance with Articles 1108 and 1206 of the NAFTA.

For transparency, also attached are documents that list non-conforming measures maintained at the provincial and territorial level.

The listing of a measure in Annex I is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

I have the honour to propose that this letter, which is equally authentic in English and in French, and your letter of confirmation in reply, shall constitute an agreement of the Parties, which shall enter into force as of March 31, 1996, and an agreed interpretation of the Free Trade Commission.

Please accept, Ambassador Kantor, the assurances of my highest consideration.

Sincerely,

Arthur C. Eggleton

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (1102, 1202)
Most-Favoured Nation Treatment (1103, 1203)
Local Presence (1205)
Performance Requirements (1106)
Senior Management and Boards of Directors (1107)

Level of Government: Provincial

Measures: All existing non-conforming measures of all provinces and territories.

Description:

Phase Out: None

Le 29 Mars, 1996

Monsieur l'ambassadeur Michael A. Kantor
Représentant au Commerce des Etats-Unis
600 Seventeenth Street N.W.
Washington, D.C. 20506
Etats-Unis

Monsieur l'Ambassadeur,

Je me réfère à notre échange de lettres des 21 et 27 décembre 1995 relatif aux articles 1108 et 1206 de l'Accord de libre-échange nord-américain, (ci-après l' "ALENA"). Conformément audit échange de lettres, j'ai l'honneur de confirmer ce qui suit:

Le document ci-annexé, qui est à joindre a la liste canadienne de l'annexe I de l'ALENA, énonce les réserves concernant les mesures non conformes appliquées par les provinces et les territoires, conformément aux articles 1108 et 1206 de l'ALENA.

Par souci de transparence, sont également ci-annexés des documents listant les mesures non conformes maintenues aux niveaux provincial et territorial.

L'inscription d'une mesure à l'annexe I est sans préjudice de tout recours ultérieur à l'effet que l'annexe II s'applique à ladite mesure ou à l'une de ses applications.

J'ai l'honneur de proposer que la présente lettre, dont les versions française et anglaise font également foi, et votre lettre de confirmation en réponse constituent entre les Parties un Accord qui entrera en vigueur le 31 mars 1996, ainsi qu'une interprétation convenue de la Commission de libre-échange.

Je vous prie d'agréer, Monsieur l'Ambassadeur, les assurances de ma très haute considération.

Arthur C. Eggleton

Secteur: Tous les secteurs

Sous-secteur:

Classification de l'industrie:

Type de réserve: Traitement national (Articles 1102, 1202)
Traitement de la nation plus favorisée (Articles 1103, 1203)
Présence locale (Article 1205)
Prescriptions de résultats (Article 1106)
Dirigeants et conseils d'administration (Article 1107)

Palier de gouvernement: Provincial

Mesures: Toute mesure existante non conforme appliquée par les provinces et les territoires

Description:

Elimination progressive: Néant

March 29, 1996

The Honourable Herminio Blanco Mendoza
Secretary of Commerce and Industrial Development
Alfonso Reyes 30, Piso 9
Col. Hipodromo de la Condesa
06179 Mexico D.F.
Mexico

Dear Dr. Blanco:

I refer to our exchange of letters of December 21 and 27, 1995 with respect to Articles 1108 and 1206 of the North American Free Trade Agreement, (hereinafter referred to as "NAFTA"). Pursuant to that exchange of letters, I have the honour to confirm that:

The attached Canadian Schedule to Annex I of the NAFTA sets out the reservation of existing non-conforming measures of the provinces and territories, in accordance with Articles 1108 and 1206 of the NAFTA.

For transparency, also attached are documents that list non-conforming measures maintained at the provincial and territorial level.

The listing of a measure in Annex I is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

I have the honour to propose that this letter, which is equally authentic in English and in French, and your letter of confirmation in reply, shall constitute an agreement of the Parties, which shall enter into force as of March 31, 1996, and an agreed interpretation of the Free Trade Commission.

