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Joshua A. Escoto

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TECHNICAL BARRIERS TO TRADE UNDER NAFTA: HARMONIZING TEXTILE LABELING

JOSHUA A. ESCOTO*

I. INTRODUCTION

This paper takes an in-depth look at the North American Free Trade Agreement (“NAFTA”) and its impact on technical regulations as barriers to trade, specifically, domestic labeling requirements in the textile industry. Part II will examine the international textile trade, NAFTA’s standards¹-related measures (“SRM”), and the administrative frameworks² of Canada, Mexico and the United States. Part III will examine domestic textile labeling requirements, analyze the movement towards harmonization,³ and offer recommendations for NAFTA and future international trade agreements.

* J.D., University of Florida College of Law. The author expresses his gratitude to Christy Kehoe, Robert & Cindy Escoto and Jeffrey Gibson for their generous support.

1. NAFTA art. 915 defines a standard as “terminology, symbols, packaging, marking or labeling requirements as they apply to a good, process, or production or operating method.”

2. How the various and sometimes overlapping administrative agencies of the NAFTA countries operate.

3. The goal of harmonization is to eliminate technical barriers to trade by bring the various administrative regulations of the NAFTA countries into agreement.

II. THE TEXTILE INDUSTRY AND NAFTA

A. INTRODUCTION TO THE TEXTILE INDUSTRY

The textile industry covers a variety of goods in different stages of production.⁴ The U.S. International Trade Commission ("ITC") publishes numerous reports examining the U.S textile industry and international trade.⁵ These industry and trade summaries cover: non-woven fabrics, gloves, yarn, carpets and rugs, fur goods, coated fabrics, knit fabric, cordage, and man-made fibers.⁶ The most recent trade summary, on the apparel sector, provides an illustration of NAFTA's impact on textile production and trade.⁷

The U.S. apparel industry includes about 18,000 businesses.⁸ Over 60% of these establishments have fewer than 20 employees and only 10% have 100 or more employees.⁹ Entry barriers into the apparel industry are generally minimal given the limited capital requirements, ready access to production equipment, and broad availability of raw materials.¹⁰ Most garment production remains labor-intensive.¹¹ This is due largely to the difficulty in automating most sewing functions.¹² In 1997, labor intensity was estimated at 32%, well above the 23% mark for all manufacturing.¹³ Since apparel jobs require few skills, industry wages are relatively low.¹⁴ In 1997, the average hourly wage for apparel production workers was \$8.25, only 63% of the hourly wage for all manufacturing workers.¹⁵

4. USITC PUBLICATION 3169, INDUSTRY AND TRADE SUMMARY: APPAREL (1999).

5. *Id.*

6. *Id.*

7. *Id.*

8. *See id.* at 3.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* Labor intensity is measured by the ratio of total labor costs to value added.

14. *Id.*

15. *Id.* In April 1997, President Clinton announced an agreement among industry, labor, consumer, and human rights officials (the Apparel Industry Partnership) on a voluntary code of conduct intended to uphold workers' rights in the United States and abroad. The Apparel Industry Partnership Agreement contains a workplace code of conduct that includes a guaranteed minimum or prevailing industry wage, a maximum 60-hour work week, and a prohibition against child labor – that is, employment of those under 15 years of age in most countries.

The apparel industry's share of U.S. gross domestic product ("GDP") remained unchanged during most of the period between 1993-1997.¹⁶ In contrast, the apparel industry's share of U.S. manufacturing GDP fell from 2.4% in 1993 to 2.0% in 1997.¹⁷ Although declining in employment, the industry made gains in shipments, profitability, and productivity during 1993-1997.¹⁸ These changes reflect investment in new technologies, adoption of flexible manufacturing systems, and the growing use of operations in the Caribbean and Mexico.¹⁹

Recently, the U.S. apparel industry's domestic market has faced competitive pressures.²⁰ To sharpen the industry's competitive edge, U.S. producers have taken a three-step approach.²¹ First, U.S. producers have restructured operations to reduce costs and focus more on marketing.²² Second, they have adopted "quick response" manufacturing, marketing, and distribution systems to respond more quickly to retailer needs and changing fashions.²³ And third, U.S. producers have expanded global sourcing, including assembly operations in the Caribbean and Mexico.²⁴

Between 1993 and 1997, two-way trade in textile apparel increased from \$18 billion to almost \$57 billion.²⁵ Imports grew from \$14.6 billion to \$48.5 billion (43%) while exports grew from \$3.6 billion to \$8.4 billion (74%).²⁶ Primarily, this growth in two-way apparel trade has occurred with countries benefiting from preferential trade agreements with the United States.²⁷ This trade growth is exemplified by NAFTA members Mexico and Canada.²⁸

Currently, Mexico has moved ahead of Hong Kong, Korea, Taiwan, and the Dominican Republic to become the second-largest single supplier of

16. . See *id.* at 6.

17. *Id.*

18. *Id.*

19. *Id.*

20. See *id.* at 9. Imports now supply slightly more than ½ of the domestic apparel market and are likely to continue to grow as import quotas are gradually eliminated.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. See *id.* at 20.

26. *Id.*

27. *Id.*

28. *Id.* Other beneficiary countries include the Caribbean Basin Economic Recovery Act (CBERA) members.

apparel imports (5.3 billion in 1997).²⁹ NAFTA tariff preferences have contributed to the faster growth in U.S. apparel imports from Mexico.³⁰ The U.S. imports for consumption from Mexico have increased from 1.4 billion in 1993 to 5.35 billion in 1997.³¹ Similarly, the U.S. exports of domestic merchandise to Mexico have increased from 849 million in 1993 to 2.2 billion in 1997.³² Likewise, U.S. apparel imports from Canada have increased 139% during 1993-1997 to 1.3 billion.³³ This increase makes Canada the fourteenth largest source overall and the second largest developed country supplier after Italy.³⁴

B. THE NORTH AMERICAN FREE TRADE AGREEMENT

The NAFTA agreement categorizes standards-related measures into three groups: (1) technical regulations, (2) standards, and (3) conformity assessment procedures. A technical regulation means

[A] document which lays down goods' characteristics or their related processes and production methods, or services' characteristics or their related operating methods, including the applicable administrative provisions, with which *compliance is mandatory*. It may also include or deal exclusively with terminology, symbols, packaging, *marking or labeling requirements* as they apply to a good, process, or production or operating method.³⁵

A standard is similarly defined but compliance is not mandatory.³⁶ Standards are frequently set by private standardization bodies.³⁷ An example in the United States is the American Society of Testing which has issued over 8,500 voluntary standards.³⁸ A conformity assessment procedure is a procedure that is used directly or indirectly to determine that a technical regulation or standard is fulfilled.³⁹ Such procedures

29. *See id.* at 23. Mexico trails only China (7.4 billion).

30. *See id.* at 25.

31. *See id.* at 22.

