THE NORTH AMERICAN FREE TRADE AGREEMENT: REASONS FOR PASSAGE AND REQUIREMENTS TO BE A FOREIGN LEGAL CONSULTANT IN A NAFTA COUNTRY

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I. INTRODUCTION

Under a global economy, countries around the world trade with each other. International trade is essential to achieving a global economy. As the world moves toward a global economy, the need for international trade of goods and services is increasing. Numerous agreements between countries have been passed to facilitate international trade. The North American Free Trade Agreement[1] (NAFTA) signed by Canada, Mexico, and the United States, is the most recent trade agreement. It was signed

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1. North American Free Trade Agreement, Aug. 12, 1992, pmbl., 32 I.L.M. 297, Hein's No. KAV 3417 at 297 [hereinafter NAFTA].

by each party with the intention of increasing trade through the elimination of tariff and non-tariff barriers to trade.[2]

This paper is intended to be a guide for practicing lawyers. The paper is divided into ten sections. The first section is the introduction to the paper. The second section covers the history behind the passage of NAFTA. The third section outlines the objectives of NAFTA. After the general objectives of NAFTA are explained, the fourth section covers the requirements to be a foreign legal consultant in a NAFTA Party. The fifth section covers NAFTA dispute resolution procedures if there is a dispute between Party governments. The sixth section explores arbitration and litigation in Mexico. The seventh section explains the Canadian International Trade Tribunal (CITT). The eighth section covers the possibility of Chile becoming the next Latin American country to have a Free Trade Agreement with the United States. The ninth section covers the economic benefits NAFTA produces for each NAFTA Party. The tenth section is the conclusion.

II. HISTORY BEHIND PASSAGE OF NAFTA

The concept for the North American Free Trade Agreement began with the trade agreement between the United States and Canada. In 1986, Canada, the largest trading partner of the United States, asked the United States to negotiate a free trade agreement.[3] The United States and Canada created the Canada-United States Free Trade Agreement (CUFTA) in 1988.[4] CUFTA was intended to promote trade between Canada and the United States. In 1988, Mexico was growing economically and became the third largest trading partner with the United States.[5] Mexico now wanted a trade agreement with the United States.[6]

Canada, Mexico, and the United States had economic incentives to adopt a tri-lateral trade agreement. The single most important goal of each country was to increase trade.[7] The United States believed the removal of tariff and non-tariff barriers between the United States and Mexico would create new trade and investment opportunities.[8] The United States wanted to

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2. Ellen G. Yost, *The United States Perspective On Negotiations For A North American Free Trade Agreement*, 5 INT'L L. PRACTICUM 67 (1992).

3. *Id.*

4. BARRY APPELTON, NAVIGATING NORTH AMERICAN FREE TRADE AGREEMENT: A CONCISE GUIDE TO THE NORTH AMERICAN FREE TRADE AGREEMENT 4 (1994).

5. Yost, *supra* note 2, at 67.

6. *Id.*

7. *Id.*

8. *Id.* at 68.

increase exports to Canada and Mexico.[9] Canada wanted to gain access for Canadian goods, services, and capital to Mexico.[10] Mexico wanted an agreement with the United States to seek new market opportunities for its rapidly emerging market.[11]

The 1980s were marked by the creation of regional trade blocks because strong regional trade blocks enable countries to become less dependent on international trade. They are cost-efficient and beneficial to member countries.[12] For example, prices on both imports and exports can be reduced because shipping costs among adjacent countries is lower than shipping costs among distant countries. With lower prices, individuals within a regional trade block can benefit by the decrease of cost in consumption.

These trade blocks pose serious threats to non-members. Members have an incentive to provide favorable treatment to each other and grow strong as a trading block. Non-member countries are disadvantaged by increased tariff and non-tariff barriers to trade. Non-member exports to regional trade blocks shrink because of their higher prices which are caused by the trade barriers.

Trade among European nations became more united in the 1980s.[13] The strength of the European Union (EU) poses serious threats to the United States future position in the world market place.[14] All three of the North American countries wanted a tri-lateral agreement because of the single market in the European Community.[15] Several of the principal members of the EU are the United Kingdom, Germany, France, Italy, Spain, Austria, Finland, and Sweden.[16] The North American countries wanted to strengthen their economies to compete with the EU, which is the largest trading block in the world.[17] NAFTA was partly conceived to

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9. *Id.* at 67.