Please accept, Dr. Blanco, the assurances of my highest consideration.

Sincerely

Arthur C. Eggleton

Le 29 mars, 1996

L'honorable Herminio Blanco Mendoza
Secrétaire au Commerce et au Développement industriel
Alfonso Reyes 30, Piso 9
Col. Hipodromo de la Condesa
06179 Mexico D.F.
Mexique

Monsieur le Secrétaire,

Je me réfère à notre échange de lettres des 21 et 27 décembre 1995 relatif aux articles 1108 et 1206 de l'Accord de libre-échange nord-américain, (ci-après l' "ALENA"). Conformément audit échange de lettres, j'ai l'honneur de confirmer ce qui suit:

Le document ci-annexé, qui est à joindre à la liste canadienne de l'annexe I de l'ALENA, énonce les réserves concernant les mesures non conformes appliquées par les provinces et les territoires, conformément aux articles 1108 et 1206 de l'ALENA.

Par souci de transparence, sont également ci-annexés des documents listant les mesures non conformes maintenues au niveaux provincial et territorial.

L'inscription d'une mesure à l'annexe I est sans préjudice de tout recours ultérieur à l'effet que l'annexe II s'applique à ladite mesure ou à l'une de ses applications.

J'ai l'honneur de proposer que la présente lettre, dont les versions française et anglaise font également foi, et votre lettre de confirmation en réponse constituent entre les Parties un Accord qui entrera en vigueur le 31 mars 1996, ainsi qu'une interprétation convenue de la Commission de libre-échange.

Je vous prie d'agréer, Monsieur l'Ambassadeur, les assurances de ma très haute considération.

Arthur C. Eggleton

March 29, 1996

The Honorable Arthur C. Eggleton
Minister of International Trade
External Affairs and International Trade Canada
Ottawa, Ontario K1A 0G2

Dear Minister Eggleton:

I refer to the exchange of letters of December 21, 1995 with respect to Article 1108 and 1206 of the North American Free Trade Agreement (NAFTA). Pursuant to that exchange of letters, I have the honor to confirm that:

The attached U.S. Schedule to Annex I of the NAFTA sets out the reservation of existing non-conforming measures of the states, the District of Columbia and the Commonwealth of Puerto Rico in accordance with Articles 1108 and 1206 of the NAFTA.

For transparency, also attached are documents that list non-conforming measures maintained at the state level.

The listing of a measure in Annex I is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

I have the honor to propose that this letter, and your letter of confirmation in reply, shall constitute an agreement of the Parties, which shall enter into force as of March 31, 1996, and an agreed interpretation of the Free Trade Commission.

Sincerely,

Michael Kantor

Enclosure

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (1102, 1202)
Most-Favored Nation Treatment (1103, 1203)
Local Presence (1205)
Performance Requirements (1106)
Senior Management and Boards of Directors (1107)

Level of Government: State

Measures: All existing non-confirming measures of all states,
the District of Columbia, and the Commonwealth of
Puerto Rico

Description:

Phase-out: None

29 de marzo de 1996

Mr. Arthur C. Eggleton
 Ministro de Comercio Internacional
 125 Sussex Drive
 Ottawa, K1A 0G2

Estimado Ministro Eggleton:

En respuesta a su comunicación de hoy y con referencia a nuestro intercambio de cartas del 21 de diciembre de 1995, en relación con los artículos 1108 y 1206 del Tratado de Libre Comercio de América del Norte. De conformidad con dicho intercambio, tengo el honor de confirmar que:

La Lista de México al Anexo I del Tratado de Libre Comercio de América del Norte (al que en lo sucesivo nos referiremos como "TLC"), que adjunto, dispone la reserva de las medidas estatales disconformes existentes, de conformidad con los artículos 1108 y 1206 del TLC.

Para efectos de transparencia, también adjunto los documentos en los que se enlistan las medidas disconformes mantenidas a nivel estatal.