32. *Id.*

33. *See id.* at 27.

34. *Id.*

35. North American Free Trade Agreement, Dec. 8, 1992, Can.-Mex.-U.S., art. 915, 32 I.L.M. 289, [hereinafter NAFTA].

36. Shirley Coffield, *Sovereignty Revisited: Commonality of Standards – Implications for Sovereignty – a U.S. Perspective*, 24 CAN.-U.S. L.J. 235 (1998).

37. *Id.*

38. *Id.*

39. *See* NAFTA art. 915. A conformity assessment procedure does not include an approval procedure, which means any registration, notification, or other mandatory administrative procedure

include sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval.⁴⁰

Under Part III of NAFTA, Technical Barriers to Trade, Chapter 9 specifically addresses standards-related measures.⁴¹ In Chapter 9, NAFTA attempts to balance a member's right to regulate the area of safety and health with the commitment to minimize barriers to trade.⁴² The chapter deals with this dichotomy by affirming each member's sovereignty to regulate, while also providing for harmonization measures.⁴³

Article 904 states broadly that each party may maintain or apply any standards-related measure relating to safety and the protection of human, animal or plant life or health, the environment or consumers.⁴⁴ In addition, each party may take any measure to ensure its enforcement or implementation, including those measures that prohibit the importation of goods and services from another party.⁴⁵ Even further, each party may establish the levels of protection that it considers appropriate in carrying out the legitimate objectives of safety and protection.⁴⁶

However, the sovereignty of the parties to regulate is balanced by the requirement of non-discriminatory treatment.⁴⁷ Pursuant to Article 904, each party must accord the goods of another party national treatment⁴⁸

for granting permission for a good or service to be produced, marketed or used for a stated purpose or under stated conditions.

40. *Id.*

41. *See generally* NAFTA ch. 9.

42. *Id.*

43. *Id.*

44. *See* NAFTA art. 904.

45. *See generally* NAFTA.

46. *See* NAFTA arts. 904 & 907. If a party performs an assessment of risk, Article 907 limits Article 904 by stating that NAFTA members should avoid arbitrary or unjustifiable distinctions between similar goods or services when the distinctions: (a) result in arbitrary or unjustifiable discrimination against goods or service providers of another party; (b) constitute a disguised restriction on trade between the parties; or (c) discriminate between similar goods or services for the same use under the same conditions that pose the same level of risk and provide similar benefits.

47. *See* NAFTA Chapter 9 art. 904.

48. *See* NAFTA Chapter 9 art. 301. National treatment with regard to market access is addressed in Article 301 which provides that:

1. Each party shall accord national treatment to the goods of another party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are a party, are incorporated into and made part of this agreement.

and treatment no less favorable than that it accords to like goods of any other country.⁴⁹ Further, no party may prepare, adopt, maintain or apply any standards-related measure with a view toward, or with the effect of, creating an unnecessary obstacle to trade between the parties.⁵⁰ However, an unnecessary obstacle to trade is not deemed to be created when the demonstrable purpose of the measure is to achieve a legitimate objective, and, the measure does not operate to exclude goods of another party that meet the objective.⁵¹ In addition, when a party's standard-related measure conforms to an international standard, it is presumed to be consistent with the non-discriminatory and unnecessary obstacles requirements.⁵²

NAFTA further requires its members, to the greatest extent practicable,⁵³ to harmonize standards-related measures.⁵⁴ Article 906 requires harmonization to facilitate the trade of goods and services between the member countries.⁵⁵ In addition, when the exporting member demonstrates to the satisfaction of the importing member that its technical regulation adequately fulfills the importing member's legitimate objectives, Article 906 requires each importing member to treat the exporting member's technical regulation as equivalent.⁵⁶ If requested by the exporting member, the legitimate reasons for a denial of equivalence by the importing member must be stated in writing.⁵⁷ Pursuant to Article 906, members should also accept the results of a conformity assessment procedure conducted in another member state when the procedure offers an assurance equivalent to its own procedure.⁵⁸

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded by such state or province to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

49. *See infra* note 46.

50. *Id.*

51. *Id.*

52. *See* NAFTA art. 905.

53. *See* NAFTA art 906 para. 2. "Without prejudice to the rights of any party under this chapter." The broad principle of sovereignty limits harmonization.

54. *See* NAFTA art. 906. Here NAFTA goes beyond the requirements of previous agreements.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

C. THE ADMINISTRATIVE FRAMEWORKS OF THE NAFTA MEMBERS

The NAFTA members create, implement and enforce textile regulations differently. Canada and the U.S. have a dualistic approach, utilizing a trade related administrative agency and the national customs agency. In contrast, Mexico's Directorate General de Normas ("DGN") is responsible for the creation and implementation of textile regulations.

Canada and the U.S. have similar administrative frameworks for the creation and enforcement of labeling requirements.⁵⁹ In Canada, the Competition Bureau maintains and encourages fair competition by applying four statutes: the Competition Act, the Consumer Packaging and Labeling Act, the Textile Act, and the Precious Metal Marking Act.⁶⁰ The Competition Bureau is organized into separate branches which deal with the provisions of legislation covering civil matters, criminal matters, mergers, and fair business practices.⁶¹ In addition, there are two coordinating branches, compliance and internal affairs.⁶² The U.S. Federal Trade Commission ("FTC") is similarly structured.⁶³ The FTC ensures a competitive market by enforcing a variety of federal antitrust and consumer protection laws.⁶⁴ Generally, the Commission directs its efforts toward stopping actions that threaten consumers' exercise of informed choice.⁶⁵ Also, the Commission undertakes economic analysis to support law enforcement and to contribute to the policy decisions of Congress.⁶⁶

Textile labeling enforcement is also carried out by the customs agencies of Canada and the U.S.⁶⁷ Both Customs Services are tasked with enforcing compliance with trade and border regulations.⁶⁸ However, the U.S. and Canadian dualistic approach can lead to a lack of congruence

59. FEDERAL TRADE COMMISSION; VISION, MISSION, GOAL (lasted updated June 17, 1999) <<http://www.ftc.gov/ftc/mission.htm>> [hereinafter FTC]; THE U.S. CUSTOMS SERVICE <<http://www.customs.gov/about/weare.htm>> [hereinafter The U.S. Customs Service]; THE CANADIAN COMPETITION BUREAU <<http://strategis.ic.gc.ca/SSG/ct01234e.html>> [hereinafter The Canadian Bureau]; THE CANADIAN CUSTOMS AND REVENUE AGENCY, OUR MISSION, VISION AND VALUE <http://www.ccr-aadrc.gc.ca/agency/programs_services/mission-e.html> [hereinafter The Canadian Customs and Revenue Agency].

60. *See* The Canadian Competition Bureau.

61. *Id.*

62. *Id.*

63. *See* FTC.