10. RONALD J. WONNACOTT, *Canada's Role in NAFTA: To What Degree Has It Been Defensive, in* MEXICO AND NAFTA: WHO WILL BENEFIT 163, 165 (1995).

11. RONALD H. BROWN, U.S. DEP'T OF COM., U.S. GLOBAL TRADE OUTLOOK 1995-2000: TOWARD THE 21ST CENTURY 23 (1995).

12. *Id.*

13. *Id.*

14. BROWN, *supra* note 11, at 32.

15. GABRIEL SZEKELY, *The Consequences of NAFTA for European and Japanese Trade and Investment, in* MEXICO AND NAFTA: WHO WILL BENEFIT 149 (1994).

16. BROWN, *supra* note 11, at 30-31.

17. *Id.* at 32.

provide a safety valve for North American trade should the European Community begin to exclude non-member countries.[18]

Canada, Mexico, and the United States agreed that a regional free trade agreement would sustain each country's economic position in the world market place.[19] Nations enter into free trade agreements for other reasons.[20] First, a candidate country may choose to pursue a free trade arrangement in order to maintain access to its prospective partner's market.[21] Second, a free trade agreement can improve current bilateral trade and investment relations.[22] Finally, nations who lower trade barriers can promote trade diversion, and ultimately equalize their bilateral trade balance.[23]

Since 1980, the United States has undergone a transition in its exports.[24] Because of the tremendous economic growth in Asia and Mexico and the moderate growth in Europe, the United States has increased exports to Asia and Mexico.[25] The United States moved away from traditional European markets and moved toward the Asian and Mexican markets because markets for United States products in Mexico and Asia expanded and increasing foreign investment in Mexico produced a rapid increase in the trade of capital and intermediate goods.[26] NAFTA was viewed as a tool in furthering the United States transition from the European to the Mexican markets.

III. OBJECTIVES OF NAFTA

The goal of NAFTA is to establish a free trade area.[27] Article 101 of NAFTA establishes the free trade area consistent with article XXIV of the General Agreement on Tariffs and Trade (GATT).[28] Under article 103(1) of NAFTA, the Parties affirm their existing rights and obligations

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18. SZEKELY, *supra* note 15, at 149.

19. BRENDA M. MCPHAIL, NAFTA NOW! THE CHANGING POLITICAL ECONOMY OF NORTH AMERICA vii (1995).

20. KENT S. FOSTER & DEAN C. ALEXANDER, PROSPECTS OF A U.S.-CHILE FREE TRADE AGREEMENT 32 (1994).

21. *Id.*

22. *Id.*

23. *Id.* at 33.

24. BROWN, *supra* note 11, at 23.

25. *Id.* at 24.

26. *Id.* at 23. Intermediate goods are goods not yet in final form. They are goods to be used in further manufacturing processes.

27. NAFTA, *supra* note 1.

28. *Id.* at art. 101.

under GATT and under any other agreements to which such Parties are a party.[29]

The GATT agreement was signed in 1947 by twenty-four nations.[30] The objectives of GATT are raising the standard of living, ensuring full employment, attaining a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world, and expanding the production and exchange of goods.[31] Each signatory party wanted to eliminate discriminatory treatment in international commerce as well.[32]

NAFTA does not eliminate GATT's provisions. NAFTA recognizes GATT and allows the Parties to maintain their rights and obligations under GATT. GATT and NAFTA are similar because each agreement seeks to promote international trade by eliminating tariff and non-tariff barriers to trade.[33] However, if there is a conflict between two NAFTA Parties and NAFTA and GATT have different resolutions, NAFTA will prevail to the extent of the particular conflict, except as otherwise provided in NAFTA.[34]

Free trade agreements allow countries to strengthen their economic relationships through the elimination of trade barriers.[35] All three NAFTA Parties committed themselves to strengthening their economic relationships. The preamble of NAFTA established the commitment among the United States, Canada, and Mexico to work together. The governments resolved to strengthen their friendship and cooperation, contribute to the development and expansion of world trade, and provide a catalyst to broader international cooperation.[36]

The governments wanted to create an expanded and secure market for the goods and services produced in their territories, reduce distortions to trade, and establish clear and mutually beneficial rules governing their trade.[37] The governments also wanted to ensure a predictable commercial framework for business planning and investment.[38] Each country desired

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29. *Id.*

30. General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. No. 1700, at 639 [hereinafter GATT].

31. *Id.* at 641.