El listado de una medida en el Anexo I es sin perjuicio de que en el futuro se alegue que el Anexo II puede aplicarse a la medida o a la aplicación de la misma.

Tengo el honor de aceptar su propuesta de carta y que esta carta de confirmación constituyan un acuerdo entre las Partes para entrar en vigor el 31 de marzo de 1996, y una interpretación acordada de la Comisión de Libre Comercio.

Atentamente

c.c.p. Embajador Michael Kantor
 Representante Comercial de los Estados Unidos
 Washington, D.C.

Sector: Todos los sectores

Sub-Sector:

Clasificación Industrial:

Tipo de reserva: Trato Nacional (1102, 1202)
 Trato de Nación Más Favorecida (1103, 1203)
 Presencia Local (1205)
 Requisitos de Desempeño (1106)
 Altos Ejecutivos y Consejo de Administración (1107)

Nivel de Gobierno: Estatal

Medida: Todas las medidas disconformes existentes a nivel estatal.

Descripción:

Calendario de Reducción: Ninguno

Dr. Herminio Blanco Mendoza
Minister of Trade and Industrial Development

March 29, 1996

Arthur C. Eggleton
Minister of International Trade
125 Sussex Drive
Ottawa K1A 0G2

Dear Minister Eggleton:

This is in reply to your communication of this date as well as in reference to our exchange of letters on December 21, 1995, regarding Articles 1108 and 1206 of the North American Free Trade Agreement. Pursuant to that exchange, I have the honour to confirm that:

The attached Mexican Schedule to Annex I of the Free Trade Agreement of North America (hereinafter referred to as "TLC"¹) sets out the reservation of existing nonconforming measures of the states, in accordance with Article 1108 and 1206 of the TLC.

For transparency, also attached are documents that list non-conforming measures maintained at the state level.

The listing of a measure in Annex I is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

I have the honour to accept the proposal made in your letter and affirm that the present letter of confirmation shall constitute an agreement of the Parties, which shall enter into force as of March 31, 1996, and an agreed interpretation of the Free Trade Commission.

Sincerely,

[Signed: H. Blanco M.]

cc: Ambassador Michael Kantor
Trade Representative of the United States
Washington, D.C.

¹ Tratado de Libre Comercio (de América del Norte) = NAFTA

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (1102, 1202)
Most-Favored Nation Treatment (1103, 1203)
Local Presence (1205)
Performance Requirements (1106)
Senior Management and Boards of Directors (1107)

Level of Government: State

Measures: All existing non-confirming measures of all states.

Description:

Phase-out: None

Backgrounder
NAFTA TRILATERAL AGREEMENT ON LISTING STATE
AND PROVINCIAL RESERVATIONS

Under the North American Free Trade Agreement (NAFTA), Parties may list non-conforming measures in various ways. In Annex II, all three Parties to the NAFTA have set out identical reservations for certain sectors, notably for social services like health to the extent that they are social services established or maintained for a public purpose. Parties do not need to list specific measures under Annex II. Moreover, they may introduce new NAFTA inconsistent measures in those sectors. In particular, this protects all key elements of the Canadian health care system.

Any remaining non-conforming measures not captured by the broad carveouts in Annex II are to be listed in Annex I. These carveouts are exceptions to basic NAFTA rules which require that service suppliers and investors from other NAFTA Parties be permitted to operate under the same conditions as Canadians. Measures were to be specifically listed and, if not, could not be maintained. The federal governments of the three Parties had already listed their measures, but states and provinces were given until March 32, 1996, to compile their lists.

In preparation for the March 31 deadline, the federal government worked closely with the provinces to ensure effective coverage under Annex I. Some provinces were concerned to the extent that a measure might not be covered by the extensive carveout in Annex 11. The three NAFTA Parties have recently agreed, however, to each table only a short general reservation under Annex I covering all state and provincial measures. While they will continue to exchange lists of detailed measures as previously, this will be for transparency purposes only. This approach ensures that all existing provincial measures are captured, regardless of whether or not they are listed.