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The Intellectual Underpinnings of North American Economic Integration

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North America has developed two regional trade agreements, the 1988 Canada-U.S. Free Trade Agreement (Canada-U.S. FTA)¹ and the 1992 North American Free Trade Agreement (NAFTA).² This Article traces the origins of these free trade agreements (FTAs), identifies their underlying objectives, and assesses their integrationist effect. We emphasize that continuing economic integration in North America is more market-based than policy-driven, reflecting an increase in border trade and investment flows.

As such, there are clear differences between the post-war European economic integration and the more recent model of North American arrangements, and applying the word "integration" to these latter schemes is probably a misnomer. In North America, the economies involved were already well integrated before the recent regional trade agreements were concluded, especially in the Canada-U.S. case. They are not part of an ongoing process to move ever closer to an economic and monetary union as is an objective in Europe. North American trade agreements have instead been driven more by the desire of smaller countries (Canada and Mexico) to have more assured safe-haven

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1. Canada-United States Free Trade Agreement, Jan. 1, 1989, 27 I.L.M. 281 [hereinafter Canada-U.S. FTA].

2. North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 289 and 32 I.L.M. 605 [hereinafter NAFTA].

agreements with their larger partner (the United States), than simply by trade enlargement objectives.³ These agreements reflect the concerns over the possible impact of U.S. trade actions in such areas as anti-dumping, and the even wider concern that U.S. trade policy could evolve in a more protectionist direction⁴ so that without a trade agreement access to the U.S. market might be threatened. In the case of Mexico, the desire to use a regional FTA to bind prior domestic liberalization policy was also an important consideration.⁵

Furthermore, the North American trade agreements lack the wider political and strategic objectives of fostering economic interdependence to reduce the risk of regional conflicts, a key to the European experience. A fundamental difference is the country configuration in North America, which has the United States as a larger, dominant country interacting with Canada and Mexico as smaller countries, as opposed to the small number of countries of more equal size seeking unity in Europe. Because there is no compelling reason for the United States to move toward deeper integration, the recent North American FTAs contain no commitments to proceed further to unified capital markets, exchange rates, monetary union, and transnational courts. In short, if recent North American trade agreements are equated with regional economic integration, they differ sharply from the post-war European arrangements. They differ both in substance and form, reflecting sharply different objectives and containing no road map for deeper integration.

3. Mexico's overriding objectives, for example in NAFTA, were to ensure a more open and secure access to the world's largest market, and to assure increased inflow of external capital. Gustavo Vega Canovas, *NAFTA and the Supplemental Agreements on Environmental and Labor Standards: A Mexican Perspective*, Presented at the Conference for NAFTA Implementation: Side Agreements and Broader Implications 5 (June 23, 1993) (transcript available at the Centre for Trade Policy and Law at Carleton University, Ottawa, Canada). The regional FTA would reduce the threat of U.S. protectionism and enhance Mexican export opportunities in both the U.S. and Canadian markets. *Id.*

4. Canada especially held these concerns. For an extensive discussion of recent trends in U.S. trade policy, see PATRICK LOW, *TRADING FREE: THE GATT AND U.S. TRADE POLICY* (1993).

5. See generally GARY C. HUFBAUER & JEFFREY J. SCHOTT, *NAFTA: AN ASSESSMENT* (1993); *NORTH AMERICAN FREE TRADE: ISSUES AND RECOMMENDATIONS* (Gary C. Hufbauer & Jeffrey J. Schott eds., 1992); *Symposium on North American Free Trade*, 14 *WORLD ECON.* 53 (1991).

I. SUMMARIES OF THE NORTH AMERICAN FREE TRADE AGREEMENTS⁶

A. THE CANADA-U.S. FREE TRADE AGREEMENT

The 1988 Canada-U.S. FTA covers a wide range of subjects in twenty-one chapters, and is greater in length than the 1947 General Agreement on Tariffs and Trade (GATT).⁷ The Canada-U.S. FTA contains an agreement on the elimination of tariffs over ten years,⁸ including special arrangements for apparel,⁹ and provides a new set of procedures for resolving bilateral disputes in countervailing and anti-dumping duties. It also contains a series of arrangements and disciplines covering sectoral and other matters such as agriculture, energy, autos, investment, services, wine and spirits, and procurement.

Despite its length and broad coverage, the Canada-U.S. FTA is not intended to dramatically change the bilateral U.S.-Canada trade flows. Prior to the agreement, trade between Canada and the United States was already largely duty-free or at low duty rates, and trade barriers in key sectoral areas, such as textiles, steel, agriculture, and energy, remained largely untouched by the agreement. Before the consummation of the agreement, the average tariff on Canadian exports to the United States was approximately one percent, and nearly eighty per-

6. This section draws on the discussions of these two agreements in John Whalley, *Regional Trade Arrangements in North America: CUSTA and NAFTA*, in *NEW DIMENSIONS IN REGIONAL INTEGRATION* 352 (Jaime de Melo & Arvind Panagariya eds., 1993) [hereinafter *Regional Trade Arrangements*]; John Whalley, *CUSTA and NAFTA: Can WHFTA Be Far Behind?*, 30 J. COMMON MKT. STUD. 125 (June 1992) [hereinafter *CUSTA and NAFTA*].

7. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. pts. 5, 6, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

8. An important feature of the Canada-U.S. FTA is the joint commitment to eliminate duty drawbacks covering imports of materials from third countries for bilateral trade as of January 1, 1994. The elimination of tariffs applies also to autos and auto parts, and affects Japanese transplant production in Canada shipped to the United States. See, e.g., Ronald J. Wonnacott, *Canada's Role in the U.S.-Mexico Free Trade Negotiations*, 14 WORLD ECON. 79 (1991) (emphasizing the importance of this provision on autos and auto parts).

9. The Canada-U.S. FTA establishes a tariff quota for apparel set approximately at 1987 trade levels. Canada-U.S. FTA, *supra* note 1, ch. IV. Bilateral trade is duty-free up to the quota, and at the most favored nation rate thereafter. *Id.* Also, for trade in apparel beyond the tariff quota, duty drawbacks are allowed bilaterally. For example, a refund in Canada of Canadian duties is permitted on fabric imports from the United States made into apparel and re-exported to the United States. *Id.* However, duty drawbacks are banned for imported inputs from third countries. *Id.*

cent of Canadian trade with the United States was duty-free.¹⁰ While there had been an increase in the use of contingent trade measures (such as anti-dumping and countervailing duties), and disciplining these measures was a major negotiating objective for Canada,¹¹ the impact on bilateral trade was relatively small.¹²

Table 1 briefly summarizes the main provisions of the Canada-U.S. FTA. Chapter I sets out the Scopes and Objectives, and Chapter II provides General Definitions. Chapter III lays out rules of origin, which have become even more important in the trilateral NAFTA arrangement with the addition of Mexico. Chapter IV details how various border measures, including tariffs, duty waivers, and drawbacks, will work bilaterally, with Article 401 setting out the schedule and coverage for bilateral tariff eliminations.

Table 1. Main Provisions of the Canada-U.S.
Free Trade Agreement

1. *Tariff Elimination*

Tariffs to be eliminated over a 10-year period beginning January 1, 1989, in three different groups by product:

- (1) tariffs to be reduced immediately: included are computers and equipment, leather, some unprocessed fish, and animal feeds;

10. See CANADA, DEP'T OF FIN., *THE CANADA-U.S. FREE TRADE AGREEMENT: AN ECONOMIC ASSESSMENT* 57 (1988); MINISTRY OF SUPPLY AND SERVICES OF CAN., *ROYAL COMMISSION ON THE ECONOMIC UNION AND DEVELOPMENT PROSPECTS FOR CANADA*, REPORT 311 (1985).

11. The sectoral conflicts created by subsidy and dumping issues have nonetheless been sharp, and have seemingly not diminished with the conclusion of the agreement. A recent conflict centered on Quebec Hydro's pricing policies and the benefits to heavy power users and exporters to the United States. *U.S. Moves Threaten Norsk Plant*, *GLOBE & MAIL* (Toronto), Feb. 15, 1992, at B6 (detailing how Norsk Hydro AS located a plant in Bécancour, Quebec, in order to sell magnesium to the U.S. market). In December 1991, Quebec Hydro faced a 32.8% interim duty after an initial finding of a subsidy, and in February 1992, Quebec Hydro was levied with a 32.7% provisional anti-dumping duty. François Shalom, *U.S. slaps 33% duty on Norsk's magnesium*, *GAZETTE* (Montreal), Feb. 14, 1992, at F1.

12. In 1986, approximately three percent of Canadian trade was covered by such measures in place at the time of the agreement's negotiation. This percentage excluded trade in softwood lumber where Canada agreed to a 15% export tax in return for a withdrawal of countervailing duty petitions by the American lumber industry. Canada's bilateral use of anti-dumping actions (though not countervail) was as extensive as by the United States. See J. LESTER & T. MOREHEN, *TRADE BARRIERS BETWEEN CANADA AND THE UNITED STATES* (Canada, Dep't of Fin. Working Paper No. 88-3, 1989); John Whalley, *Now That the Deal Is Over: Canadian Trade Policy Options in the 1990s*, 16 *CANADIAN PUB. POL'Y* 125 (June 1990).

- (2) tariffs to be eliminated in five equal stages: included are subway cars, printed matter, furniture, hardwood plywood, and most machinery; and
- (3) tariffs to be eliminated in 10 stages: included are most agricultural products, steel, textiles and apparel, softwood plywood, and tires.

2. *Agriculture*

Both countries agreed to prohibit export subsidies on bilateral trade. Agricultural tariffs to be eliminated over 10 years (provision included for Canada to restore temporary tariffs on fresh fruits and vegetables under certain conditions). Mutual exemption from restrictions under meat import laws. Some non-tariff barriers eliminated as well.

3. *Wine and Distilled Spirits*

Measures cover listing, pricing, distribution practices, blending requirements, and the standards and labelling requirements of distinctive products. Objective is to provide equal treatment to Canadian and U.S. wine and distilled products in each product category. Beer is excluded from this chapter.