32. *Id.*

33. *Id.*

34. NAFTA, *supra* note 1, at art. 103(2), at 297.

35. FOSTER & ALEXANDER, *supra* note 20, at 23.

36. NAFTA, *supra* note 1, at pmbl., at 297.

37. *Id.*

38. *Id.*

to build on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation.[39]

The preamble of NAFTA includes each country's desire to enhance the competitiveness of their firms in global markets, foster creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights.[40] The preamble states that each country has to implement NAFTA with the same ideals. In implementing NAFTA each country is to protect, enhance, and enforce basic workers' rights.[41] Implementation must be consistent with environmental protection and conservation policies of the NAFTA Parties.[42] Finally, the purpose of NAFTA is to create new employment opportunities and improve working conditions and living standards in each country's respective territory.[43]

The preamble and chapter one objectives apply to all twenty-two chapters. The objectives under chapter one include the facilitation of cross-border movement of goods and services through the elimination of tariff and non-tariff barriers to trade.[44] Each country wanted to promote fair competition in the free trade area to increase investment opportunities in the territories of the Parties.[45] NAFTA is to provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory.[46] The objectives also include the Party's desire to create effective procedures for the implementation and application of NAFTA, and establish a joint administration for the resolution of disputes.

Similar to the preamble and chapter one, chapter three of NAFTA is also applicable to all twenty-two chapters of the trade agreement. Under article 301(1) of chapter three, "[e]ach Party shall accord national treatment to the goods of another Party in accordance . . . with GATT."[47] According to article 301(2), national treatment means treatment at least equal to that accorded similar domestically produced goods. Article 302 covers tariff elimination. Under article 302, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good, and each party shall progressively eliminate its customs duties on

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39. *Id.*

40. *Id.*

41. *Id.*

42. NAFTA, *supra* note 1, at pmbl., at 297.

43. *Id.*

44. *Id.* at art. 102(1)(a), at 297.

45. *Id.* at art. 102(1)(c), at 297.

46. *Id.* at art. 102(1)(d), at 297.

47. *Id.* at art. 301(1), at 299.

originating goods.[48] On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties.[49]

IV. REQUIREMENTS FOR A FOREIGN LEGAL CONSULTANT TO A NAFTA PARTY

NAFTA covers both trade of goods and services. Cross-Border trade in services is covered in chapter twelve of NAFTA.[50] Annex 1210.5 section B of chapter twelve covers foreign legal consultants.[51] "Each Party shall allow a national of another Party to practice or advise on the law of any country in which that national is authorized to practice as a lawyer."[52]

NAFTA has guidelines that each country must follow to license a lawyer to practice or advise in another Party's territory. NAFTA requires each party to consult with and obtain advice from their professional bodies on what type of association a domestic lawyer and a foreign consultant need to create.[53] In addition, the professional bodies of each country are to recommend standards and criteria that foreign legal consultants must follow in order to be authorized to consult in the other party's territory. NAFTA allows the professional bodies to recommend standards and criteria for any matter connected to foreign legal services.[54]

Each signatory Party to NAFTA agrees to consult with each other in the area of foreign legal consultation.[55] NAFTA requires each party to establish national programs to create common procedures for the authorization of foreign legal consultants.[56] If a Party recommends a course of action, the other party should implement the recommendation through its authorities within one year from the date of such recommendation.[57]

Article 1210 sets forth licensing and certification requirements for foreign legal consultants.[58] Article 1210 is in NAFTA to ensure

48. NAFTA, *supra* note 1, at art. 302(1), (2), at 300.

49. *Id.* at art. 302(3), at 300.

50. *Id.* at ch. 12, at 649.

51. *Id.* at Annex 1210.5(B), at 652.

