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HUGO PEREZCANO

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Hugo has taught law at the Escuela Libre de Derecho in a joint program with the International Chamber of Commerce, Monterrey Institute of Technology and Higher Education and Universidad Iberoamericana. His expertise is in economic law, international trade law and negotiations, and NAFTA.

EXECUTIVE SUMMARY

The 20-year anniversary of the North American Free Trade Agreement (NAFTA) has been seen as another milestone in the ongoing trade relations between Mexico, Canada and the United States. It offers a good opportunity to assess how the agreement has worked and to consider whether regional integration can be enhanced.

There are many ways to evaluate NAFTA. This paper undertakes a stratified analysis, while considering each party's perspective. Such an approach places NAFTA in its historical context while also looking forward, in order to reflect on whether a fuller integration can be achieved to assist the three parties in facing the significant global challenges of today.

The three NAFTA parties expected trade and investment flows to increase as a result of the agreement's operation. However, their respective policy objectives in entering into trilateral negotiations differed.

Trade between Canada and the United States grew steadily following the end of World War II to become the largest between any two nations in the world. Consequently, entering into a free trade agreement (FTA) became an obvious step in taking advantage of this reality. Canada and the United States negotiated a bilateral FTA that came into force in 1989. For Canada, NAFTA was a natural extension of the Canada-United States Free Trade Agreement (CUSFTA) that would grant it preferential access to the Mexican market. Canada also saw NAFTA as an opportunity to improve and build on the CUSFTA.

The United States expected to benefit from greater market openness in Canada and Mexico, but it had other policy objectives as well in entering into the CUSFTA and later NAFTA. On one hand, the United States took advantage of negotiating with like-minded nations to drive the position it had advanced in the Uruguay Round on new and difficult topics in the multilateral forum: liberalization of trade in services (including through cross-border investment); the establishment of multilateral rules for the protection of intellectual property rights; and reducing trade barriers for goods. On the other hand, Mexico had embarked on a significant market-oriented reform and needed NAFTA for it to succeed. The United States' participation in the NAFTA negotiations was founded, in part, on the recognition that an economically prosperous Mexico was in its best interest, not only in terms of its economic policy, but also in terms of its foreign policy toward Mexico and Latin America.

Mexico's economic crisis in the early 1980s compelled it to restructure its foreign debt and prompted a dramatic shift in its economic policy. Mexico undertook a significant economic reform and, in little over a decade, went from being a closed to an open economy. However, without

NAFTA, it is unlikely that the economic reform would have been as profound, and very uncertain how long it would have lasted. Mexico saw NAFTA as a means to push further its economic reform and to provide certainty and long-term economic stability, as well as self-discipline.

Assessing NAFTA 20 years later, there is no doubt that NAFTA accomplished the goal of increasing trade and investment flows among the three parties, even exceeding expectations. NAFTA also essentially achieved each party's main policy goals when setting out to negotiate the agreement.

To a large extent, NAFTA has worked well and mostly as expected. The great majority of the transactions happening daily in the region take place uneventfully, in accordance with the NAFTA rules. However, certain disputes remain unresolved and have had far-reaching consequences that go beyond the specific sectors and bilateral trade relations.

NAFTA could be significantly improved by the parties' compliance with their NAFTA obligations. NAFTA could also be improved in other areas, such as government procurement, by enhancing access to each party's market as originally provided for under NAFTA, and by liberalizing sectors where each party adopted reservations. NAFTA could be further improved by, for instance, enhancing border crossings, creating a North American transportation network, the regional integration of animal and plant health and food safety inspection services, and fostering regulatory cooperation and education initiatives, with a view to achieving regulatory uniformity in many sectors. The NAFTA parties could also jointly address other related topics such as security of energy supply, energy efficiency, sustainable development and climate change, the development and integration of regional energy infrastructure, the development of energy distribution networks, low-carbon technologies, carbon capture and the shift to alternative energy.

INTRODUCTION

The twentieth anniversary of NAFTA is yet another opportunity to assess the current state of trade relations among Mexico, Canada and the United States. The anniversary has again sparked debate between NAFTA critics and supporters. Indeed, in looking at arguments on one side and the other, one might say that it has rather stirred the same debate that took place more than 20 years ago between the time that NAFTA was being negotiated and when it was finally approved by each country's legislature. This paper asks whether NAFTA has worked as it was intended, and whether regional integration can be enhanced.