4. *Energy*

Canadian and U.S. rights and obligations under GATT affirmed regarding trade restrictions in energy products including the prohibition on minimum export or import price commitments. Export taxes, fees or charges on energy goods also prohibited. Any export restrictions must be designed not to disrupt normal channels of supply or alter the product mix. Canada agreed to eliminate one of the price tests that the National Energy Board applied to exports.

5. *Automotive Products*

Tariffs on vehicles and auto parts to be phased out over 10 years. Auto Pact safeguards and Canadian value-added commitments maintained for the Big Three auto makers. Special rules of origin to apply to all vehicles traded under the agreement. As long as safeguards are met, qualified producers can import vehicles and parts duty-free into Canada from anywhere in the world. Fifty percent of the direct production cost of any vehicle to be incurred in Canada and the United States will qualify for duty-free status.

6. *Government Procurement*

Increases the amount of procurement open for competition in each market. Threshold lowered from US\$171,000 to US\$25,000. All government purchases above this threshold are open to competition for suppliers from either country, unless reserved for small businesses or for national security reasons. Transparency also improved.

7. *Services*

Both countries agreed to extend the principle of national treatment to providers of a list of commercial services listed in an Annex. Many commercial services are included, but transportation, basic telecommunications, doctors, childcare, and others are excluded.

8. *Temporary Entry of Business Persons*

Established reciprocal access for Canadian and American business travelers to each market. Laws and regulations governing entry to each country liberalized for business travelers.

9. *Investment*

Extended national treatment to the establishment of new businesses; liberalized rules on acquisitions of existing businesses in Canada. Canadian review threshold of direct acquisitions to increase to US\$150 million. Limits agreed on for certain performance requirements.

10. *Financial Services*

"Grandfathered" indefinitely, including a privilege for Canadian banks to operate in more than one state without being subject to review after 10 years. Canadian banks in the United States to be able to underwrite and deal in securities of Canadian governments. U.S. firms and investors exempted from some aspects of the "10/25" rule. Financial institutions are not covered by dispute settlement procedures of the agreement. Difficulties are to be dealt with through consultations between appropriate government departments.

11. *Institutional Provisions—Chapter 18*

Established necessary institutional provisions to manage the agreement. Provides for mandatory notification of any measure; consultations at the request of either party; referral to Canada-U.S. Trade Commission if consultations do not resolve dispute; and dispute settlement procedures based on panels composed of five members.

12. *Binational Dispute Settlement in Anti-Dumping and Countervailing Duty Cases—Chapter 19*

Either country's government may ask for a review of an anti-dumping or countervailing duty determination by a bilateral panel with binding powers. Panels determine if existing laws have been applied correctly and fairly. Findings by the panel are binding on both parties.

SOURCES:

CANADA, DEP'T OF EXT. AFF., *THE CANADA-U.S. FREE TRADE AGREEMENT: SYNOPSIS* (1987).

D. STEGER, *A CONCISE GUIDE TO THE CANADA-UNITED STATES FREE TRADE AGREEMENT* (1988).

MICHAEL HART, *A NORTH AMERICAN FREE TRADE AGREEMENT: THE STRATEGIC IMPLICATIONS FOR CANADA* (1990).

Chapter V provides a reaffirmation of the principle of national treatment to bilateral Canada-U.S. trade, and Chapter VI discusses technical standards.¹³ Chapter VII contains a long discussion on agriculture, containing complex formulas but relatively little of substance in terms of new bilateral liberalization. Chapter VIII covers wine and distilled spirits, primarily setting out disciplines on various domestic arrangements in Canada. Chapter IX, covering energy, places limits on the use of domestic pricing policies in Canada, and details security of supply arrangements with a right of first refusal for the United States at

13. Most issues in this area were left to an ongoing five to seven year negotiation process to implement the 1988 Canada-U.S. FTA, which has since been superseded by NAFTA.

the world price on specified amounts of energy in the event of supply shortages.

Chapter X deals with trade in autos, grandfathering in arrangements concluded earlier under the 1965 U.S.-Canada Auto Pact. More importantly, Chapter X also heightens the previous domestic content requirements so that on a comparable basis the fifty percent rule under the Auto Pact is increased significantly.¹⁴ Chapter XI covers emergency actions, including special bilateral exceptions for any safeguard actions taken under Article XIX of GATT. Chapter XII details limited exceptions for trade in goods from the arrangements in other chapters. Chapter XIII contains provisions relating to government procurement, but most notably, does not cover state and provincial governments on the two sides of the border. Chapter XIV on services contains few substantive provisions, grandfathering in all existing service arrangements in both countries, and promising that most favored nation treatment will apply to new service provisions, while at the same time exempting most of the important sectors from even these future arrangements.¹⁵

Chapter XV covers temporary entry for business persons, and, with Chapter XVI on investment, raises the transaction limit beyond which the screening provisions of Investment Canada apply. Chapter XVII contains changes in financial services arrangements on both sides of the border, covering regulations affecting foreign branch operations and certain changes in cross-border rules on reserves. Chapter XVIII details the institutional provisions of the agreement, including a dispute settlement procedure covering the agreement itself.¹⁶ These provisions, operating much like GATT dispute settlement mechanisms, provide

14. Under the new content rule, overhead and other indirect costs are not included in the requirement that, for a car crossing the border to be declared duty-free, 50% of the invoice price must represent costs incurred in either Canada or the United States. CANADA, DEP'T OF EXT. AFF., *THE CANADA-U.S. FREE TRADE AGREEMENT* 151 (1988). The 1988 Canadian government's annotation of the Canada-U.S. FTA suggested that the new rule was roughly equivalent to a 70% content rule under the previous Auto Pact basis for calculating content. *Id.*

15. For a discussion of the treatment of services in the Canada-U.S. FTA, see John Whalley, *Services and the U.S.-Canada Relationship Beyond the FTA*, in *THE UNITED STATES, CANADA AND THE WORLD ECONOMY* 45 (Charles Doran & Alvin Paul Drischler eds., 1991).

16. Chapter XVIII thus provides for the settlement of disputes over the interpretation and implementation of the whole agreement. Canada-U.S. FTA, *supra* note 1. It provides for the establishment of the Canada-United States Trade Commission and sets out notification, consultation and binding arbitration panel procedures. *Id.*

for panels, a conciliation process, and necessary withdrawals of concessions. Chapter XIX contains the new bilateral dispute settlement provisions in the areas of anti-dumping and countervailing duties.¹⁷ These provisions, which were temporary pending further agreement from a five to seven year negotiation process to implement the 1988 Agreement, have subsequently been incorporated in NAFTA. Chapter XIX creates a separate dispute settlement and panel procedure for disputes involving the use of countervailing and anti-dumping duty actions, different from and beyond that contained in Chapter XVIII. Chapter XX covers residual provisions, and Chapter XXI details various operational provisions, including entry into force, annexes, and other matters.

To summarize, the Canada-U.S. FTA, beyond a phased-out bilateral elimination of tariffs, contains four main sets of provisions. The first set of provisions consists of new disciplines on domestic (largely Canadian) policies, particularly in the areas of energy and investment, and to a far less reaching extent quantitatively on wines and spirits. The second set of provisions consists of two dispute settlement chapters, Chapter XVIII and XIX, with the latter reflecting the Canadian objective of achieving some new disciplines over U.S. anti-dumping and countervailing duties. In the third set of provisions are chapters on key sectors, including autos. The fourth set of provisions includes the "empty" chapters dealing with services, agriculture, and procurement; they are long and complex with seemingly little substance.

17. Chapter XIX deals with disputes arising from anti-dumping and countervailing duty (AD/CVD) cases. A binational panel makes determinations as to whether or not an AD/CVD action being taken by either country is compatible with its domestic law. When the agreement was signed in 1988, it was agreed to develop and eventually implement a separate system of AD/CVD arrangements that would simultaneously apply to both countries. This was left to an ongoing five to seven year negotiation process to follow on after the agreement, but with the finalization of NAFTA, such panels are now to be a permanent feature. See D. STEGER, A CONCISE GUIDE TO THE CANADA-UNITED STATES FREE TRADE AGREEMENT 71-74 (1988); CANADA, DEP'T OF EXT. AFF., *supra* note 14, at 48-52; A. ANDERSON & A. RUGMAN, A REVIEW OF THE DISPUTE SETTLEMENT PROCESSES UNDER THE CANADA-U.S. FREE TRADE AGREEMENT AND THE GATT (University of Toronto Working Paper, 1991) (evaluating the panel findings thus far from disputes dealt with under these two chapters); see also T. BODDEZ & M. TREBILCOCK, UNFINISHED BUSINESS: REFORMING TRADE REMEDY LAWS IN NORTH AMERICA (1993); Gilbert R. Winham, *Dispute Settlement in NAFTA and the FTA*, in ASSESSING NAFTA: A TRINATIONAL ANALYSIS 251 (Steven Globerman & Michael Walker eds., 1993) (discussing changes to the dispute settlement mechanism under NAFTA).

B. THE NORTH AMERICAN FREE TRADE AGREEMENT

In many ways, the more recent NAFTA is an echo of the earlier Canada-U.S. FTA.¹⁸ NAFTA has similar provisions in autos and parts, textiles and apparel, anti-dumping and countervailing duties, government procurement, services and investment, and temporary entry for business persons. Furthermore, NAFTA contains important dispute settlement provisions. The textile and apparel arrangements are also closely related. Only in the areas of intellectual property and land transportation, neither of which are covered by the Canada-U.S. FTA, are there differences.¹⁹

Table 2 summarizes the main provisions of NAFTA. At its heart is a ten-year trilateral tariff elimination commitment with the accompanying rules of origin, including special rules in the key sensitive sectors of autos/auto parts and textiles/apparel. A series of sectoral and instrument arrangements also appear in the agreement. In energy, differential domestic and export prices are disallowed. In agriculture, there is a key Mexican commitment to phase out import restrictions for corn; there are, however, no significant changes in U.S. and Canadian seasonal restrictions in tomatoes, lettuce, and other horticulture products. Procurement, land transportation, and financial services all see relatively modest change from the present regulatory environment. There are no special arrangements for steel.