52. *Id.* at Annex 1210.5(B)(1), at 652.

53. *Id.* at Annex 1210.5(B)(2)(a), at 652.

54. NAFTA, *supra* note 1, at Annex 1210.5(B)(2)(b)&(c), at 652.

55. *Id.* at Annex 1210.5(B)(3), at 652.

56. *Id.* at Annex 1210.5(B)(4), at 652.

57. *Id.* at Annex 1210.5(B)(5), at 652.

58. *Id.* at Annex 1210.5(B)(2)(b), at 652.

unnecessary barriers to trade are not created.[59] Under article 1210(1)(a) "each party shall ensure that any such measure is based on objective and transparent criteria, such as competence and the ability to provide a service, and is not more burdensome than necessary to ensure the quality of a service."[60] In addition, "each measure should not constitute a disguised restriction on the cross-border provision of a service."[61]

Any citizenship or permanent residency requirement is scheduled to be eliminated by the year 1996.[62] Thus, an individual does not need to live or be a citizen of a Party country to be a foreign legal consultant in that country. A Party may mandate a permanent residency requirement if another Party continues to enforce a permanent residency requirement. Such residency requirement may be maintained as long as the other Party maintains its residency requirement.[63] A Party may reinstate any such requirement at the federal, state, or provincial level. The Party reinstating such requirement should give notice to the non-complying Party of such reinstatement action.[64]

Measures adopted or maintained by a Party relating to the licensing or certification of professional service providers must conform to Annex 1210.5.[65] Section A of Annex 1210.5 discusses the general provisions of professional services including the processing of applications for licenses and certifications.[66] The granting of a license or certification shall be within a reasonable time after an application for a license or certificate has been completed.[67] Authorities will inform the applicant if additional information is needed.[68]

Each NAFTA Party encourages its relevant professional bodies in their respective territories to develop standards and criteria for licensing and certification of professional services.[69] Standards and criteria may be developed concerning education, academic programs, and continuing education to maintain professional certification.[70] Examination standards

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59. *Id.* at art. 1210(1), at 650.

60. NAFTA, *supra* note 1, at art. 1210(1)(a)&(b), at 650.

61. *Id.* at art. 1210(1)(c), at 650.

62. *Id.* at art. 1210(3), at 650.

63. *Id.*

64. *Id.* at art. 1210(3)(a)&(b), at 650-51.

65. *Id.* at art. 1210(5), at 651.

66. NAFTA, *supra* note 1, at Annex 1210.5(A), at 651-52.

67. *Id.* at Annex 1210.5(A)(1)(a), at 651.

68. *Id.* at Annex 1210.5(A)(1)(b), at 651.

69. *Id.* at Annex 1210.5(A)(2), at 652.

70. *Id.* at Annex 1210.5(A)(3)(a)&(e), at 652.

may be established by each country for licensing qualification. An applicant may be interviewed and may have to take an oral examination. In addition, each country may require a certain amount of experience before an applicant can be granted a license.[71]

NAFTA permits the establishment of other standards. A Party may limit the scope of practice on permissible activities.[72] A Party may mandate local knowledge requirements for such areas as local laws, regulations, language, geography or climate.[73] A Party is also allowed to create standards for consumer protection.[74]

Each party may set standards and criteria on conduct and ethics to be followed by foreign legal consultants. These standards can include professional conduct and the nature of disciplinary action for non-conformity with those standards.[75] The International Bar Association created a guide on ethics applicable for international lawyers in the International Code of Ethics in 1956.[76] According to the International Code of Ethics "a lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted."[77] The lawyer is subject to the same ethical standards as lawyers in the country where he is working.[78]

The American Bar Association amended its Model Rules of Professional Conduct in August 1993 to provide in rule 8.5 that a lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct.[79] Lawyers who practice or consult in foreign jurisdictions may be subject to the ethical rules of more than just one jurisdiction.[80]

The Free Trade Commission was created under NAFTA to be responsible for supervising implementation of the Agreement.[81] The Trade

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71. *Id.* at Annex 1210.5(A)(3)(b)&(c), at 652.

72. NAFTA, *supra* note 1, at Annex 1210.5(A)(3)(f), at 652.

73. *Id.* at Annex 1210.5(A)(3)(g), at 652.