64. *Id.*

65. *Id.*

66. *Id.*

67. *See* The U.S. Customs Service; The Canadian Customs and Revenue Agency.

68. *Id.*

for regulation standards.⁶⁹ For example, under the Canadian Textile Labeling Regulation, disclosure of the manufacturer is not required, but it is required by the Canadian Customs Service.⁷⁰ Similarly, under the U.S. Textile Labeling Regulations the abbreviations MEX and CAN are permitted, but they are not permitted by the U.S. Customs Service.⁷¹

The Mexican administrative framework differs from the Canadian and U.S. dualistic approach. The foundation for Mexico's new standards system, the Federal Law on Metrology and Standardization, was first published on July 1, 1992.⁷² Under the new law, the Directorate General de Normas ("DGN") within the Secretariat for Commerce and Industrial Development ("SECOFI") is responsible for the formulation and implementation of standards in Mexico.⁷³ In addition, the Ministries of Health, Agriculture, Environment, Transportation, and Energy play a key role in developing and enforcing standards.⁷⁴

Each year SECOFI issues a National Standardization Plan that outlines areas in which each Ministry intends to amend or add a standard.⁷⁵ Mexican standards development generally proceeds as follows:

- (1) the relevant ministry, recognized national body or other interested party recommends revision or amendment of a current standard, or development of a new standard;
- (2) the National Standardization plan for that year contains a notice of the intention to develop or amend a standard;
- (3) a group consisting of interested parties, including producers, users, government officials and academicians, meet to work on the standard;
- (4) when a draft is complete, it is sent to SECOFI, which reviews the standard. If the standard requires no further amendment or revision, SECOFI publishes the draft standard in Mexico's *Diario Oficial*;
- (5) interested parties are given 90 days to comment on the standard;
- (6) SECOFI receives comments and responds individually or collectively; and
- (7) the final standard is published in the *Diario Oficial*.⁷⁶

69. This topic is discussed more fully under Part II.

70. *Id.*

71. *Id.*

72. *An Overview of Mexico's Standards System*, NAFTA doc. 9000.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

In Mexico, both standards and technical regulations are government-mandated.⁷⁷ Normas Mexicanas (“NMX”) are voluntary standards intended for use as references.⁷⁸ The application of the NMX voluntary standard is increasing in Mexico.⁷⁹ Normas Oficial Mexicanas (“NOM”) are mandatory technical regulations.⁸⁰ If there is a NOM in force for a given good then all domestic and imported goods must comply.⁸¹ Most NOM products must receive a NOM Certification prior to importation.⁸² An exception to NOM certification are those which describe “commercial information” such as labeling.⁸³ The labeling NOM does not require certification but must be complied with prior to importation into Mexico.⁸⁴ However, Mexico is currently moving towards an official stamp, a NOM Mark, to indicate compliance with mandatory standards.⁸⁵ The mark would be similar to the EU mark signifying compliance with the European Standards.⁸⁶

III. DOMESTIC LABELING REQUIREMENTS AND THE MOVE TOWARDS HARMONIZATION

A. AN ANALYSIS OF THE TEXTILE LABELING REQUIREMENTS

The Canadian Textile Labeling Act and regulations (the Canadian Textile Regulations)⁸⁷ cover⁸⁸ any textile fiber, yarn, or fabric, or any

77. *Obtaining a NOM Certification*, NAFTA doc. 9011.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *List of Mandatory Mexican Standards Enforced at the Border*, NAFTA doc. 9012.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. The Textile Labeling Act, ch. T-10 (1985) (Can.) [hereinafter The Textile Labeling Act]; The Textile Labeling and Advertising Regulations, C.R.C., c. 1551 (1996) (Can.) [hereinafter The Textile Labeling and Advertising Regulations]. Further, the Canadian Hazardous Products Act and regulations require a basic, minimum flammability standard for all consumer textile articles. Also, the voluntary Canadian Care Labeling Program is an effort to streamline care-related information with the application of basic symbols.

88. *See* The Textile Labeling and Advertising Regulations. Items not proscribed by the act and regulations include: (1) articles intended for a one-time use only; (2) overshoes, boots, shoes, indoor slippers, footwear liners and insoles; (3) toys, ornaments, pictures, lamp shades, tapestries, wall hangings, wall coverings, room dividers, screens, book covers, book marks, gift wrap, flags and pennants; (4) sports and games equipment other than sports garments; (5) lawn and beach furniture, including lawn and beach umbrellas and parasols, and hammocks; (6) playpens, crib-pens, strollers, jumpers, walkers and car seats for infants and children; (7) labels, adhesive tapes and sheets, cleaning cloths, wipers, therapeutic devices and heating pads; (8) pet accessories; (9) belts, suspenders, arm bands, garters, sanitary belts and bandages; (10) curler head covers, hair nets and shower caps; (11) carpet underpadding; (12) musical instruments and accessories; (13) straw or felt

product made from these substances, in the form in which it is to be sold to any person for consumption or use.⁸⁹ The textile label is required to disclose:

- (1) every fiber in an amount of 5% or more by mass using its generic name; (2) every fiber in an amount less than 5% by mass using its generic name or the term "other fiber"; (3) the fiber content in both French and English; and (4) the dealer identity by business name and address or by a Canadian identification number.⁹⁰

Similarly, Mexico's textile labeling requirements are governed by a single technical regulation, NOM-004-SCFI-1994 — Trade Information and Labeling of Textiles, Apparel, and Accessories (the Mexican Textile Regulations). The Mexican Textile Regulations cover the trade information that national manufacturers and importers must disclose on textiles,⁹¹ household textiles,⁹² apparel,⁹³ and accessories.⁹⁴ The Mexican Textile Regulations require that apparel,⁹⁵ accessories, and household textiles⁹⁶ display the following information:

headwear, padding or helmets worn in sports; (14) non-fibrous materials that do not have a fabric support, including films and foams; (15) household twine, string, craft ribbon not intended to be used in the construction of prescribed consumer textile articles, baler twine, binder twine and gift wrap ribbon; and (16) items which are exported, or sold to or by a duty-free store. In addition, the following businesses, institutions and agencies for their own use, or for use by or for resale to their employee or students, are exempt from the labeling requirements: (1) commercial or industrial enterprises; (2) federal, provincial, municipal departments or agencies; (3) public utilities; (4) educational institutions; (5) health care facilities; and (6) religious orders or organizations.

89. See The Textile Labeling Act. Defined as "consumer textile articles," the term does not include "textile fiber products" which are to be used in the manufacturing, processing, or finishing of any product for sale.

90. See generally The Textile labeling and Advertising Regulations.

91. Mexican Textile & Apparel Labeling Rules for 1996, Jan. 24, 1996 (Trade Information and Labeling of Textiles, Apparel, and Accessories), NOM-004-SCFI (1994) § 3.5 (Mex.) [hereinafter Mexican Textile & Apparel Labeling Rules for 1996]. Textile is defined as a product made by using natural, artificial, or synthetic fibers, including but not limited to, yarns, sewing threads, worsteds, fabrics, cashmeres, passementerie, laces, ribbons, embroidery, elastics and the like.