There is no single, correct approach to evaluate NAFTA. Even though an obvious benefit for all three countries was the increase in regional trade and investment flows, an analysis at that level alone would be incomplete. Yet, because each country's policy objectives and expectations in entering into NAFTA differed from one another, the agreement's effects should also be looked at from different perspectives. With this in mind, this paper uses a stratified analysis, peeling through some of NAFTA's layers, considering the different perspectives of each NAFTA party and what each set out to accomplish, beyond enhancing trade and investment flows — but certainly without disregarding them.

This paper therefore begins by recalling the three countries' main policy objectives in negotiating and entering into NAFTA. It then goes on to assess whether the agreement has achieved its goals in terms of regional trade and investment flows, and realizing the parties' policy objectives. It also looks at NAFTA on its own terms: the parties' compliance with the agreement's provisions, certain enhancements that the parties decided to overlook and reservations that each of them made. Finally, it looks at key areas that have consistently been identified as requiring attention from the NAFTA parties. Such an approach will place NAFTA in its historical context while also looking forward — not only at the next 20 years but also beyond, since NAFTA, as a policy instrument, is more far-reaching than that. At the same time, NAFTA is a policy instrument that was designed more than 20 years ago, and one that has remained static.

POLICY OBJECTIVES AND EXPECTATIONS

Canada

Prior to NAFTA coming into force in 1994, Canada and the United States had already entered into a comprehensive bilateral FTA (the CUSFTA), which had come into force exactly five years earlier, on January 1, 1989. At the time, it was perhaps the broadest FTA in the world (Villarreal and Fergusson 2013, 32), comprising the following: rules on trade in goods, including tariff elimination on all products within 10 years (by 1998), as well as the elimination of most non-tariff barriers[1] and restrictions on the use of safeguards; liberalization of covered services based on national treatment (that is, eliminating restrictions imposed on foreigners, unless those same restrictions are imposed on nationals), including (albeit on a more limited basis) liberalization of trade in financial services; liberalization (also based on providing national treatment) and other

1 The CUSFTA maintained import quotas to protect each country's most sensitive agricultural products, which were covered by their respective farm policies. These quotas were carried over to NAFTA unchanged. However, the Uruguay Round agreements required that all import quotas be "tariffied," that is, converted into tariffs, which resulted in the adoption of new, very high import duties (in some cases reaching more than 300 percent) on such products. Thus, while the initial agreement between Canada and the United States was intended to eliminate all tariffs, ultimately some remained as a result of the Uruguay Round process of tariffication.

substantive protections for cross-border investments;[2] expanded access to each other's federal government procurement markets; and dispute settlement provisions.

Over the years after World War II, trade between Canada and the United States gradually increased until it was the largest between any two trading partners in the world (MacDonald 1998). For Canadian policy makers and the private sector, the need to take advantage of this reality was evident, as the 1965 Auto Pact had already shown (ibid.). However, the level of existing trade barriers in Canada's access to the US market was a secondary concern to the threat of growing protectionism in the United States (McCulloch 1990). Thus, the dispute settlement mechanisms that were negotiated were seen as central elements in securing such access, as was the prospect of developing new rules on trade remedies within seven years of the agreement's entry into force (Tuomi 1988).[3]

NAFTA developed following a Mexican proposal to the United States to negotiate an FTA. Canada was not at the forefront of the initiative. However, it seemed like a natural extension of the CUSFTA that would provide Canada with access to the Mexican market and close to 100 million potential consumers. It also offered Canada the opportunity to improve and build on the CUSFTA. There was concern that the North American market could develop in a "hub and spoke" pattern, with the United States becoming the hub "from which investors could serve not only the large US domestic market but also the Canadian and Mexican markets through free trade 'spokes'" (MacDonald 1998, 60-61), and Canada thus finding itself in a disadvantageous position. Canada saw the CUSFTA as a platform for its private sector to achieve global competitiveness, and was therefore eager to become a part of NAFTA and the world's largest free trade area (MacDonald 1998). At the outset, Canada's approach to the negotiations was somewhat defensive, but as negotiations progressed Canada became more alert to the significant opportunities for improving the provisions of the CUSFTA. The Canadian government began to stress the importance of ensuring that Canadians achieve an equal footing with Americans and Mexicans in the North American marketplace.

