

**STANDARDS AS NON-TARIFF BARRIERS:
NAFTA'S IMPACT**

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Forward

The Texas Legislature established the **Texas Centers for Border Economic and Enterprise Development** during its 70th Session. The **Texas Centers** program is a consortium effort between Texas A&M International University, the University of Texas - El Paso and the University of Texas - Pan American. The primary purpose of the **Texas Centers** is to provide leadership and support to Texas border communities in their economic development efforts.

The legislature provides funds to support the efforts of the **Texas Centers** in three principal activity areas:

- 1) Development and maintenance of an economic database;
- 2) The conduct of economic development research and planning; and,
- 3) The provision of technical assistance to industrial and governmental entities.

Texas A&M International University's **Texas Center** operates under the direction of the Graduate School for International Trade and Business Administration's **Institute for International Trade** (IIT).

This report "**Standards as Non-Tariff Barriers: NAFTA'S Impact**" by Dr. Jim Giermanski contributes to the goals of the **Texas Centers**.

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The most fundamental objective of the North American Free Trade Agreement (NAFTA) is the elimination of barriers to trade. Barriers take two basic forms: taxation (tariffs) and non-tariff barriers (NTB). Non-tariff barriers can include items such as quotas which are numerical limits of how much of an imported product can be entered into a country, or health and safety barriers which take the form of standards which attempt to protect the end user from a potentially negative impact from an imported product.

BACKGROUND

Because NTBs can be significant impediments to trade, they have been scrutinized by nations for years. Some have called these types of barriers the most insidious of all. Therefore, the question of standards as potential trade barriers has been treated in the General Agreement on Tariffs and Trade (GATT), The Treaty of Rome, and in the North American Free Trade Agreement. Article XX of GATT and Article 36 of the Treaty of Rome specifically uphold a nation's right to set and enforce measures to protect the health and life of humans, animals, or plants. What constitutes protection, then, becomes an issue for national, state, and local governments and private organizations as well. The Tokyo Round of GATT further produced guidelines for the development of any new standards (those after the Tokyo Round) in its Agreement on Technical Barriers to Trade. In this agreement there is an obligation on the part of the signatories to ensure

that national and regional regulatory entities do not use standards as a means of discrimination. In other words, a Nation cannot protect a local industry, say avocado production, by limiting the importation of foreign avocados under the guise that the foreign avocados do not meet phytosanitary standards if the standards are not justifiable scientifically and are merely used to discriminate. Similarly, a nation could not discriminate against a foreign motor carrier on safety grounds if the safety grounds were not valid and were used only to depress foreign competition to the local, regional, and national carriers.

The Agreement on Technical Barriers to Trade encourages trading nations to utilize international standards when developing or adopting new national or regional standards. If there are no applicable international standards, the signatory nations should follow transparent procedures for developing standards or certifications procedures. Transparent steps include public debate, prudent consideration of recommendations and the publication and promulgation of the standards ultimately adopted. In effect, the Agreement encourages harmonization of standards in an effort to avoid discriminatory practices which serve as barriers to trade.

STANDARDS UNDER NAFTA

Since one of the purposes of NAFTA is to eliminate non-tariff barriers, it is not surprising that one chapter in the accord is devoted to technical barriers to trade. Chapter Nine entitled Standards Related Measures affirms the party nations'

responsibilities and rights under The Agreement on Technical Barriers to Trade. It also repeats the parties' commitment to afford national treatment to each other in this respect.

National treatment means treatment no less favorable than accorded to like goods of its own nation. Furthermore, it adheres to the principle that no party nation shall create unnecessary obstacles to trade through the establishment of standard-related measures. Specifically, NAFTA states:

"Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that a Party considers appropriate."¹ The chapter further reveals that each nation will coordinate the harmonization, notification, and publication of standards as quickly as possible under the terms of the Agreement.

By virtue of this chapter NAFTA establishes a tri-nation Committee on Standards-Related Measures and subcommittee working groups. Subcommittees will be composed of scientists, technical experts, and government representatives. Specifically, the Committee shall establish subcommittees on:

1. Land Transportation Standards,

¹ The NAFTA, U.S. Government Printing Office, 1993, Vol. I, Chapter Nine, p.9-3.

2. Telecommunications Standards,
3. Automotive Standards, and
4. Labeling of Textile and Apparel Goods Standard.

The Land Transportation Standards Subcommittee, for instance, is mandated to meet a timetable in harmonizing relevant standards. Specifically, the subcommittee must complete by:

1. July 1, 1995 non-medical standards-related measures involving drivers, to include such issues as age and language used by drivers,
2. July 1, 1996 medical standards for drivers,
3. January 2, 1997 safety-related standards such as brakes, tires, weights, dimensions, maintenance, repair, and environmental pollution levels,²
4. January 2, 1997 supervision of motor carriers' safety compliance, and
5. January 2, 1997 standards involving road signs.³

In other chapters of NAFTA additional requirements to establish uniformity in practices are evident. For instance the U.S. Immigration and Naturalization Service and its counterparts in Mexico and Canada have until January 2, 1995 to develop and

² On December 18, 1995 Mexican motor carriers will be allowed access to any location in Texas, New Mexico, Arizona, and California, almost one year before standards on equipment and safety are harmonized. Therefore, during that one-year interim, Mexican motor carriers will be required to meet U.S. federal motor carrier safety standards and comply with other U.S. laws involving motor carriers. U.S. motor carriers will also have to comply with like Mexican requirements of the motor carrier standards existing in Mexico during this time period.

³ NAFTA, p. 9-17.

publish procedures for the implementation of requirements contained in Chapter 12, Cross-Border Trade in Services, and Chapter 16, Temporary Entry for Business Persons.

IMPACT ON THE UNITED STATES

Although NAFTA is now the law of the land, not all its impact will be felt for some time. One observation is clear, however: the status quo will change. Certain U.S. producers can no longer depend on the protection traditionally afforded by standards which under NAFTA may not be scientifically supportable. For instance, U.S. motor carriers will no longer be able to count on current equipment and related driver standards of the United States to protect themselves from Mexican competition if by agreement of the Party nations, those U.S. standards are not empirically supportable nor essential and constitute a trade distorting barrier. Similarly, no longer will U.S. social workers be able to defend against competition from Mexican social workers who are in the United States on a temporary basis simply by citing State-regulated criteria which may be discriminatory under NAFTA. When necessary, the U.S. and Mexican states and the Canadian provinces will be required to demonstrate that their present standards are justifiable.

The consequence is obvious: the likelihood of greater competition. And with greater competition should come lower prices for the consumer which is, after all, the ultimate purpose of increased trade and economic cooperation.