92. See *id.* § 3.8. Household textiles are defined as articles made by using natural and/or artificial synthetic fibers that have a use different from that of apparel and that are designed to perform any of the following functions: protection, decoration or cleaning of homes and commercial or services establishments. These include but are not limited to, curtains, towels, carpets, blankets, bedspreads, etc.

93. See *id.* § 3.4. Apparel is defined as an article manufactured with textiles, the purpose of which is to cover part of the body, except footwear.

94. See *id.* § 3.1. Accessory is defined as an article used as a complement to the apparel or for ornamental purposes.

95. See *id.* § 4.1.1. In the following cases, the information must appear on the box, container, package or wrapper in which the product is sold: (a) pantyhose; (b) stockings and knee-high stockings; (c) socks and knee socks; (d) any other product for which attaching the label directly

(1) a trademark;⁹⁷ (2) the description of inputs, by percentage in decreasing order; (3) the size, for apparel, or measurements for household textiles;⁹⁸ (4) care instructions; (5) the country of origin; and (6) the name, designation or trade name, and federal tax register number of the manufacturer or importer.⁹⁹

Similarly, textiles and goods not covered above¹⁰⁰ must display the following information:

(1) description of inputs, by percentage in decreasing order; (2) country of origin; and (3) name, designation or trade name, and federal tax register number of the manufacturer or importer.¹⁰¹

Unlike those of Canada and Mexico, textile labeling requirements in the United States are governed by three technical regulations.¹⁰² The U.S. Textile Fiber Products Identification Act and Regulations (the U.S.

thereto would be prejudicial to the use or to the esthetic or monetary value of the product owing to its fragility.

96. *See id.*, § 5.1.2. Household textiles include: (a) sheets; (b) blankets and coverlets, except electric blankets; (c) bedspreads; (d) tablecloths; (e) place mats; (f) napkins; (g) protectors; (h) tablecoverings; (i) ready-made curtains; (j) towels; (k) mattresses and box springs made or upholstered with textiles.

97. *See id.* § 4.2. When the manufacturer or importer of the products use a trademark different from its own name, designation, or trade name it must include the designation by which it is known as the supplier of the product.

98. *Id.* Apparel sizes must be expressed in Spanish. In addition, measurements of textiles and household textiles must be expressed in accordance with the General System of Units of Measure (NOM-008-SCFI).

99. *Id.*

100. *Id.* For the following products, the information must be displayed on a permanent label and incorporated prior to their admission into Mexico. As an alternative, the information may also be embroidered or printed on the product. The products include: (a) bolts of fabric, not longer than five meters, prepared for retail sale and containing 45% or more of combed wool (cashmere yard goods); (b) handbags; (c) suitcases; (d) coin purses; (e) wallets; (f) cases; (g) knapsacks; (h) handkerchiefs; (i) umbrellas and sunshades; (j) seat covers; (k) covers for electric and other home appliances; (l) ironing board covers; (m) heat protectors and oven mitts for household use; (n) bathroom fixture covers; (n) covers for furniture; (o) cushions; (p) toys made or lined with textile materials; (q) articles for cleaning; (r) diapers; (s) canvasses for painters.

The information must be displayed on temporary labels or tied to the product for the following items: (a) woven and non-woven fabrics, regardless of type; (b) carpets, and carpet pads made of textile materials; (c) wigs; (d) articles for hair, except those which, because of their small size, must be packed in bulk; (e) bow-ties; (f) disposable items intended only to be used once.

In addition, the information must be displayed on the spool, container, package, wrapper, or skin or other presentation in which the product is offered. Such items include: (a) threads and yarn; (b) worsted yarn for hand knitting; (c) pieces or rolls of any length of lace, embroidered strips, ribbons, shoelaces, belts, articles for the hair, elastics, textile labels in rolls or in bulk, and other articles of passementerie having a width of up to 30 cm.

101. *Id.*

102. The Wool Products Labeling Regulations, 16 CFR 300 (2000); The Fur Products Labeling Regulations, 16 CFR 301 (2000); The Textile Fiber Products Identification Regulations, 16 CFR 303 (2000).

Textile Regulations)¹⁰³ and the U.S. Wool Products Labeling Act and regulations (the U.S. Wool Regulations)¹⁰⁴ cover most clothing and textile products commonly used in a household.¹⁰⁵ The U.S. Textile and Wool Regulations require disclosure of:

- (1) generic names and percentages by weight of the constituent fibers present in the product, in order of predominance by weight; (2) name under which the manufacturer or other responsible company does business, or the registered number issued to the company by the commission; and (3) name of the country where the product was processed or manufactured.¹⁰⁶

In addition, any items not labeled and shipped in the intermediate stage of production must include an invoice disclosing:

- (1) fiber content; (2) country of origin; (3) manufacturer or dealer identity; and (4) name and address of the person or company issuing the invoice.¹⁰⁷

Further, the Fur Products Labeling Act and Regulations (the U.S. Fur Regulations)¹⁰⁸ require additional labeling disclosures for any garment

103. The Textile Fiber Products Identification Act, 15 USCS 70 (2000); *See* 16 CFR 303.

104. The Wool Products Labeling Act, 15 USCS 68 (2000); *See* 16 CFR 300.

105. *See* 16 CFR 303. Such items include: clothing, except for hats and shoes; bats or batting; handkerchiefs; flags; scarves, cushions; bedding: sheets, covers, blankets, comforters, pillows, pillowcases, quilts, bedspreads, and pads (but not outer coverings for mattresses or box springs); all fibers, yarns and fabrics (except packaging ribbons); curtains and casements; furniture slip covers and other furniture covers; draperies; afghans and throws; tablecloths, napkins and doilies; sleeping bags; floor coverings—rugs, carpets and mats; antimacassars and tidies (doilies); towels, washcloths, and dishcloths; hammocks; ironing board covers and pads; dresser and other furniture scarves; umbrellas and parasols. Items not covered by the labeling requirements include: upholstery or mattress stuffing (unless it is reused, then the label must say reused stuffing); bandages, surgical dressings and other products subject to the Federal Food, Drug and Cosmetic Act; outer covering of upholstered furniture, mattresses, and box springs; waste materials not used in a textile product; linings, interlinings, fillings, or padding used for structural purposes (However, if they are used for warmth, the fiber must be disclosed; shoes, overshoes, boots, slippers and all outer footwear (socks are covered); stiffenings, trimmings, facings, or interfacings; headwear; backings of carpets or rugs and paddings or cushions to be used under carpets, rugs, or other floor coverings; textile used in handbags or luggage, brushes, lampshades, toys, feminine hygiene products, adhesive tapes and adhesive sheets, cleaning cloths impregnated with chemicals, or diapers; and sewing and handicraft threads. The U.S. Textile Act labeling requirements apply when the products are ready for sale to consumers. Even if small details are not finished, when the manufacturing of the product is substantially complete it is considered to be ready for sale to consumers.