74. *Id.* at Annex 1210.5(A)(3)(h), at 652.

75. *Id.* at Annex 1210.5(A)(3)(d), at 652.

76. Helena M. Tavares, *The United States Perspective on Traveling With The Attorney-Client Privilege: Checked or Carry-On Baggage*, 7 INT'L L. PRACTICUM 9 (1994).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. HAMILTON LOEB, NORTH AMERICAN FREE TRADE AGREEMENT: SUMMARY AND ANALYSIS 100 (1993).

Commission agreed to meet within one year of the date of entry into force of this Agreement "with a view to assessing the overall progress of section twelve, amending or removing reservations on foreign legal consultant services, and assessing further work that may be appropriate regarding foreign legal consultant services."[82]

V. NAFTA DISPUTE PROCEDURES

In the event of a governmental dispute between Parties the foreign legal consultant must know the dispute resolution methods. NAFTA has procedures for dispute resolution. Chapter twenty of NAFTA provides for the dispute settlement procedures.[83] NAFTA dispute resolution begins with consultations, which are to be the primary means of settling disputes. If consultation fails to yield a resolution within thirty to forty-five days after initiation, a consulting Party may request a meeting of the Free Trade Commission, which is also responsible for resolving disputes regarding the interpretation or application of a NAFTA chapter. The Commission may rely on technical advisors, convene working groups or experts, or seek conciliation, mediation or other dispute resolution procedures in an effort to resolve the dispute promptly.

If consultation is not successful then a Party can request an arbitral panel. A third Party with a substantial interest can join as a complaining party before the panel. The arbitral panel consists of five members ordinarily chosen from a roster of experienced experts in the fields of law, trade, or other matters covered under the Agreement. The disputing Parties first agree on the Chair of the panel. Each then selects two additional members, who are citizens of the other disputing Party.[84]

The panel will issue an initial and final report evaluating the dispute.[85] If the panel determines that a measure taken by a Party is inconsistent with obligations of NAFTA or impairs specified benefits provided under the Agreement, and the Parties have not reached a mutually satisfactory resolution, the complaining Party may suspend the application of the equivalent benefits to the other Party until they have reached an agreement.[86]

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82. NAFTA, *supra* note 1, at Annex 1210.5(B)(7), at 652.

83. LOEB, *supra* note 81, at 101.

84. *Id.*

85. *Id.* at 102.

86. *Id.*

VI. ARBITRATION AND LITIGATION IN MEXICO

A United States business entity may agree with its Mexican business partner to submit disputes to binding arbitration.[87] Mexico has passed legislation that facilitates the enforcement of arbitration awards by its courts.[88] However, if the parties have not provided a procedure for the selection of an arbitrator, a Mexican court will appoint one. The court will choose two arbitrators when a three person panel is required; and those two chosen arbitrators will select a third. There generally is no right to appeal the court's appointment.

Unless an entity included suitable dispute resolution clauses in its contracts, the entity may find itself litigating in Mexican courts.[89] Litigation against a Mexican entity cannot proceed in a United States court unless the defendant has consented to jurisdiction or has contacts with the forum. Rather than rely on judicial precedent, Mexican courts primarily look to constitutional, statutory or administrative provisions as sources of law. Discovery for lawsuits in Mexico is limited. The law does not provide parties with the right to conduct written interrogatories or depositions out of court. The production of documents and most other discovery occurs during trial. Limited discovery typically may be undertaken only in connection with efforts to obtain a court order preserving the status quo or prohibiting certain conduct-relief comparable to a temporary restraining order or injunction.

Besides limited discovery, litigation in Mexico may pose other problems. Mexican courts allow criminal sanctions in civil disputes if fraudulent conduct was committed in a business context. The most common provisions utilized are those pertaining to criminal fraud, which effectively criminalizes any fraudulent conduct committed in a business context. Such a charge is not difficult for an opponent to raise and once fraud proceedings are initiated, a court has discretion to place the accused in jail until the charges are resolved.