NAFTA provisions covering services, investment, and temporary entry of business persons are very similar to those in the Canada-U.S. FTA.²⁰ There is a statement of principles for service trade restrictions, along with a greatly restricted scope due to grandfathering of existing measures and sectoral exceptions. These are thresholds below which investment screening will not apply. NAFTA also provides for expedited entry procedures for short-term business visitors.

18. See C.B. CADSBY & K. WOODSIDE, *THE EFFECTS OF THE NORTH AMERICAN FREE TRADE AGREEMENT ON THE CANADA-UNITED STATES TRADE RELATIONSHIP: A REVIEW ARTICLE* (University of Guelph Department of Economics Discussion Paper No. 1993-11, 1993); *ASSESSING NAFTA: A TRINATIONAL ANALYSIS*, *supra* note 17.

19. The provisions for intellectual property and land transportation nevertheless reflect the multilateral accords negotiated during the Uruguay Round and contained in the Dunkel Draft. Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, GATT Doc. MTN.TNC/W/FA (Dec. 20, 1991).

20. See Canada-U.S. FTA, *supra* note 1, chs. 14-17.

Table 2. Main Provisions of the NAFTA²¹

1. *Tariff Elimination*

Tariffs are phased out on goods meeting North American rules of origin standards according to three timetables: immediate, over 5 years, over 10 years. There is also a special sensitive tariff category with a 15-year phase out.

2. *Textiles and Apparel*

MFA quotas removed and tariffs to be phased out over 10 years on textiles and apparel that meet specific North American rules of origin ("yarn-forward" rules specify all processing from yarn onward must be in one of the three countries). Special tariff quotas apply for non-qualifying trade, as do phase-out commitments for quotas on non-qualifying trade. Special safeguard provisions were agreed upon for importers.

3. *Autos and Parts*

Tariffs on light trucks to be reduced by 50% immediately and remaining tariffs to be eliminated over 5 years. Tariffs on other vehicles to be phased out over a 10-year period. Each country committed to eliminate tariffs on certain parts immediately and reduced other tariffs over a 5 or 10-year period. Special rules of origin apply in this sector, requiring eventually 62.5% North American content for passenger automobiles, light trucks, and their transmissions and engines. Sixty percent North American content will apply in other vehicles and auto parts. North American content is to be calculated by tracing import content from outside NAFTA through the production chain.

4. *Energy*

No differential domestic and export (or import) pricing of energy and petrochemical products. Mexico is exempt from provisions dealing with import and export restrictions. Specific commitments relating to Canada-U.S. energy trade that were laid out in the Canada-U.S. FTA continue to apply to the two countries.

5. *Agriculture*

Ten-year phased elimination of tariffs and quotas, except in dairy, poultry, eggs, and sugar. Fifteen-year phase out for sensitive products (corn, dry beans in Mexico; orange juice and sugar in the United States). U.S. sugar will continue to be protected by global quotas; increases in imports from Mexico will be at the expense of non-NAFTA suppliers (Philippines, Brazil, Caribbean).

6. *Anti-dumping/Countervail*

Disputes over the use of these instruments are to be resolved by a panel system which reviews whether actions by countries are consistent with domestic laws (similar to the Canada-U.S. FTA).

7. *Government Procurement*

Increased the coverage of federal contracts open to competitive bidding from each country.

21. These provisions are as of August 12, 1992.

8. *Services*

National treatment and most-favored-nation treatment enshrined as basic obligations, but most existing service regulation grandfathered in, and exceptions specified to the obligation.

9. *Land Transport*

Timetable for removal of the barriers to land transportation services included as well as for the establishment of compatible technical and safety standards.

10. *Investment*

Performance requirements are banned for NAFTA investment transactions, although government procurement, export promotion and foreign aid activities are exempt. Screening procedures only permitted above specified limits (\$150 million after 10 years for Mexico).

11. *Financial Services*

National treatment and right-to-establish granted in financial services.

12. *Intellectual Property*

Commitments set out in a number of categories (copyrights, patents, trademarks, designs, trade secrets, integrated circuits, and others). Similar to commitments agreed upon multilaterally in GATT Uruguay Round Dunkel text.

13. *Temporary Entry*

New rules to facilitate easier cross-border business travel.

14. *Environment*

No country may lower its standards to attract investment; affirms each country's right to set own environmental standards. Disputes involving environmental standards or trade measures taken under specified environmental agreements can be referred to the NAFTA dispute settlement mechanism.

15. *Trade Commission*

Trilateral commission (much as in the Canada-U.S. FTA) to take up disputes over the agreement itself.

16. *Entry into force*

NAFTA entered into force January 1, 1994.

17. *Accession*

Other countries may be admitted to NAFTA subject to approval by the NAFTA parties and subject to terms and conditions.

18. *Side Agreements*

NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL CO-OPERATION.

Establishes Commission for Environmental Co-operation and sets up a co-operative work program. All three countries agree to comply with their domestic environmental laws. Strict procedures to resolve disputes. Trade sanctions could be used to enforce a dispute resolution between the United States and Mexico (only if a monetary penalty is not paid). Canada exempt from trade sanctions as enforcement mechanism. Disputes involving Canada to be resolved through domestic courts.

NORTH AMERICAN AGREEMENT ON LABOR CO-OPERATION.

Establishes Commission for Labor Co-operation and sets up co-operative work program and consultation process. Dispute settlement similar to that

under environment agreement. Canada again exempt from trade sanctions as enforcement mechanism.

SOURCES:

Various summaries of the agreement published immediately following August 11, 1992 in WALL STREET J., GLOBE AND MAIL, FIN. POST, and others.

DESCRIPTION OF THE PROPOSED NORTH AMERICAN FREE TRADE AGREEMENT (Aug. 12, 1992) (prepared by the Governments of Canada, the United Mexican States, and the United States of America).

Colleen Hamilton, *News and Events*, 16 WORLD ECON. 1 (1993).

CANADA, DEP'T OF EXT. AFF. & INT'L TRADE, THE NORTH AMERICAN FREE TRADE AGREEMENT: THE NAFTA MANUAL (1993).

CADSBY & WOODSIDE, *supra* note 18.

Unlike the Canada-U.S. FTA, NAFTA contains intellectual property provisions. These provisions, however, largely restate what is already in portions of the Uruguay Round decisions (the Dunkel text).²² Dispute settlement provisions are also similar to those in the Canada-U.S. FTA, covering disputes about the agreement itself and panel procedures concerning anti-dumping and countervailing duty issues. An important innovation in the negotiations leading to the agreement was the two-track procedure leading to the side agreements, separating out social issues such as environment and workers' rights from more traditional trade issues.²³

The prior bilateral Canada-U.S. FTA helped the three countries focus the trilateral NAFTA negotiations, given the early concern of whether and how the bilateral agreement could be trilateralized.²⁴ The negotiations that followed centered around

22. See NUR 055, GATT (Dec. 3, 1992).

23. In May 1991, in order to gain congressional approval of fast-track negotiating authority in the talks with Mexico, President Bush submitted an "action plan" to Congress. CONG. Q. 1121 (1991). According to this plan, the Bush Administration stated that the Labor Department would sign an agreement with Mexico providing for cooperation on working conditions and child labor. *Id.* Environmental issues would be negotiated on a parallel track and would deal with air and water pollution, hazardous wastes and spills, pesticides and enforcement. *Id.* An environmental assessment of the agreement was also to be completed. *Id.* When President Clinton was elected, he promised further negotiations on environment and labor which resulted in the side agreements.

24. Achieving a three-country North American free trade agreement was the objective of the U.S., Canadian and Mexican trilateral trade negotiators since the spring of 1991, when the U.S. Congress granted the Bush Administration authority for bilateral trade negotiations with Mexico. An existing 1987 U.S.-Mexico framework understanding and other subsequent accords had already approximately doubled some Mexican textile quotas and achieved a degree of bilateral liberalization in steel. For further discussion, see I. Trela &

how NAFTA and the Canada-U.S. FTA would coexist. Was NAFTA to be a core three-way agreement with separate additional bilateral agreements which would replace the Canada-U.S. FTA? Was it to be a supplementary agreement beyond the scope of the Canada-U.S. FTA? What institutional form was NAFTA going to take? A trilateral trade commission, for instance? Or something else? It quickly became apparent that some of the key chapters of the Canada-U.S. FTA were designed to deal with issues exclusively without the Mexican analogue (the wine and spirits chapter, for instance). On the other hand, some of the key issues discussed between Canada and Mexico (environment, intellectual property, labor mobility) had no obvious analogues on which to draw from the Canada-U.S. negotiation.²⁵

NAFTA is thus a partial echo of the Canada-U.S. FTA. The eventual agreement contained phased tariff cuts, similar dispute settlement procedures, slightly changed chapters in the cases of autos, textiles, and energy, and similar "empty" chapters. Some new arrangements in NAFTA cover transportation, intellectual property, environment, and labor standards. Like the U.S.-Canada FTA, outside of tariff elimination, NAFTA contains rearranged protection as well as substantive liberalization. Most of the more meaningful non-tariff concessions are on the Mexican side (in autos, beans, and corn). NAFTA, however, does not deal with any specific process for achieving further integration, and both its complexity and partially empty chapters equally pervade the agreement.

Consequently, while containing liberalizing elements, like the Canada-U.S. FTA, NAFTA is in fact more of a comprehensive trade agreement than a free trade agreement. It now has the key sectoral protection left in place or rearranged and contains supplementary agreements covering a range of non-trade and social issues, such as labor mobility, environment, transportation, and investment. NAFTA reflects the approach of a similar bilateral tariff elimination, with accompanying sectoral and instrument arrangements. NAFTA, however, contains neither commitment to, nor specifications for, any wider process of economic integration.

John Whalley, *Trade Liberalization in Quota-Restricted Items: U.S. and Mexico in Textiles and Steel*, 15 *WORLD ECON.* 45 (Jan. 1992). See also Appendix II for a chronology of the NAFTA negotiations.