106. *Id.*

107. *Id.*

108. The Fur Products Labeling Act, 15 USCS 69 (2000); *See* 16 CFR 301.

made entirely or partly from fur.¹⁰⁹ Such additional disclosures include whether:

- (1) the fur product contains or is composed of used fur; (2) the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur; or whether (3) the fur is composed of paws, tails, bellies, or waste fur.¹¹⁰

The problem with the U.S. approach is the disconnection between the three regulations. U.S. exporters shipping to Canada or Mexico may rely on the textile technical regulation to ensure compliance. In contrast, Canadian and Mexican exporters shipping to the U.S. must comply with three separate textile technical regulations.

1. The Fiber Content Requirement

Part III of the Canadian Textile Regulations governs the fiber content disclosure requirement.¹¹¹ The regulations provide the generic names for textile fibers¹¹² and requires application for any fiber that has not been proscribed by the regulations.¹¹³ The regulations also allow a descriptive term or a Canadian registered trade mark to be used along with the fiber's generic name.¹¹⁴ The amount that a fiber is present in an article, above 5%, is required to be expressed as a percentage of the total fiber mass in order of predominance.¹¹⁵ However, when only one fiber is contained in the product, the words "all" or "pure" may be used instead of the 100% designation.¹¹⁶ If a fiber(s) is less than 5% then the regulations require disclosure of the percentage amount with the term "other fiber(s)."¹¹⁷ In addition, if the product is a combination of materials where the fiber is unknown or mixed, disclosure and the percentage is required.¹¹⁸ Further, when the article is made up of two or more sections that differ in fiber content, each section's fiber content and percentage must be disclosed separately.¹¹⁹ Likewise, when lining is

109. *Id.*

110. *Id.*

111. *See* The Textile labeling and Advertising Regulations pt. III.

112. *See id.* § 26.

113. *See id.* § 27.

114. *See id.* § 40.

115. *See id.* §§ 29-31. The regulations also allow a disclosure tolerance of 5%.

116. *See id.* § 29(3).

117. *See id.* § 31.

118. *See id.* § 32. Such terms include: unknown, undetermined, miscellaneous, or mixed fibers.

119. *See id.* § 34.

used for warmth or a textile is used for filling, the label must clearly indicate the textile's use, fiber content, and percentage.¹²⁰

The Canadian Textile Regulations provide a disclosure exemption for trimmings and findings. If trimmings¹²¹ are in an amount less than 15% of the total outer surface area of the article, the label is only required to make a clear indication that the fiber content is exclusive of the trimmings.¹²² Similarly, findings¹²³ that are not specified do not have to be disclosed on the label.¹²⁴ Further, the Canadian Regulations provide a 5% tolerance level for disclosures.¹²⁵

The Mexican Textile Regulations have similar requirements for fiber content disclosure. Generally, any fiber above 5% must be disclosed as a percentage of the total volume in decreasing order.¹²⁶ Any fiber that is 5% or more of the total must be listed by its generic name,¹²⁷ while fibers constituting less than 5% of the total may be designated as "other(s)."¹²⁸ Similarly, a trade mark or trade name may be used with the generic name of the fiber as long as it appears in equal size.¹²⁹

However, the Mexican Textile Regulations differ from the Canadian requirements in several areas. Whenever scraps, different lots, or by-

120. *See id.* §§ 37 & 38.

121. *See id.* § 25 defines "trimmings" as (a) any fiber product that has been added to a consumer textile article for a decorative purpose and that differs in textile fiber content from the article to which it has been added, including embroidery, applique, braid, lace, ribbon, smocking threads, patch pockets, ruffles, piping, belts, rick rack, collars and cuffs, or (b) decorative patterns or designs that are an integral part of the article but do not create an all-over design (garniture).

122. *See id.* § 36.

123. *See id.* § 25 defines "findings" as any textile fiber product that (a) have been added to a consumer textile article for a functional purpose other than filling, stuffing or providing warmth, whether or not they also serve a decorative purpose; and (b) differ in textile fiber content from the article to which they have been added; and (c) do not constitute a part of the outer surface of the article to which they have been added unless they are incorporated at or along an edge thereof, and without limiting the generality of the foregoing, includes (d) belting, binding, tape, stiffening, facing, interfacing, thread, buttons, slide fasteners, hook and loop pile fasteners, garters, gussets, leg, neck and wrist bands, plackets and concealed pockets; (e) any lining (other than a laminated or bonded lining), interlining, or padding incorporated primarily for structural purposes and not for warmth; (f) any padding affixed to the underside of floor coverings; (g) elastic material inserted in or added to the consumer textile article, including elastic waist bands, elastic leg bands, elastic wrist bands and elastic smocking; and (h) elastic yarns used in a limited area in socks for the purpose of holding.

124. *See id.* § 39.

125. *Id.*

126. *See Mexican Textile & Apparel Labeling Rules for 1996* §§ 4.3 - 4.3.2.

127. *See id.* § 4.3.2. When applicable, the fibers must be designated in accordance with NMX-A-99. Also, the trade name or registered trademark of a fiber may be used if authorization from the license holder has been obtained. The trade name may be used as long as it is used in conjunction with the generic name of the fiber and appears in letters of equal size.

128. *See id.* § 4.3.3.

129. *See id.* § 4.3.2.

products are used, the Regulations require disclosure of the percentage with the term “regenerated fibers.”¹³⁰ In addition, only a 3% tolerance level is permitted and the tolerance is not applicable to the terms “100%” or “all.”¹³¹ Further, the regulations provide an exemption for fiber inputs included solely for ornamental, protective, or structural purposes that do not exceed 5% of the total volume *or* 15% of the total surface area.

The U.S. Textile Regulations have the same general 5% fiber disclosure requirement as Canada and Mexico.¹³² The U.S. regulations differs by requiring fibers with a definite functional significance, present in an amount less than 5%, to be disclosed by percentage with their generic name.¹³³ Similar to the Canadian regulations, the U.S. Textile Regulations provide a list of generic fiber names and establish a procedure for establishing new names.¹³⁴ Also, the U.S. Textile Regulations apply the same standards to trimming,¹³⁵ mixed fiber, lining for warmth and sectional disclosure.¹³⁶ However, unlike Canada’s 5% tolerance level, the U.S. Textile Regulations have a 3% level similar to Mexico’s technical regulation.¹³⁷

The U.S. Wool Regulations have important differences as well. A wool product is considered any product, or portion of a product, that contains

130. *See id.* §§ 4.3.5. & 4.3.7. In addition, when the terms “virgin” or “new” are used the fibers constituting the textile must be new or virgin.