After a judgment is entered, the client is faced with enforcing the judgment. Enforcement may be difficult unless proper procedures are followed. In order to maximize the likelihood any United States judgment will be enforced against the Mexican entity, service must be accomplished via a method recognized as proper both in the United States and Mexico.

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87. Ernesto Cordero, *How U.S. Firms Can Stay Out of Trouble*, CAL. L. BUS., May 15, 1995, at 19.

88. *Id.* at 29.

89. *Id.* at 19.

Service of process is accomplished through the transmission of legal papers between the pertinent United States and Mexican courts.

The method of service all parties should utilize is set forth in the Inter-American Convention on Letters Rogatory and Additional Protocol (the Inter-American Convention), signed by both the United States and Mexico. A Mexican court will not likely enforce a judgment obtained in a suit not served in accordance with the Inter-American Convention.[90] Generally, the State Department assists in the transmission of legal papers. However, the Mexican court takes charge of serving the defendant, and proof of service is transmitted to the plaintiff or the United States court.

Once a United States judgment is obtained Mexican courts will enforce it subject to limitations. The obligation to be enforced must not contravene Mexican public policy or law. The judgment must also create a personal liability, as opposed to one declaring rights to property. Personal service of process must have been made on the Mexican defendant pursuant to the Inter-American Convention, and the court issuing the judgment must be deemed competent under international standards.[91]

VII. CANADIAN INTERNATIONAL TRADE TRIBUNAL

Doing business in Canada requires the foreign legal consultant to be familiar with institutions that are involved with Canadian trade issues. Canada has a judiciary/advisory institution responsible for trade remedies and inquiries.[92] Under its judicial functions, the Canadian International Trade Tribunal (CITT) acts as an administrative court and is responsible for all appeals from customs and excise decisions.[93] In its advisory capacity, the CITT is responsible for inquiring and reporting to the Governor in Council on any trade matter relating to the economic, trade or commercial interests of Canada with respect to any goods or services.

There are several ways that a case may be submitted to the CITT. The Canadian Deputy Minister of Revenue, any domestic producer of goods, or an association of producers may initiate the case. The preliminary determination of material injury is made by the same department that is examining the issue.[94] A decision on the case must be

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90. *Id.* at 29.

91. *Id.*

92. ANDREW D.M. ANDERSON, SEEKING COMMON GROUND: CANADA-U.S. TRADE DISPUTE SETTLEMENT POLICIES IN THE NINETIES 51 (1995).

93. *Id.* at 52.

94. *Id.* at 55.

made between 255 and 300 days after the commencement of the case.[95] Unless otherwise specified in the contract, an entity doing business with Canada may be subject to a CITT ruling.

VIII. PROSPECTS OF CHILE BECOMING A NAFTA PARTY

Canada, Mexico, and the United States are the original Parties to NAFTA. NAFTA does not prohibit any Party from entering into Free Trade Agreements with other countries. Chile is most likely the next Latin American country to negotiate a free trade agreement with the United States.[96] In 1990, the United States and Chile established the United States-Chile Council on Trade and Investment.[97] The objective of the Council is to monitor trade and investment relations, including identification of areas where liberalization is needed.[98] President Clinton and Trade Representative Mickey Kantor expressed a desire to further United States trade relations with Chile and enter into a free trade agreement with Chile.[99]

In addition to the general reasons for entering into free trade agreements, other reasons exist for a United States-Chile Free Trade Agreement (FTA).[100] First, the FTA would be a partial fulfillment of the EAI's goal of subsequent United States free trade agreements with Latin American and Caribbean nations.[101] Second, Chile has one of the most advanced and open economies in Latin America.[102] Third, United States interests are served as other Latin American countries would observe the benefits of Chile's democratic traditions and free market reforms.[103] Fourth, the United States stated that Chile is the only nation to enter into a FTA.[104] Fifth, United States firms would gain greater access to the Chilean market.

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95. *Id.*

96. FOSTER & ALEXANDER, *supra* note 20, at 30.

97. *Id.* at 29.

98. *Id.*

99. *Id.* at 31-32.

100. *Id.* at 34.

101. *Id.* President Bush established the long term goal of a hemispheric free trade area stretching from Anchorage, Alaska to Argentina. This is known as the Enterprise For The Americas Initiative [hereinafter EAI]. *Id.*

102. FOSTER & ALEXANDER, *supra* note 20, at 34.

103. *Id.* at 34-35.