25. See MICHAEL HART, *A NORTH AMERICAN FREE TRADE AGREEMENT: THE STRATEGIC IMPLICATIONS FOR CANADA* (1990) (analyzing the Canada-U.S. FTA on a chapter-by-chapter basis with respect to its trilateralization).

II. THE INTELLECTUAL FORCES BEHIND THE NORTH AMERICAN FREE TRADE AGREEMENTS

As we have suggested above, the Canada-U.S. FTA and NAFTA are complex and detailed treaties involving disciplines on domestic policy and lowered protection. Neither of the two agreements, however, is committed to a deeper integration process. What factors and intellectual developments brought about this outcome?

The remarkable fact about both the Canada-U.S. FTA and NAFTA is that each is a result of smaller countries approaching a larger country and demanding a trade agreement. Usually, economists think of small countries as having little leverage in trade negotiations with large countries, and large countries as preferring to initiate bilateral negotiations with small countries. In the case of North America, however, trade negotiations took place as a result of two small countries (Canada and Mexico) interacting with one dominant country, the United States. The form which these two agreements have taken reflect this unique phenomenon where Canada sought a "safe haven" or insurance-based agreement, and Mexico had similar objectives and also sought to use a trade agreement as an effective way of locking in domestic policy reform.²⁶

A. CANADIAN TRADE INITIATIVES AND U.S. RESPONSES

1. Earlier Negotiation Attempts by Canada

As detailed in Appendix I, early Canadian attempts to negotiate bilateral trade agreements with the United States date as far back as 1854, long before the 1867 Canadian Confederation. The historical pattern of Canadian-initiated requests for a bilateral agreement was to back away from whatever had been tentatively achieved as a result of internal political struggles relating to the Canadian position. Such policy reversals occurred in 1891, 1896, 1911 and 1948. For example, the opposition won the acrimonious Canadian general election of 1911, promoting a policy against the then-negotiated trade agreement with the United States on the slogan of "no truck or trade with the

26. See C. PERRONI & JOHN WHALLEY, *THE NEW REGIONALISM: TRADE LIBERALIZATION OR INSURANCE?* (National Bureau of Economic Research Working Paper No. 4626, 1994) (suggesting that the more substantive concessions in the Canada-U.S. FTA and NAFTA were made by the two smaller countries effectively as an insurance premium in return for more secure access to the U.S. market).

Yanks."²⁷ Given that the United States had abrogated the 1854 Elgin-Marcy Trade Treaty,²⁸ the prevailing argument in Canada was that strong multilateral disciplines should have preference to any bilateral agreement with the United States.

Due to this record of inconsistency on the Canadian side, the American approach to regional trade negotiations with Canada over the years became one of dealing with trade frictions on a case-by-case basis. Whenever questions of a comprehensive trade arrangement arose, the American reaction was to sit back and await a firm indication of Canadian intent, rather than initiating regional negotiations themselves.

2. Canadian Objectives for the Canada-U.S. FTA

By the early 1980s, the Canadian posture towards a possible bilateral trade agreement with the United States began to change. There was a clear movement away from an exclusive commitment to multilateral GATT arrangements and towards new regional arrangements. The primary concern in the period following the conclusion of the 1979 Tokyo Round was that the multilateral process was likely to be too slow, and even ineffective, in dealing with Canadian trade interests. This concern grew further during the 1981 recession with fears that Canada could potentially be side-swiped by U.S. trade actions affecting copper and other products. For example, a long series of studies from the research community in Canada stressed how a trade agreement with the United States would be able to exploit scale economies.²⁹ This concern was even intensified by the newly emerging arguments in Canada advocating a movement towards bilateral negotiation with the United States.³⁰ By 1983, Canada sought to go farther and faster down the bilateral route rather than the multilateral route in addressing Canada's trade con-

27. For a discussion of the history of Canada-U.S. trade relations, see L. ETHAN ELLIS, *RECIPROCITY 1911: A STUDY IN CANADIAN-AMERICAN RELATIONS* (1939); O.C. MASTERS, *RECIPROCITY 1846-1911* (1969); J.H. YOUNG, *CANADIAN COMMERCIAL POLICY* (1957); R. Cuff & J. Granatstein, *The Rise and Fall of Canadian-American Free Trade, 1947-48*, 58 *CANADIAN HIST. REV.* 459 (1977).

28. ELLIS, *supra* note 27, at 1. The United States abrogated the Elgin-Marcy Trade Treaty in 1866. *Id.*

29. See RONALD J. WONNACOTT & PAUL WONNACOTT, *FREE TRADE BETWEEN THE UNITED STATES AND CANADA* (1967).

30. For the later influential study, see R.G. HARRIS & D. COX, *ONTARIO ECONOMIC COUNCIL, TRADE, INDUSTRIAL POLICY AND CANADIAN MANUFACTURING* (1984).

cerns,³¹ and the general consensus was for bilateral trade negotiations with the United States.³²

The U.S. response to the initial Canadian request for a bilateral negotiation was revealing and, in part, indicated the direction which the negotiation was likely to take. The United States treated Canada's idea of a comprehensive trade negotiation with some caution; some circles saw the request as simply yet another Canadian initiative that would falter domestically, as in the past. The United States did, however, recognize the Canadian request as an opportunity to deal with some outstanding trade irritants, especially in the investment and energy areas. Moreover, it was recognized that a bilateral negotiation with Canada could be useful in the pending GATT multilateral negotiations. Comprehensive U.S.-Canada trade negotiations would help in yielding bilateral arrangements which might be multilateralized, especially in new areas such as services, and in producing a parallel bilateral negotiation whose acceleration could be used as a threat to bring reluctant multilateral partners to the table.³³

As the process progressed through 1986, Canada's negotiating approach was to give priority to the security of access to the U.S. market, looking especially for new restraints over U.S. con-

31. The Canadian domestic policy debate resulted first in a request for a bilateral sectoral negotiation and evolved into the request for the broader Canada-U.S. FTA, which implicitly began in 1983-1984 with a questioning of whether giving preeminence to GATT was the best way of dealing with Canada's then trade policy concerns.

32. The argument was later reflected in the 1985 report of the Macdonald Commission, a key Federal Government Royal Commission which recommended in favor of a bilateral trade negotiation with the United States. The possibility of a bilateral negotiation had also been raised in earlier important documents. See STANDING SENATE COMM. ON FOREIGN AFFAIRS OF THE PARLIAMENT OF CANADA, CANADA-UNITED STATES RELATIONS, VOL. II, CANADA'S TRADE RELATIONS WITH THE UNITED STATES (1978); CANADA, DEP'T OF EXT. AFF., A REVIEW OF CANADIAN TRADE POLICY (1983). For a further discussion of why Canada pursued a bilateral negotiation, see Gilbert R. Winham, *Why Canada Acted*, in BILATERALISM, MULTILATERALISM AND CANADA IN U.S. TRADE POLICY 37 (William Diebold, Jr. ed., 1988).

33. See USITC, ANNUAL REPORT OF THE PRESIDENT OF THE UNITED STATES ON THE TRADE AGREEMENTS PROGRAM 1984-1985, 61 (1986). The U.S. position was as follows:

If the United States cannot reach timely trade agreements on a multilateral basis, it is prepared to progress on trade issues by negotiating on a bilateral or plurilateral basis with like-minded nations. . . . America believes bilateral and plurilateral negotiations can serve as a useful step toward achieving a multilateral consensus.

Id.

tingent protection in anti-dumping and countervailing duties.³⁴ The key Canadian objective became one of seeking new disciplines over the application of U.S. countervailing duties, especially those involving U.S. actions against subsidies given to Canadian firms for regional or social policy purposes.

Canada's initial proposal for an agreement that placed various types of subsidies outside of the reach of U.S. countervail proved fruitless, and in the end had to be abandoned after being held onto until very late in the negotiation. The Canadian negotiating approach nevertheless became one of offering a package to the Americans, to which proposed disciplines on subsidies and countervailing duties were judiciously appended. This process included a bilateral negotiation on services which could subsequently be multilateralized, a negotiation on agriculture and on other components which the United States might find useful multilaterally. Having developed such a list, the next step for Canada was to add proposals on subsidies, countervail, and anti-dumping to the package. The United States' response to this initiative was that if Canada wished to package a number of issues into what it called a comprehensive free trade agreement, they would not object. The United States' main objective, however, remained one of dealing with outstanding trade irritants.³⁵

The Canadian side repeatedly made efforts to engage the Americans in a genuine negotiation on this basis over the eighteen-month negotiating process; their efforts were unsuccessful. In the last three weeks of the negotiation the Canadians withdrew because of the lack of progress on the subsidy issue. They were called back with ten days to go, largely due to the sentiments emanating from the U.S. Congress: if the United States cannot negotiate a trade agreement with Canada, with whom

34. The dependency on the U.S. market for Canadian goods and jobs and vulnerability to U.S. protectionism was a key concern. According to the Canadian government, in 1984 almost \$6 billion of Canadian exports to the United States were affected by U.S. protectionist measures (including anti-dumping, countervailing duties, and surcharges). See CANADA, DEP'T OF EXT. AFF., CANADIAN TRADE NEGOTIATIONS (1985). These measures affected a range of goods such as steel, copper, asbestos, raspberries, softwood lumber and hogs. *Id.*

35. These trade irritants included features of the Canadian National Energy Program used in the early 1980s, and the activities of the Canadian Foreign Investment Review Agency, which conducted investment screening in Canada. The Agency was the predecessor of the current milder screening agency, Investment Canada.

can it negotiate a trade agreement?³⁶ Canada subsequently resumed the negotiations with the United States.

The net result was a concession on subsidies made to the Canadians in the last few hours. The final agreement substituted panel review for judicial review in bilateral trade remedy cases involving anti-dumping and countervailing duties, the now-famous Chapter XIX panels of the Canada-U.S. FTA. Because of the prior negotiating process, however, the final agreement remained complex and lengthy, some chapters of which were limited in substance.