131. The tolerance is considered on the basis of the volume of each of the fibers or inputs instead of the total product volume. However, when calculating the tolerance for: elastic bands; stockings and pantyhose whose manufacture includes inputs made of natural or synthetic origin; or, braiding, yarn, sewing thread, or fancy thread, the basis is the total product volume.

132. *See* 16 CFR 303 § 303.16.

133. *See id.* § 303.3 The regulations were amended to permit the use of generic names for fibers present in an amount less than 5% without requiring the disclosure of functional significance. The functional significance requirement often caused imported products to be delayed and relabeled at the border. However, non-wool fibers that do not have a functional significance, and that are present in an amount less than 5%, must be labeled “other fiber(s).”

134. *See id.* §§ 303.7 & 303.8.

135. Trim includes: collars, cuffs, braiding, waist or waist bands, rick-rack, tape, belting, binding, labels, leg bands, gussets, gores, welts, findings, and superimposed hosiery garters. Findings include: elastic materials and threads added to a garment in minor proportion for structural purposes; and, elastic material that is part of the basic fabric from which a product is made, if the elastic does not exceed 20% of the surface area. Also excluded are decorative trim applied by embroidery, overlay, applique, or attachment; and, decorative patterns or designs that are an integral part of the fabric.

136. *See id.* §§ 303.12, 303.22, 303.25 & 303.29. But “findings” require disclosure if it exceeds 20% of the surface area. Also note that ornamentation refers to “any fibers or yarn imparting a visibly discernible pattern or design to a yarn or fabric.” Since there is some overlap between the definitions of “ornamentation” and “trimmings,” if the ornamentation or trim exceeds the 15% and 5% exemptions then its fiber content has to be disclosed. If it is less than the 15% or 5%, its contents do not have to be disclosed if the label says “exclusive of decoration” or “exclusive of ornamentation.”

137. *See id.* § 303.43.

wool including recycled wool.¹³⁸ The U.S. Wool Regulations do not have the 5% provision and require disclosure of any amount of wool in a product.¹³⁹ In addition, the regulations do not provide any tolerance for the content of wool products. However, the regulations state that it will not be considered mislabeling if the “deviation results from unavoidable variations in manufacture” despite due care.

Similarly, the U.S. Fur Regulations require special fiber content disclosures beyond the basic requirements of Canada and Mexico. Pursuant to the name guide, the U.S. Fur Regulations require disclosure of the name of the animal that produced the fur.¹⁴⁰ Also, the regulations require disclosure of used furs¹⁴¹ and fur products composed of pieces.¹⁴² In addition, whether the product contains or is composed of bleached, dyed, or otherwise artificially colored fur must be disclosed.¹⁴³ Further, the regulations provide a unique exemption for fur products. If the cost of any fur incorporated in a product or the selling price of a fur product does not exceed \$150, the product is exempt from the disclosure requirements of the regulations.¹⁴⁴

2. The Dealer Identification Requirement

Pursuant to the Canadian Textile Regulations, a dealer’s name and postal address must be disclosed on the textile label.¹⁴⁵ A dealer is defined as any person who is a manufacturer, processor, finisher, or retailer of a textile fiber product, or a person who is engaged in the business of importing or selling any textile fiber product.¹⁴⁶ Alternatively, a

138. *See* 15 USCS 68 § 68. Recycled wool is wool that has been returned to a fibrous state after having been woven, knitted, or felted into a wool product, regardless of whether a consumer has ever used the product. *See id.*

139. *See* 16 CFR 300 § 300.3.

140. *See* 16 CFR 301 §§ 301.0 - 301.11.

141. *See id.* § 301.21.

142. *See id.* § 301.20. Fur pieces include paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur.

143. *See id.* § 301.19.

144. *See id.* § 301.39. However, the exemption does not apply if: the product contains used fur; the product is the whole skin of an animal; or any false, deceptive, or misleading statements are made about the fur. In addition, if any representations are made about the fur in labeling, invoicing, or advertising, the name of the animal must be disclosed. Also, whether the fur is artificially colored or composed of pieces must be disclosed. *See id.*

145. *See* The Textile Labeling and Advertising Regulations §12. The postal address where the dealer (a) manufactures or has manufactured on his or her behalf, processes, finishes, or sells at retail consumer textile articles in Canada; (b) imports consumer textile articles into Canada; or (c) owns and distributes consumer textile articles in Canada.

146. *See* The Textile Labeling Act §1.

Canadian dealer may obtain an identification number (“CA Number”) which is considered as binding as the dealer’s name and address.¹⁴⁷

Contrarily, the Mexican Textile Regulations require the name, designation or trade name, and federal tax register number of the *manufacturer or importer*.¹⁴⁸ The regulations also contain a broader definition for manufacturer:

[T]he natural or juristic person responsible for a product; a merchant shall be considered the manufacturer of those products that display his trademark, even when he has ordered their full or partial production, the manufacture, or their finishing by a third party.¹⁴⁹

Unlike Canada and the U.S., the Mexican Textile Regulations do not provide an alternate identification provision.

Similar to the Canadian Textile Regulations, under the U.S. Textile Regulations the label must disclose the identification of the manufacturer, importer, or other dealer.¹⁵⁰ Alternatively, the label may disclose a company’s Registration Number (“RN”).¹⁵¹ An RN is issued and registered by the FTC and may be issued to any firm in the U.S. that manufactures, imports, markets, distributes, or otherwise handles textile products.¹⁵²

3. The Country of Origin Requirement

The Canadian Textile Regulations only require disclosure of the country of origin when there is a representation made about the importation of the article.¹⁵³ However, the Canadian Customs Act requires special disclosure for NAFTA countries of origin.¹⁵⁴ Memorandum D11-3-3, NAFTA Marking of Goods, requires country of origin marking for apparel.¹⁵⁵ Under the Customs Act, the country of origin is considered

147. See 16 CFR 301 § 301.19.

148. See Mexican Textile & Apparel Labeling Rules for 1996 §§ 4.1.1 - 2.

149. See *id.* § 3.2.

150. See 16 CFR 300 § 300.4; 16 CFR 301 § 301.26; 16 CFR 303 10 ¶ § 303.19.

151. *Id.*

152. *Id.*

153. See The Textile Labeling and Advertising Regulations §11 (1) (c). When a representation is made, disclosure of the country of origin is required in either of the official languages.