104. *Id.* at 35.

IX. ECONOMIC BENEFITS OF NAFTA

Each country has realized tremendous economic benefits as a result of NAFTA. The distribution of United States manufactured exports to Canada and Mexico has increased since the early 1980s to present day. In 1983, the United States exported 21.1 percent of its manufactured exports to Canada and 4.4 percent to Mexico.[105] United States exports to Mexico have increased substantially over the past ten years and in 1992 Mexico became the second largest market for United States manufactured goods.[106] In 1994, the United States exported twenty-four percent of its manufactured exports to Canada and 8.9 percent to Mexico.[107] With lower tariffs on exported Mexican goods, Mexican imports into the United States are expected to grow from seven percent to ten percent by the year 2000.[108] In anticipation of NAFTA, Mexico realized five billion dollars in foreign investment in the first quarter of 1992.[109]

NAFTA provides advantages for United States investors to establish businesses in Mexico by requiring that United States or Canadian companies be treated the same as Mexican businesses.[110] Under article 301 of chapter three, NAFTA provides that each Party shall accord national treatment to the goods of the another Party.[111] According to Commerce Department data for 1994, United States exports to Mexico leaped to 50.8 billion dollars from 41.6 billion dollars in 1993, an increase of twenty-two percent.[112] Mexican exports to the United States have increased from 39.9 billion dollars in 1993 to 49.5 billion dollars in 1994.[113] Investment in factories and equipment has grown as a result of NAFTA.[114] United States and Canadian companies invested 2.4 billion dollars in Mexico during the first eight months of 1994.[115] Asia and Europe have also increased their investment in Mexico.[116]

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105. BROWN, *supra* note 11, at 24.

106. *Id.*

107. *Id.*

108. MCPHAIL, *supra* note 19, at 90.

109. *Id.*

110. Nina Schuyler, *The Mexican Connection: U.S. Business South of The Border Creates Legal Problems as Two Different Cultures Blend Together*, CAL. L. BUS., May 15, 1995, at 18.

111. NAFTA, *supra* note 1, at art. 301, at 299.

112. Schuyler, *supra* note 110, at 18.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

X. CONCLUSION

Free trade agreements are generally passed to increase trade between countries and operate to decrease or eliminate trade barriers. Countries want the increase in trade to outweigh tariff income and the economic benefits of protecting local businesses from foreign competition. Since NAFTA was passed, trade among Mexico, Canada, and the United States has grown significantly. With increasing trade among the NAFTA Parties, the need for foreign legal consultants should expand. To consult or advise in a foreign Party's territory should be facilitated by the licensing requirements enumerated within chapter twelve of NAFTA.

Chapter twelve of NAFTA lists the procedures and requirements to become a licensed foreign consultant or lawyer in a NAFTA country. An individual must first apply for a license. Then a determination must be made within a reasonable time after completion of the application. The application may entail a written as well as an oral examination. Continuing education may be required to maintain the license.

NAFTA provisions may be extended to Chile. Chile is well positioned to become a Party to NAFTA. If Chile becomes a NAFTA member it is likely the same or similar licensing requirement will apply to consultants or lawyers who wish to practice in Chile. First, it is practical to apply already existing provisions to a new country. Second, negotiations for new or different license requirements could delay Chile from becoming a NAFTA Party. Third, each country would need to agree on new or different license requirements.

A contract between NAFTA parties should always contain a dispute resolution clause. Litigation in Mexico is different from litigation in the United States. A foreign legal consultant should be familiar with the Canadian International Trade Tribunal's role in trade disputes involving Canadian business. Local counsel should be attained if litigating in Mexico or Canada. Local counsel should be able to offer valuable information on local customs that are to be followed inside and outside of court.

There are several measures an individual can take to become an effective foreign legal consultant or lawyer. First, a consultant should know and understand the language and customs of the city and country that the consultant is doing business with. Second, a consultant should know the local officials of the city in case of any problems. Third, a consultant should know local counsel for general advice or information. These measures, if taken, will facilitate transactions between different countries and issues will not be as foreign to understand.