B. MEXICAN CONSIDERATIONS BEHIND NAFTA

1. Timing of NAFTA Negotiations

The debates leading to the negotiations of NAFTA began when the Canada-U.S. FTA negotiations ended (see Appendix II). Due to the success of the Canada-U.S. FTA negotiations, even from such disorganized origins, bilateral or regional negotiation rapidly became a cornerstone of the emerging U.S. trade policy. The U.S. government began to utilize active regional agreements as a substitute for limited progress multilaterally, and to use such negotiations as a threat to coerce reluctant multilateral partners.³⁷ In line with this new policy, the Reagan

36. Several Senate Finance Committee members, at various times during the negotiations, acknowledged the difficulties in saying "no" to a trade agreement with Canada. See Jerry Idaszak, *Process and Politics*, CHICAGO SUN-TIMES FORUM: CANADIAN-AMERICAN TRADE NEGOTIATIONS, PROCEEDINGS 24 (1986). During the Senate Finance Committee's hearings on granting authority to negotiate the Canada-U.S. FTA, Senator Bill Roth stated: "We have no greater friend than Canada, economically, militarily and otherwise. It would be a serious mistake to back away from an opportunity that may not come again in a while." *Id.* Senator Bob Packwood, the Committee Chairman, stated: "If there is any country we can conclude a free trade agreement with, it ought to be Canada." *Id.* Furthermore, Committee members remembered that the Canadians had helped with the Iranian hostage crisis. According to Senator Bill Bradley, saying "no" to Canada would alienate a key ally:

Canada has flirted with the idea of a trade agreement with us for 100 years. At some political risk, however, the Canadian government has courageously chosen to follow through with actual talks. Disapproval by the Finance Committee would be a slap in the face—especially at a time when Canada is one of only three countries that strongly support our response to Libyan terrorism.

132 CONG. REC. E1309 (daily ed. Apr. 22, 1986) (statement of Sen. Bradley).

37. For example, Senator Lloyd Bentsen, stated:

The FTA with Canada means that the United States can say in Geneva, 'if you won't work with us to open up world trade, then we can negotiate trade agreements with other countries on a bilateral basis and those countries will have the advantage of it and you won't be sharing in it.'

Administration began the Enterprise for the Americas Initiative (EAI), proposing framework agreements for individual Latin American countries, a policy which continued under the Bush Administration.³⁸ It was no accident that in December 1990, when the Brussels GATT Ministerial was floundering in the supposed conclusion of the Uruguay Round, President Bush was in Latin America promoting the EAI.

The three-country participation and the existence of the Canada-U.S. FTA both complicated and accelerated NAFTA negotiations. Canada participated in NAFTA negotiations with a strategy based on the outcome of the earlier Canada-U.S. FTA: not only to protect and preserve what was deemed beneficial to it, but also to actively seek to open up the unsatisfactory portions.³⁹ Moreover, Canada had a strong desire to be at the table and fully informed of the negotiation process so that Canada could avoid a "hub and spoke" situation where the United States could obtain preferential treatment in both Mexico and Canada.⁴⁰ Canadian participation was also politically important to Mexico because Mexican negotiators would not be alone at the table with a large and potentially assertive power who could be seen domestically as dictating the terms of NAFTA.⁴¹

134 CONG. REC. S12783 (daily ed. Sept. 19, 1988) (statement of Sen. Bentsen).

38. In June 1990, President Bush launched the Enterprise for the Americas Initiative (EAI) with the stated objective of forming a free trade zone from Anchorage to Tierra del Fuego. See Eduardo Gitli & Gunilla Ryd, *Latin American Integration and the Enterprise for the Americas Initiative*, 26 J. WORLD TRADE 25 (1992). The EAI focused on three pillars: trade, investment and debt. *Id.*

39. Officially, Canada's three objectives in participating in the NAFTA negotiations were the following: (1) to gain access to the Mexican market on an equal footing with the United States; (2) to improve and protect the Canada-U.S. FTA; and (3) to make sure Canada remained an attractive investment location relative to the United States and Mexico. See CANADA, DEP'T OF EXT. AFF. & INT'L TRADE, *NAFTA: WHAT'S IT ALL ABOUT?* (1993).

40. The one situation Canadian negotiators did not want to see develop was a situation in which the United States had a preferential agreement with Mexico and a preferential agreement with Canada. For a further discussion on "hub and spoke," see RONALD J. WONNACOTT, *THE ECONOMICS OF OVERLAPPING FREE TRADE AREAS AND THE MEXICAN CHALLENGE* (C.D. Howe Inst. Commentary XIV, 1991); C. KOWALCZYK & R.J. WONNACOTT, *HUBS AND SPOKES, AND FREE TRADE IN THE AMERICAS* (National Bureau of Economic Research Working Paper No. 4198, 1992).

41. The NAFTA negotiations concluded on August 12, 1992. However, the Clinton Administration subsequently indicated that the agreement would not be submitted to Congress until side agreements on labor and the environment were negotiated. The subsequently negotiated side agreements lay out the principles of protection for labor and the environment and establish trilateral commissions for both labor and the environment. Under these side agreements,

2. Mexican Policy Considerations

For a variety of policy reasons,⁴² Mexico was the main demander for NAFTA negotiations, which were rapidly trilateralized to include Canada.⁴³ From the Mexican side, a trade negotiation with the United States was attractive to different groups within Mexico. First, NAFTA is key to Mexico's continued economic growth. Mexico's drive for NAFTA directly resulted from its own unilateral liberalization, begun in 1985, and its entry into GATT in 1986.⁴⁴ Despite major concerns over national autonomy, negotiating such an agreement would enable Mexico to join the world economy.⁴⁵ Without NAFTA, Mexico would suffer from continued oil dependency, a lack of much

disputes between Mexico and the United States can eventually result in trade sanctions. Canada, however, successfully pressed for an exemption from the use of trade sanctions as an enforcement mechanism. Disputes involving Canada in these areas will be dealt with through the domestic courts. For a discussion of the side agreements, see CANADA, NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL CO-OPERATION (1993); CANADA, NORTH AMERICAN AGREEMENT ON LABOR CO-OPERATION (1993); Canada, Office of the Prime Minister, Prime Minister Announces NAFTA Improvements: Canada to Proceed with Agreement (Press Release, Dec. 2, 1993); CANADA, DEP'T OF EXT. AFF. & INT'L TRADE, THE NORTH AMERICAN FREE TRADE AGREEMENT: THE NAFTA MANUAL (1993). See also Derrick Wilkinson, *NAFTA and the Environment: Some Lessons for the New Round of GATT Negotiations*, 17 WORLD ECON. 395 (1994).

42. In light of NAFTA, Mexico's main policy objectives are to achieve rapid economic growth, reduce inflation and restore confidence necessary to re-attract flight capital and to service its large external debt, focusing on fiscal and monetary stringency, deregulation, privatization and further liberalization of trade and investment policies. Vega Canovas, *supra* note 3, at 4.

43. For a detailed discussion of the interaction between the policy objectives for NAFTA among Mexico, the United States and Canada, see HART, *supra* note 25, at 1-11.

44. For more than 40 years, Mexico followed a development strategy based on the import substitution approach. Following the debt crisis in the early 1980s and feeling the effects of the weak oil market, the Mexican government abandoned the inward looking strategy and undertook a unilateral liberalization program. For detailed discussions of Mexico's objectives in the NAFTA negotiations, see NORTH AMERICAN FREE TRADE: ISSUES AND RECOMMENDATIONS, *supra* note 5; Nisso Bucay & Eduardo Perez Motta, *Mexico, in DEALING WITH THE NORTH: DEVELOPING COUNTRIES AND THE GLOBAL TRADING SYSTEM* 211 (John Whalley ed., 1987); Gustavo Vega, *Editorial Introduction to Symposium on North American Free Trade*, 14 WORLD ECON. 53 (1991).

45. As a result of the liberalization policy, Mexico joined GATT in 1986, significantly reduced its tariffs, and liberalized its policy in foreign investment and intellectual property rights. See Vega Canovas, *supra* note 3, at 4. These efforts reflected Mexico's serious intention to seek more aggressive ways of joining the world economy. *Id.* For a detailed analysis of Mexico's trade structure and policy before and while joining GATT, see Bucay & Perez Motta, *supra* note 44.

needed foreign capital and limited access to the larger U.S. and Canadian markets for its exports.

Moreover, Mexico's new meritocrats saw the negotiation of NAFTA as one way of making the Mexican liberalization program, underway since 1985,⁴⁶ more secure. The idea was to lock in domestic policy reform through an international treaty so that it would be harder to reverse it in the future.⁴⁷ Due to the fact that the success of its economic liberalization program was dependent upon gaining access to stable and secure markets, it was inevitable for Mexico to pursue the broader framework of NAFTA.⁴⁸ Consequently, while all three countries realize permanent economic gains, Mexico's interest in NAFTA is more closely motivated by and connected to its domestic liberalization.

Other concerns mirrored those of the Canadians, namely, to obtain a "safe haven" agreement with Mexico's largest trading partner in order to avoid being left out of an emerging regional trade bloc following the Canada-U.S. FTA.⁴⁹ Much inspired by the recent European integration,⁵⁰ the Mexican government hopes that U.S. and Canadian capital and technology attracted into Mexico through NAFTA will create profound economic growth into the twenty-first century.⁵¹ Therefore, becoming a

46. The liberalization program called for a radical restructuring of Mexico's economy by reducing the role of government and eliminating barriers to trade and investment. See Vega Canovas, *supra* note 3, at 2. NAFTA is critical to Mexico because it has become a net exporter of manufactured goods, and this is a key to sustaining economic growth. *Id.* at 6.

47. Mexico's participation in the NAFTA negotiations was a direct consequence of its basic economic strategy in the 1980s. One current Mexican objective in light of NAFTA has been the pursuit of the permanence of its ongoing economic strategy. See Jesus Silva Herzog, INTRODUCTION TO MEXICO AND THE NORTH AMERICAN FREE TRADE AGREEMENT 3 (Victor Bulmer-Thomas et al. eds., 1994).