154. NAFTA Country of Origin “Marking Rules”, Canada Customs and Revenue Agency, Memorandum D11-3-3 (1996) (Can.).

155. See *id.* § 3(1).

the country in which: (1) the goods are wholly obtained or produced, (2) the goods are produced exclusively from domestic materials, or (3) each of the materials undergoes an applicable tariff change.¹⁵⁶

In contrast, disclosure of the country of origin is required by the Mexican Textile Regulations.¹⁵⁷ In addition, the Mexican regulations require four distinct types of disclosure. First, when the finished product and all of the inputs are manufactured in one country, the disclosure must read "made in (country of origin)."¹⁵⁸ Second, when the product is manufactured in Mexico with inputs from another country, the required disclosure is "made in Mexico with (description of inputs) imported from (country of origin)."¹⁵⁹ Third, when the product is manufactured in one country with inputs from another country, it must be disclosed as "made in (country of manufacture) with (description of inputs) imported from (country of origin)."¹⁶⁰ And fourth, when the manufacturing process takes place in two or more countries, the process that takes place in the last two countries must be disclosed with phrases such as "finished in (country) with imported material" or "manufactured in (country)."¹⁶¹

A hybrid of the Canadian and Mexican approach, U.S. country of origin disclosure is required by the individual textile regulations and the U.S. Customs Marking Statute.¹⁶² The U.S. Textile and Wool Regulations require disclosure of the origin of materials 'one step removed' from the manufacturing process.¹⁶³ The regulations require three distinct types of disclosure. First, when the article is manufactured completely in the U.S. from U.S. materials the required disclosure is "Made in the USA." or some other clear or equivalent term.¹⁶⁴ Second, when the article is manufactured in the U.S., either wholly or partially from imported materials, the required disclosure is "Made in USA of imported fabric" or "Knitted in USA of imported yarn."¹⁶⁵ And finally, when the article is partially manufactured in a foreign country and the U.S. examples of the required disclosure include: "Imported cloth, finished in USA," "Sewn in

156. *See id.* § 4 (1). Also, the country of origin may be the country in which a good is considered to originate under a chapter note set out in schedule III.

157. *See* Mexican Textile & Apparel Labeling Rules for 1996 § 4.6.

158. *Id.* § 4.6.1.

159. *Id.* § 4.6.2.

160. *Id.* § 4.6.3.

161. *Id.* § 4.6.4.

162. *See* 16 CFR 3000 § 300.25; 16 CFR 303 § 303.33. *See also* 16 CFR 301 §§ 301.12 - 301.14. The U.S. Fur Act has specific provisions to determine the country of origin for fur products produced or taken abroad.

163. *Id.*

164. *Id.*

165. *Id.*

USA of imported components,” and “Made in (foreign country, finished in USA.)”¹⁶⁶

Generally, the Marking Statute supports the requirements set forth in the U.S. Fur, Textile, and Wool Regulations. However, while the regulations permit variant spellings and certain abbreviations, U.S. Customs rulings do not permit the abbreviations CAN and MEX.¹⁶⁷ For example, in *Continental Mexican Rubber v. United States*,¹⁶⁸ the court allowed the abbreviation MEX only when used in conjunction with the name of the Mexican state and city in which the goods originate.¹⁶⁹

4. The Language Requirement

Pursuant to the Canadian Textile Regulations, only the generic names, in addition to any information directly relating to the fiber content, must be disclosed in both English and French.¹⁷⁰ In contrast, the Mexican Textile Regulations require the entire label disclosure to be in Spanish.¹⁷¹ Similarly, the U.S. Textile, Wool, and Fur Regulations require the entire label disclosure to be in English.¹⁷²

5. Care Labeling Requirements

The Canadian Care Labeling Program is voluntary but inaccurate or misleading instructions are prohibited by the Canadian Textile Regulations.¹⁷³ The program consists of five basic symbols in three traffic light colors.¹⁷⁴ The symbols tell the consumer which procedure to use for washing, bleaching, drying, ironing and dry cleaning.¹⁷⁵ The symbols apply to the entire article and relate principally to shrinking,

166. *Id.*

167. *See* 16 CFR 300 § 300.25.

168. *Continental Mexican Rubber v. United States*, Abstract No. 39882, 1 CCR 489 (1938).

169. *Id.*

170. *See* The Textile labeling and Advertising Regulations § 11. Terms such as “reclaimed” or section descriptions must also be bilingual. However, the bilingual provision of descriptive terms is only recommended. *See also Canadian Textile Labeling: General Worksheet.*

171. *See* Mexican Textile & Apparel Labeling Rules for 1996 § 4.1.4.

172. *See* 16 CFR 300 § 330.7; 16 CFR 301 § 301.3; 16 CFR 303 § 303.4.

173. FAIR BUSINESS PRACTICES BRANCH, *Textile Care Instructions: An Overview for the Textile Trade on Its Role in Providing Care Instructions*, available at <<http://strategis.ic.gc.ca>> (Aug.25, 1997).

174. *Id.*

175. *Id.*

stretching, color change, staining, chlorine effect, change in appearance, and the maximum safe ironing temperature.¹⁷⁶

Contrary to the Canadian Program, the Mexican Textile Regulations require disclosure of the proper treatment and instructions for care of the article.¹⁷⁷ The proper treatment, and instructions for care and preservation of the product must be indicated by brief clear language or by symbols.¹⁷⁸ Mandatory instructions include those for: washing,¹⁷⁹ drying,¹⁸⁰ ironing,¹⁸¹ bleaching,¹⁸² and any other necessary special instructions.¹⁸³

Similarly, the U.S. Care Labeling Rule¹⁸⁴ requires disclosure of full care instructions for the article and warnings if the article cannot be cleaned without harm.¹⁸⁵ In addition, the instructions must ensure that no substantial harm will occur to the article.¹⁸⁶ Required disclosure includes washing, bleaching, drying, ironing, and dry-cleaning instructions.¹⁸⁷ Contrary to the Mexican Textile Regulations, the use of symbols are permitted as long as the words fulfill the disclosure requirements.¹⁸⁸

B. HARMONIZING THE LABELING REQUIREMENTS

1. The U.S. Move Towards Harmonization

In 1998, pursuant to NAFTA Article 906, the FTC amended the U.S. Textile, Wool, and Fur Regulations to harmonize and streamline textile labeling requirements.¹⁸⁹ The amendments addressed the fiber content

176. *Id.*

177. *See* Mexican Textile & Apparel Labeling Rules for 1996 § 4.5.

178. *Id.*

179. Instructions for washing include: (1) the method (by hand, by machine, dry-cleaning, or special process, or recommendation against any of these washing methods); the water temperature; and whether soap or detergent must be used.

180. Drying instructions include: (1) whether to wring or not; (2) the use of sun or shade; (3) line or flat dry; (4) home or industrial dryer; and (5) the specific dryer temperature or cycle recommendation.

181. Ironing instructions include: (1) whether to use warm, hot, or steam iron (or no ironing); and (2) any special conditions.

182. Whether or not to use chlorine-compounds or other whiteners.

183. Special instructions must mention any inherent tendency to shrink or become misshapen, and any instructions for dealing with such conditions.

184. *FTC Guideline: Writing a Care Label*, revised (1999).

185. *Id.* at.2.

186. *Id.*

187. *Id.* at 5.