48. In 1983, President de la Madrid initiated Mexico's economic liberalization program. See Judith Teichman, *Dismantling the Mexican State and Role of the Private Sector*, in THE POLITICAL ECONOMY OF NORTH AMERICAN FREE TRADE 177 (Richard Grinspun & Maxwell A. Cameron eds., 1993). President Carlos Salinas continued the program. *Id.*

49. President Salinas stated: "What we want is closer commercial ties with Canada and the United States, especially in a world in which big regional markets are being created. We don't want to be left out of any of those regional markets, especially not out of Canadian and American markets." *GLOBE & MAIL* (Toronto), Apr. 10, 1990, at B1.

50. President Salinas' trip to Europe in January 1990 significantly influenced his thoughts on the need to secure Mexico's access to the North American market. At that time, he concluded that Europe was preoccupied with its own regional integration, EC 1992 and the European Economic Area, as well as the rebuilding of Eastern Europe. See *id.*

51. See Vega Canovas, *supra* note 3, at 2.

part of the North American regional economic growth plays an indispensable role in assuring the ultimate success of Mexico's economic development.

Yet another reason for Mexico's participation in NAFTA was the need to attract investment.⁵² A study by the United States International Trade Commission (USITC) estimated that NAFTA would stimulate a considerable amount of direct investment from the United States in Mexican infrastructure, manufacturing, agriculture, computers, autos, and services (banking, insurance, securities).⁵³ The USITC also reported that NAFTA would encourage the repatriation of some of the estimated \$50 billion in Mexican flight capital.⁵⁴

While NAFTA has primarily the same structure as the Canada-U.S. FTA, Mexican objectives throughout the NAFTA process seemed to reflect the desire to use a trade agreement to underpin domestic policy reform so as to attract incoming foreign investment. The primary objective was to use an international treaty as a way of securing existing domestic policy reforms rather than simply to achieve improved and more secure access to the U.S. market in an effort to spur growth. Subsequently, by having the domestic reforms locked in, and a deeper integration with its most important trading partner, Mexico's economy would be more efficiently integrated into the global economy.

III. COMPARISON OF NORTH AMERICAN AND EUROPEAN INTEGRATIONIST FORCES

A. TRADE EXPANSION IN NORTH AMERICA

We suggest above that the underlying objectives of the two smaller NAFTA countries for regional trade negotiations reflect the intellectual underpinnings of the North American FTAs. These objectives, although somewhat different for Canada and Mexico respectively, emerged as a result of the rapidly growing cross-border trade. There was the common desire to allow this

52. According to Vega Canovas, NAFTA would "bolster" investor confidence by offering an important signal of future intentions, and thus encouraging a continued inflow of foreign direct investment. *Id.* at 6.

53. See generally U.S. INTERNATIONAL TRADE COMMISSION, PUB. NO. 2275, REVIEW OF TRADE AND INVESTMENT LIBERALIZATION MEASURES BY MEXICO AND PROSPECTS FOR FUTURE UNITED STATES-MEXICAN RELATIONS (1990) (investigating Mexico's trade and investment reforms and the implications of those reforms for the United States).

54. See *id.*

trade expansion to continue and not to be impeded by unilateral trade actions, as is often the case in anti-dumping and countervailing duties.

In the case of Canada, the primary objective for both the Canada-U.S. FTA and NAFTA was to avert the reach of U.S. anti-dumping and countervailing duties (contingent protection), and eventually to avoid adverse impact of any future U.S. trade actions. The underlying aim for Canada was to preserve existing access to the U.S. market. In the case of Mexico, there were similar concerns with regard to U.S. trade actions and access to the U.S. market. Unlike Canada, Mexico was also pursuing further objectives: to adjust its foreign policy towards accommodation with the first-world rather than withdraw inward as in the past, and to use a regional trade agreement as a mechanism to secure forward progress of the ongoing domestic liberalization.

Moreover, because of the asymmetries of country size involved, neither the Canada-U.S. FTA nor the NAFTA negotiations were reciprocity-driven under the GATT principle, where exchanges of trade concessions are comparable. Instead, the North American FTAs resulted from mainly unilateral concessions by Canada and Mexico whose objectives were part safe haven-driven and part domestic. Having sensed such eagerness from its trading partners in the region, the United States has been pursuing similar agreements with other countries, and this has become an important plank of the current U.S. trade policy.⁵⁵

Furthermore, it is the growth of trade and investment, rather than new institutional agreements, which seems more likely to propel North American integration forward. For example, U.S.-Mexico trade has more than doubled in five years, and capital inflows into Mexico, largely from the United States, have risen from less than \$0.5 billion in the mid-1980s to over \$13 billion in 1992.⁵⁶ In the case of Canada-U.S. trade, economic performance across the Canada-U.S. border since the bilateral agreement has been poor, with little or no increase in Canada-U.S. trade and even a fall in foreign investment from the United States to Canada.⁵⁷ The reason is that before the agreement, the economies of Canada and the United States were already

55. For a discussion of the possible regional extension of NAFTA, see *CUSTA and NAFTA*, *supra* note 6.

56. See *Regional Trade Arrangements*, *supra* note 6, at 365.

57. *Id.*

highly integrated with low barriers and substantial trade volume.

The model of North American integration in trade shows no wider strategic considerations like maintaining regional peace through growing cross-border trade and factor flows. There was no desire to pre-specify a process for the three countries to engage in deeper institutionally-based integration for economic security. In addition, no major objectives of enhancing a region-wide multilateral negotiating power were present. In all of these ways, the North American trade integration as reflected by the two FTAs differs fundamentally from European integration for which these objectives were the key.

B. THE CONTRAST WITH EUROPEAN ECONOMIC INTEGRATION

If the Canada-U.S. FTA and NAFTA are taken together to define a new regional economic integration effort in North America, it is one which sharply differs from the post-war European integration experience. In Europe, the objectives underlying the 1957 Treaty of Rome were as much political and strategic as they were economic. Having experienced two wars earlier in the century, building economic interdependence as a way of underpinning new security arrangements was a key objective. This was to be done through a phased approach to institutionally based integration: that is, a common external tariff, followed by elimination of inter-European duties, harmonization of taxes, removal of capital market impediments, and eventually full economic and monetary union. What proved to be a forty-year process of an ever-expanding regional structure was put in place, with institutions which, while limited compared to federal states, were nonetheless significant: a European court, a European Budget, and a Common Agricultural Policy. In addition, clear supporting objectives underlay the effort, not the least of which was to provide for a more cohesive European bargaining unit in trade negotiations with the United States in the GATT.

In contrast, the North American FTAs followed after market-driven processes of integration had already substantially increased U.S.-Canada and U.S.-Mexico trade. It was the threat to this trade from countervailing duty and anti-dumping actions by the United States which constituted a major concern to Canada, leading to the Canadian drive for a regional agreement. The objectives of Canada and Mexico seem to have been solely economic, that is, firmer guarantees of access to the U.S. market. These economic objectives, if anything, superseded possible

political concerns for impairment of national sovereignty by virtue of trade agreements with a large power. In addition, the reason for the country configuration of the two small approaching the large in North American trade negotiations differs from the European experience because, in North America, risks of future military conflict are not at issue. In short, the two sets of political and economic circumstances between North America and Europe are wholly different, and not surprisingly, the resulting agreements are different.

In further contrast to Europe, future North American economic integration will probably continue to be driven by the market-oriented trade and investment forces, rather than by the intergovernmental institutional arrangements in Europe. There is no further commitment to or interest in new North American institutions, North American courts, North American economic and monetary union, formally harmonized North American capital markets, and the like. Furthermore, the Canada-U.S. FTA and NAFTA do not establish institutional structures within which such integration can take place, because the Free Trade Commissions established will function effectively as ministerial meetings, without grant of supra-national autonomy. Thus, analogies between North American and European processes of regional economic integration are few.⁵⁸

IV. CONCLUSION

The respective economic and political objectives of Canada and Mexico resulted in the negotiations for the 1988 Canada-U.S. Free Trade Agreement and the 1992 North American Free Trade Agreement. After repeated failures for over a century to negotiate a bilateral trade treaty with the United States, Canada finally formed a firm position in approaching the United States for a bilateral trade agreement. The objective was to ob-

58. Despite this characterization, however, a remarkable subsequent development is that a number of other countries now want to become parties to these treaties and view accession as part of an integration process. In Latin America, for example, Chile, Venezuela, Costa Rica, Colombia and other countries now want to be signatories of NAFTA, seemingly for similar reasons to those which propelled Mexico. For a discussion of the possible enlargement of NAFTA, see JOHN WHALLEY, *EXPANDING THE NORTH AMERICAN FREE TRADE AGREEMENT* (Institute For Policy Reform Working Paper No. IPR 42, 1992); *CUSTA and NAFTA*, *supra* note 6. In December 1994, after the conclusion of the Summit of the Americas, the United States formally invited Chile to begin negotiations to join NAFTA. Helene Cooper & Jose de Cordoba, *Chile is Invited to Join NAFTA as U.S. Pledges Free-Trade Zone for the Americas*, *WALL ST. J.*, Dec. 12, 1994, at A3.

viate concerns about unilateral trade actions by the United States against Canada. More specifically, through the Canada-U.S. FTA, Canada sought to achieve secure access to the U.S. market and avert U.S. actions in anti-dumping and countervailing duties. Canada's further participation in the NAFTA negotiations was to supplement the Canada-U.S. FTA and to strike a balance between the three countries.

As the main promotor of the NAFTA negotiations, Mexico aimed at strengthening its ability to participate in the advanced economies in the region, securing its domestic policy reform through NAFTA, and like Canada, gaining access to the "safe haven" of the U.S. market. In addition, Mexico's participation in NAFTA was motivated by its desire to attract more U.S. investments to its key industries.

Both the Canada-U.S. FTA and NAFTA differ in many respects from post-war European integration. In Europe, economic integration resulted from the strong common desire to form a political and strategic alliance within the countries concerned. Thus, the European Union was formed with many institutionalized structures within its economic system. In North America, economic objectives, rather than political interests, provided the underlying momentum for the negotiation process for both the Canada-U.S. FTA and NAFTA.