188. *Id.* at 3.

189. *See* NAFTA art. 906; *see also* *FTC Proposal to Harmonize Textile Regs with Canada, Mexico: Effort to Reach More Goals of NAFTA*, (Feb. 12, 1996). On February 12, 1996, the FTC

and manufacturer identification requirements.¹⁹⁰ The Textile and Wool Regulations were amended to delete the functional significance disclosure of fibers under 5%.¹⁹¹ This regulation was amended to help eliminate importation delays.¹⁹² Although the FTC proposed to similarly amend the Wool Regulations, the Commission could not adopt the amendment since the prohibition was statutory.¹⁹³ Also, the “Fiber Content on Reverse Side” disclosure was eliminated, decreasing the number of words required to be provided in French and Spanish.¹⁹⁴ Further, the Textile Regulations were amended to incorporate the ISO standard for generic names.¹⁹⁵ In addition, the FTC added a provision to all three Regulations subjecting an RN application to cancellation when material information changes and a new application is not promptly received.¹⁹⁶ This amendment was intended to help update the current RN database.¹⁹⁷ Although these amendments are a commendable start, further harmonization is required.

2. Further Harmonization Under NAFTA

NAFTA uses a committee approach for the harmonization of textile labeling requirements.¹⁹⁸ Pursuant to 913.5.a-4, the Subcommittee on

proposed a variety of amendments to its textile content and origin rules. The proposed amendments were aimed at regulation streamlining and promoting harmonization of the textile labeling requirements between the U.S., Mexico, and Canada. First, in an effort to streamline the regulations, the FTC sought comment on eliminating the disclosure “Fiber Content on Reverse Side.” In addition, the FTC sought comment on eliminating the required disclosure of a named fiber that constitutes less than 5% of the total fiber weight. The FTC also proposed the use of new generic names for manufactured fibers if the name and fiber are recognized by an international standards-setting organization. Second, the FTC sought comments on its proposal to require companies holding registration numbers (RN) to notify the commission of any change in name, address or legal business status. The RN updates would be the first step towards a possible system of shared information between NAFTA countries. And third, the FTC sought comments on using abbreviations for common fibers and abbreviations and symbols for country of origin names. This would enable sellers to use one label for textile products sold within the three NAFTA countries. Further, the FTC sought ideas on how to resolve a potential conflict between the FTC rules and the U.S. Customs Service regulations implementing the 1994 Uruguay Round Agreements Act regarding country of origin marking. The final harmonization rule was published on February 13, 1998.

190. FEDERAL TRADE COMMISSION, vol. 16, no. 30, Rules and Regulations under the Textile Fiber Products Identifications Act, the Wool Products Labeling Act, and the Fur Products Labeling Act, Final Rule, (1998). Other amendments include label placement, administration, and the cost basis fur exemption..

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *See* NAFTA art. 913.

Labeling of Textile and Apparel Goods is required to develop and pursue a work program on the harmonization of labeling requirements to facilitate trade between the NAFTA members.¹⁹⁹ The Subcommittee's work program, outlined in 913.5.a-4, should pursue the harmonization of: (1) fiber content information; (2) registration numbers for manufacturers and importers; (3) care instructions; and (4) the adoption of pictograms and symbols to replace required written information, in addition to other measures to reduce the need for labels in multiple languages. This four step approach will decrease the current technical barriers to textile trade.

First, to further harmonize the fiber content requirements, the author suggests the Textile Subcommittee create uniform definitions with regard to fiber content disclosure. Also, the adoption of a universal standard for generic fiber names would help streamline disclosure. The Subcommittee should also review the proposed new fibers to ensure the creation of uniform fiber generic names. In addition, there should be a uniform fiber tolerance level established between the member countries. A uniform tolerance level would harmonize the enforcement policy of each member and allow textile goods to travel easily between the NAFTA members. Even further, fiber disclosure exemptions should be harmonized to limit trade barriers among the member countries.

Second, to harmonize the manufacturer disclosure requirements, the Subcommittee should create a uniform category of persons liable for disclosure. In addition, a uniform registration system and database should be created to simplify manufacturer disclosure to the various administrative agencies. The creation of a uniform registration system would harmonize disclosure by limiting the number of words to be disclosed in the various member languages. A single database would also streamline the availability and provision of manufacturer information.

Third, graphics should be implemented to harmonize the care labeling requirements as demonstrated by the Canadian Care Program (see *infra*). Further, the use of abbreviations and graphics will harmonize the country of origin requirement. The abbreviations US, MEX and CAN should be allowed by member countries to alleviate translating the country names. Also graphics, in the form of the country of origin flags, should be used to harmonize the disclosure requirements.

199. *See id.* art. 913.5 (a) (4).

3. Beyond NAFTA

A more detailed administrative structure, beyond the committee approach, is required to effectively harmonize textile labeling requirements under future trade agreements. Increased communication between trade partners is crucial to maintain true harmonization of non-tariff trade barriers. The labor side agreement to NAFTA provides a model of this new communication structure. Under the Labor Agreement's structure, each member establishes a National Administrative Office ("NAO").²⁰⁰ The NAO serves as a point of contact for the governmental agencies of the member, NAO's of other members, and the Secretariat.²⁰¹ The NAO is responsible for periodically publishing public communications of relevant matters.²⁰² A private party may file a complaint with any member country's NAO.²⁰³ After review, a NAO may request a consultation with another member's NAO.²⁰⁴ These NAO consultations open issues and start dialogue between parties. Even further, a member may decide to bring the issue to a Ministerial Consultation²⁰⁵ or to an Evaluation Committee of Experts.²⁰⁶ The NAALC structure provides three steps to bring the issue before an arbitral panel. At each step there is communication between the parties and an exchange of ideas on how to resolve the issue, and a public report is issued. This multiple-step approach enhances communication and allows issues, like harmonization of standards, to be discussed outside of a committee and prior to a Chapter 20 dispute.²⁰⁷

IV. CONCLUSION

As tariffs are reduced, the textile industry is dramatically impacted by NAFTA. With further reduction, non-tariff trade barriers will become the focus of negotiations in future trade agreements. Harmonization of labeling requirements under NAFTA has been difficult because of the committee structure and the current administrative framework of Canada, Mexico, and the United States. A comparison of domestic textile labeling requirements demonstrates how easily technical regulations can become barriers to trade. Currently there are many ways for the NAFTA

200. *See id.* art.15.

201. *See id.* art.16 (2).

202. NAALC art.16 (3).

203. *Id.*

204. *See id.* art. 21.

205. *See id.* art. 22.

206. *See id.* art. 23.

207. Chapter 20 of NAFTA outlines the dispute resolution procedures.

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Committee to further harmonize textile labeling requirements. However, for harmonization to truly evolve, future trade agreements must place a greater emphasis on communication and the administrative structures necessary to resolve technical barriers.