Whether we are witnessing the emergence of an integrated North American trade bloc built upon the Canada-U.S. FTA and NAFTA, and how economic integration will play out in the next few years in North America and elsewhere, remain to be seen. Our view, however, is that the recent North American trade agreements contribute relatively little to this integration process because they are substantively limited and largely reflect smaller country objectives. If our assessment of these agreements is correct, economic arrangements in North America will not change much in the future because of them. Trading patterns rather than trade agreements will likely be the key to any further North American integration, and the formation of whatever one might term as a North American trade bloc will remain market-driven rather than institution-based.

APPENDIX I
A CHRONOLOGY OF CANADA-UNITED STATES
TRADE NEGOTIATIONS

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- 1854 Reciprocity Treaty (Elgin-Marcy Treaty) concluded between Canada and the United States. Terms include free trade in primary products such as fish, lumber, grain, and coal. The treaty was to last ten years, at which time twelve months notice had to be given if either country withdrew.
- 1866 United States withdraws from the Reciprocity Treaty.
- 1867 Canadian Confederation.
- 1868-97 Canadian tariff policy includes a standing offer of reciprocity with the United States along the lines of the 1854 Elgin-Marcy Treaty.
- 1869 The Canadian minister of finance visits Washington, offering free or equal access to Canadian fisheries and canals and reciprocal free entry of certain manufactures in return for free entry of Canadian natural products into the United States. U.S. government expresses disinterest.
- 1870 Bill introduced in the Canadian Parliament that would provide for a commercial union between Canada and the United States.
- 1871 Great Britain and United States conclude the Treaty of Washington to regulate the use of inshore fisheries and national waterways between Canada and the United States. Sir John A. Macdonald proposes renewal of 1854 treaty to compensate Canada for opening its fisheries and waterways. The United States refuses to negotiate on that basis.
- 1874 Liberal government sends an envoy to Washington to assist the British in drafting a treaty that includes a tariff-free list of natural resources and a substantial number of manufactured articles. The U.S. Senate refuses to consider the draft treaty because Canada insists on extending any free trade arrangements to include Great Britain.
- 1879 Introduction of Macdonald's National Policy, aimed at providing a secure national market for Canadian manufactures. Government support for westward settlement intended to strengthen this market, which in turn would be encouraged through the development of a national transportation system.
- 1891 Canadian government agrees to send a delegation to Washington to negotiate a trade agreement with the United States. Negotiations fail.
- 1896 Laurier proposes reciprocity with the United States but is turned down. He states that "[t]here will be no more pilgrimages to Washington. We are turning our hopes to the Old Motherland."
- 1897 Fielding introduces the Dominion Tariff. This tariff increases many duties but contains separate tariffs toward the United States, allowing Canada to retaliate against the American Dingley tariff rates without raising the general level of tariffs in Canada. Tariff preferences toward the British go unreciprocated.
- 1907 Establishment of a triple-schedule tariff in Canada, with the United States subject to the highest tariffs.

- 1909 Payne-Aldrich Tariff on newsprint introduced in the United States, enabling the United States to impose maximum rates against countries that discriminate against the United States.
- 1910 Laurier is confronted by farmers in western Canada wanting reciprocity with the United States, especially in farm implements. United States charges that Canadian concessions to France in 1906 constituted discrimination against the United States, and that they would unwillingly have to enforce maximum rates of the Payne-Aldrich Act against Canada. U.S. delegation visits Ottawa in March. Canada is ready to negotiate reciprocal trade concessions with the minimum tariff as a basis.
- 1911 Agreement reached with the United States in January for free trade to be enacted by concurrent legislation. The agreement provides for free trade mostly in primary products and a small number of manufactured products, such as iron and steel sheets, and reciprocal tariff reductions on a wide range of other articles. Of particular significance is the duty-free access for Canadian newsprint to the United States. In the United States, President Taft has much difficulty getting bill passed. In Canada, debate in Parliament forces Liberals to call a September election. During the election campaign, Conservatives show strong imperialist sentiment. They stress that free trade with the United States would mean increased competition for Canadian farmers because of the earlier U.S. growing season; would jeopardize relations with Britain; and would risk importing U.S. economic difficulties such as unemployment. Liberals stress the benefits of a larger market under free trade. Results: Laurier (Liberals) loses; Borden (Conservatives) wins; reciprocity defeated.
- 1913 Prospects for free trade with the United States undermined for extended period. Underwood Tariff allows for duty-free access of Canadian newsprint.
- 1921 United States introduces emergency tariffs.
- 1922 United States introduces Fordney-McCumber tariffs.
- 1930 Canada introduces higher tariffs. United States introduces Smoot-Hawley Tariffs.
- 1932 Agreement at the Ottawa conference produces British Preferential Trading System—first instance of reciprocated Imperial Preference. United States increases revenue duties.
- 1933 "Buy America" Act implemented in the United States, providing a preference margin of 6% for a domestic bid over a foreign bid (including duties). Preference raised to 12% if the domestic bidder is a small business.
- 1934 United States introduced Reciprocal Trade Agreements Act (Roosevelt Good Neighbor Policy).
- 1935 Canada-U.S. Bilateral Agreement. Canada grants United States most-favored-nation status and, in some products, tariff reductions below intermediate rates.

- 1937-38 In return for U.S. tariff reductions, Canada and Britain further reduce tariffs and remove some of their preferences. Canada and United States trade on MFN basis, but Canada maintains Commonwealth preferences.
- 1941 Hyde Park Declaration. Bilateral cooperation in the defense field agreed to between Canada and the United States (Defense Production Sharing Agreement).
- 1942 Canada agrees in an exchange of notes with the United States to work toward a reduction in tariffs.
- 1943 Canada is prepared to abolish preferences in the tariff schedule, provided the United States and United Kingdom are willing to make compensatory tariff reductions. Polls in Canada indicate strong support for free trade with United States reflecting strong internationalist sentiment during the war.
- 1945 Canada hopes United States will make "multilateral horizontal" tariff reductions (major across-the-board cuts). U.S. Congressional pressure opposes these cuts, only selective cuts possible. British continue to link willingness to remove Imperial Preferences to sweeping American tariff cuts. U.S. Congress does not agree.
- 1947 Canadian dollar position regarded as serious. Canadian government declares itself willing to enter into a free trade agreement even if this necessitates a major readjustment and reorientation of Canada's international trade. Canadian government imposes "dollar-saving" restrictions the same day it signs the GATT. GATT Treaty signed in October.
- 1948 Canadian and American negotiators settle on the basis for a general trade agreement. Included are the immediate removal of all duties by both countries; the prohibition of all quantitative restrictions on imports after five years (with important exceptions on both sides); the inclusion of the right of both sides to impose absolute transitional quotas on certain products during the five-year period, and joint consultation on agricultural marketing. Prime Minister King pressed by advisers to move forward but flatly refuses, stating: "I stressed strongly that regardless of what the economic facts might be, the issue would turn on union with the States and separation from Britain."
- 1965 Canada-U.S. Automobile Products Trade Agreement (Auto Pact) concluded, provides for conditional duty-free trade between Canada and the United States in original equipment, automotive parts, and accessories (except tires and tubes) and in all but specialized types of motor vehicles.
- 1968 Canada and the United States disagree over interpretation of the objectives of the Auto Pact and the retention of the Canadian safeguard conditions. This marks the beginning of continuing differences over the Auto Pact, generally resolved following bilateral negotiations.
- 1969-70 Increasing global integration and interdependence are factors causing both Canada and the United States to undertake major reviews of foreign policy approaches and positions.

- 1971 The Nixon Administration, in reaction to continuing U.S. balance-of-payments problems, takes the United States off the gold standard, devalues the U.S. dollar and imposes a surtax on imports (motor vehicles imported from Canada are exempted). Canada is unsuccessful in seeking exemption from surtax, representing the first time after World War II that Canada is not excluded from a major U.S. economic policy action.
- 1972 The "special" economic relationship is officially ended by President Nixon in his address to the House of Commons. "It is time for Canadians and Americans to move beyond the sentimental rhetoric of the past. It is time for us to recognize that we have very separate identities; that we have significant differences, and that nobody's interests are furthered when these realities are obscured." Canada adopts an Import Surveillance Program designed to identify export-tied tax reductions abroad, such as that offered under DISC.
- 1974 U.S. Trade Act initiates Tokyo Round Trade Negotiations in the GATT. Includes a provision authorizing the president to negotiate bilateral free trade agreements with North American countries. The Trade Act signals a switch from trade policy as an instrument of overall U.S. foreign policy, to trade policy as an explicit instrument of U.S. economic self-interest.
- 1978 The Standing Senate Committee on Foreign Affairs (Van Roggen Report) recommends that serious consideration be given to bilateral free trade with the United States.
- 1979 U.S. Trade Agreement Act concludes Tokyo Round Negotiations.
- 1983 Canadian External Affairs issues a Review of Foreign Trade Policy and suggests that the government consider the advisability of sectoral free trade with the United States in urban transport equipment, textiles, agricultural equipment, and petrochemicals.
- 1983-84 Series of cases involving the possibility of countervailing duties and safeguards measures in the United States cause alarm in Canada. Softwood lumber, carbon, steel, copper, and pork are all threatened with trade-restricting measures which would adversely affect Canadian access to U.S. markets.
- 1984 Generally positive reaction by the United States to the free trade initiative. Red meat and computer services added to the list of items for consideration.
Autumn: The Senate and House of Representatives pass a bill authorizing the Reagan Administration to negotiate bilateral trade agreements. Legislation names only Canada and Israel as possible partners.
November: Donald Macdonald, Chairman of the Royal Commission on the Economic Union and Development Prospects for Canada, announces his support for a free trade agreement with the United States.
- 1985 March 18: At the "Shamrock Summit" in Quebec City, President Reagan and Prime Minister Mulroney sign Declaration on Trade in Goods and Services which aims to promote a secure climate for bilateral trade.

- September 5: Report of the Royal Commission on the Economic Union and Development Prospects for Canada released. Report urges negotiations for a free trade agreement with the United States.
- September 26: Prime Minister announces in Parliament that Canada would pursue a trade agreement with the United States in order to "secure, expand and enhance" access to U.S. markets.
- October 1: Prime Minister requests in writing negotiations to reduce barriers in goods and services. October 2: President Reagan accepts Canadian proposals.
- December 10: President Reagan notifies Congress of intent to seek fast-track authority to negotiate Canada-U.S. free trade agreement.
- 1986 April 23: The U.S. Senate Finance Committee grants negotiating authority in a 10-10 vote.
- October 16: Canada affected by a number of protectionist measures, especially a Commerce Department ruling to impose a 51% duty on Canadian lumber.
- Seven meetings held between the Chief Negotiators—Simon Reisman for Canada and Peter Murphy for the United States.
- 1987 January 27: In the annual State of the Union Address, President Reagan states commitment "to complete an historic free trade arrangement between the world's two largest trading partners—Canada and the United States."
- September 23: During negotiations in Washington (22nd meeting since the start of the talks), Canadian Chief Negotiator Simon Reisman walks out of the negotiations, stating that "[t]he U.S. is not responding on elements fundamental to Canada's position. I have therefore suspended the negotiations."
- September 25: In a speech, Canadian Trade Minister Pat Carney outlines Canadian demands that the United States must respond to if negotiations are to begin: clear rules on what is fair trade practice; speedy binding resolutions to disputes over matters such as duties imposed by each country on the other's products; increased access to each other's agricultural and food products in a balanced way; changes in automotive trade only if increased production and employment in both countries; removal of all tariffs and non-tariff barriers between the two countries and no new barriers introduced.
- September 28 and October 1: High-level meetings held to resolve differences.
- October 2-3: Final negotiating session in Washington.
- October 4: Prime Minister Mulroney announces an agreement in principle.
- 1988 January 2: President Reagan and Prime Minister Mulroney sign the Canada-United States Free Trade Agreement which goes into effect January 1, 1989.

SOURCES:

John Whalley et al., *Canadian Trade Policies and the World Economy*, in 9 ROYAL COMMISSION ON THE ECONOMIC UNION AND DEVELOPMENT PROSPECTS FOR CANADA 35-39 (1985).

CANADA, DEP'T OF EXT. AFF., CANADA-U.S. TRADE NEGOTIATIONS: A CHRONOLOGY (1987).

APPENDIX II

A CHRONOLOGY OF MEXICO-U.S. TRADE NEGOTIATIONS

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| 1980 | After negotiating to accede to the GATT, Mexico decides against joining, mainly for political reasons, including the desire not to have Mexico's trade too closely tied to the United States. Emphasis remains on "development from within." |
| 1982 | August 8: Debt crisis. Mexico announces it cannot make scheduled payments on its \$8.6 billion of debt. The IMF provides assistance. Trade dispute investigations increase in the United States against Mexico. Six cases mainly dealing with agricultural products, chemicals and steel. |
| 1983 | President de la Madrid announces intention to open and modernize the Mexican economy.
Seven complaints investigated by the U.S. International Trade Commission involving cement, bricks and tiles, glass and other steel products. |
| 1984 | USITC conducts eight more investigations. Option of a free trade area between Mexico and the United States raised by Steven Weintraub. |
| 1985 | April: The United States and Mexico conclude a three-year bilateral Understanding on Subsidies and Countervailing Duties. Mexico to be given the "injury test" in the United States countervailing duty investigations. In return, Mexico agrees to eliminate export subsidy programs.
July 25: Mexican Executive Decree introduces major trade reforms to rationalize import policy in an effort to stimulate economic adjustment and increase non-oil exports. |
| 1986 | Mexico joins the GATT. Terms of accession not nearly as liberal as those negotiated in 1979. Mexico committed to extensive trade liberalization program. |
| 1987 | The United States and Mexico conclude Framework Agreement establishing a bilateral consultation mechanism for trade and investment. Immediate Action Agenda also set up with bilateral consultations in following areas: textiles, agriculture, steel, investment, technology transfer, electronics, intellectual property, and services. |
| 1988 | President Salinas takes office. |
| 1989 | The United States and Mexico sign Understanding on Trade and Investment Facilitation Talks (TIFTs) which stems from the 1987 Framework Agreement. The TIFTs provide an umbrella for talks in specific product areas. An Action Plan is also signed. Talks begin in November on standards, testing and certification, and petrochemicals.
The United States doubles its quota on Mexican steel.
Ways and Means Committee of the U.S. House of Representatives requests the USITC to conduct a two-part study on Mexican trade and investment reforms and provide a summary of experts' views on the prospects for future U.S.-Mexican trade relations. The study reports that an overwhelming majority of experts support an FTA between the United States and Mexico as a way of enhancing their bilateral relationship. |

1990

January: President Salinas goes to Europe and realizes preoccupation with regional integration (EC 1992, EEA) and rebuilding Eastern Europe. Concludes Mexico had better seek closer ties with the United States (and Canada).

February: Agreement with the United States on textiles. Eliminates quantitative restrictions on 52 types of Mexican textiles and increased quotas for 38 other categories.

March 15: Canada and Mexico sign 10 bilateral agreements covering the establishment of a dispute settlement mechanism, ending double taxation, improving customs procedures, and initiating projects to develop agriculture and forestry.

March 28: Mexico and the United States announce intention to work toward a formal FTA. Salinas pledges to first consult with domestic groups and the Mexican Senate before proceeding.

May 22: Mexican Senate agrees with the Salinas initiative to open free trade negotiations with the United States. Senate report states U.S.-Mexico FTA would complement trade liberalization policies of Mexican president, but recommends against pursuing a common market.

June 10: Presidents Bush and Salinas announce intention to initiate negotiations for a comprehensive FTA.

August 21: President Salinas writes to President Bush to formally request FTA negotiations.

September 24: Canadian Trade Minister announces Canada will seek to join negotiations with the United States and Mexico.

1991

February: Mexico requests a GATT dispute settlement panel to investigate a U.S. embargo on tuna imports. The United States implemented the embargo in October 1990 according to its Marine Mammal Protection Act which establishes standards for tuna fishing in the tropical Eastern Pacific in order to reduce incidental dolphin kill. The embargo also applies to intermediary countries.

February 5: President Bush formally informs Congress of his intention to begin talks with Mexico and Canada to create a North American Free Trade Area.

March 1: President Bush requests a two-year extension of fast-track negotiating authority which would allow the Uruguay Round negotiations to be completed and allow the NAFTA negotiations to begin.

Opposition in the United States mounts to fast-track negotiating authority for NAFTA and for the NAFTA negotiations in general. Opponents include labor groups, textile and apparel manufacturers, farmers, consumer groups and environmentalists.

May 1: The Bush Administration submits an "Action Plan" to Congress outlining how labor and environmental concerns will be addressed in the negotiations with Mexico in order to secure enough support for fast-track negotiating authority.

May 24: Congress grants fast-track authority. Two-year extension given to complete the Uruguay Round and begin NAFTA talks.

June 11: Negotiations between Mexico, the United States, and Canada for a North American FTA begin.

- Discussions lead to 18 working groups classified under 6 topic headings. Under the Market Access group, sectoral interests are reflected, including agriculture, autos, textiles, energy, as well as tariff/non-tariff barriers, rules of origin and government procurement. Other broad negotiating groups include Trade Rules, Services, Investment, Intellectual Property, and Dispute Settlement. According to the "Action Plan" environmental concerns are to be dealt with on a parallel track.
- September: The GATT Panel Report on the "Tuna-Dolphin" dispute is released. The Panel agrees that the U.S. embargo was inconsistent with GATT disciplines, but that the U.S. "dolphin safe" labelling provision is consistent.
- 1992 August 12: NAFTA negotiations are concluded. Once ratified by the governments involved, it is scheduled to go into effect January 1, 1994.
- September 8: U.S. Congress opens hearings on NAFTA. The Bush Administration stresses NAFTA will create new jobs for Americans.
- November 3: Bill Clinton elected President of the United States. He supports NAFTA, but promises to negotiate side agreements on the environment and labor.
- December 17: Leaders of the three governments sign NAFTA. The agreement must still be ratified by the legislatures.
- 1993 March 17-18: Negotiations on the side agreements begin in Washington.
- August 13: Canada, the United States and Mexico complete negotiations on North American Agreements on Labor and Environmental Co-operation.
- October 25: Jean Chrétien elected Prime Minister of Canada. Promises to reopen NAFTA negotiations.
- November 17: U.S. House of Representatives passes NAFTA legislation. Clinton Administration had to engage in last minute negotiations to ensure sufficient support, but NAFTA passes with a vote of 234 to 200.
- November 20: U.S. Senate ratifies NAFTA.
- November 29: U.S. Trade Representative Mickey Kantor meets Canadian Minister for International Trade Roy MacLaren to discuss Canadian concerns.
- December 1: Prime Minister Chrétien announces Canadian concerns are satisfied for improvements in NAFTA on environment and labor, subsidies, anti-dumping, dispute resolution, and energy.
- 1994 January 1: NAFTA goes into effect.
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SOURCES:

Compilation from various issues of GLOBE AND MAIL and FIN. TIMES.

CANADA, DEP'T OF EXT. AFF. & INT'L TRADE, NAFTA: WHAT'S IT ALL ABOUT? 10-11 (1993).

Office of Prime Minister, Canada, *Prime Minister announces NAFTA improvements; Canada to proceed with Agreement*, Press Release (Dec. 2, 1993).

Colleen Hamilton, *News and Events*, 16 WORLD ECON. (No. 5, 1993).

Colleen Hamilton, *News and Events*, 17 WORLD ECON. (No. 1, 1994).

Steven Weintraub, *Free Trade Between Mexico and the United States?*, The Brookings Institution, Washington, D.C. (1984).

Whalley, *Regional Trade Arrangements*, supra note 6.