The United States

The US policy objectives in entering into the CUSFTA and later NAFTA were quite different. Of course, the United States was simply on the other side of the same reality of increased trade with Canada, and FTAs also represented benefits for US businesses, as the Auto Pact had earlier shown. But other US policy objectives are somewhat more difficult to grasp. The Reagan administration has been characterized by some as pro free trade (Griswold 2004), and as truly protectionist by others (Richman 1988). For instance, President Ronald Reagan's administration was instrumental in launching the Uruguay Round as well as trade negotiations with Canada and, when these were successfully concluded, President Reagan signed the CUSFTA and successfully passed it through Congress. At the same time, the administration imposed "voluntary" restraints on several countries to curtail their exports to the US market and, in the context of US trade with Canada, it imposed restrictions on imports of softwood lumber (the list of actions on one side and the other is, of course, longer). However, one commentator explains:

> Consider the matter of "free trade." In spite of quadrennial outbursts of campaign hyperbole, both Democratic and Republican administrations have stood for free trade — the proposition that open, competitive markets are better than closed markets. This consensus explains why the president's powers to negotiate for the reduction of tariffs and other trade barriers have been routinely renewed since 1945 in a series of trade acts, legislation typically supported by lawmakers from both parties. It explains why, in 1979, in conjunction with the "Tokyo Round," Congress adopted innovative codes leading to freer trade by a vote that was almost unanimous. It explains why Congress overwhelmingly ratified free trade with Canada in 1988. Even the Trade Act of 1988, which mandated the president to retaliate against countries that effectively close their markets to U.S. business, was as much a statement in favor of the free flow of goods and services as a warning that the U.S. government would protect key American producers. (Vernon 1990, 11)

The United States has, for the most part in recent history, been in favour of free trade, but there have been detractors and domestic tensions — often significant — both among its citizenry and in Congress. Paraphrasing another commentator, it would be fair to say that the United States has "championed free trade while selectively deviating from it" (Griswold 2004, paragraph 6). In any event,

2 The undertakings on investment were applied on a prospective basis only. Existing laws, policies and practices were grandfathered except where changes were specifically agreed.

3 Article 1907 of the CUSFTA established a working group that would "seek to develop more effective rules and disciplines concerning the use of government subsidies" and "a substitute system of rules for dealing with unfair pricing and government subsidization." Article 1906 stated that failure to implement the new regime within seven years of the agreement's date of entry into force would give either party the right to terminate it with six months' notice (Government of Canada 1987).

when the United States and Canada engaged in bilateral free trade negotiations, they were also involved in the Uruguay Round negotiations, which comprised, at the urging of the United States, several new and difficult topics in the multilateral forum: trade in services, investment regulations and the protection of intellectual property rights. These topics were taken up in the less controversial CUSFTA — and later expanded in NAFTA. Rachel McCulloch suggests that the United States, disillusioned with progress in the earlier years of the Uruguay Round, was retreating from the multilateral approach as a threat as well as an inducement to its trading partners. She explains that, in the absence of greater cooperation, the United States "was prepared to opt for alternative arrangements… negotiated with like-minded nations only" (McCulloch 1990, 86). In fact, the United States did not step away from the multilateral forum, but rather pursued multilateral, regional and bilateral initiatives simultaneously.

A more reasonable conclusion is that the United States was taking advantage of negotiations with like-minded nations — to be sure — to drive its position in the multilateral forum as well. For instance, in the CUSFTA the result on intellectual property was limited to an undertaking to cooperate in other fora, notably the Uruguay Round, to improve protection for intellectual property. As noted by other commentators (in reference to NAFTA), bilateral and regional initiatives were seen as more likely to facilitate, rather than impede, global trade liberalization. They provided US negotiators more leverage in the Uruguay Round by encouraging other countries to be more forthcoming on matters such as the protection of intellectual property rights and granting more access for trade in services in addition to goods (Bello and Holmer 1993, 14). For the United States, the NAFTA negotiations represented the opportunity to gain economic benefits. In 1991, Ambassador Robert Zoellick (then counsellor of the US Department of State), citing a study prepared by the US International Trade Commission, told the Senate Foreign Relations Committee that NAFTA would benefit the US economy by expanding trade opportunities, lowering prices, increasing competition, improving the ability of US firms to exploit economies of scale and increasing real income for skilled and even unskilled workers in the United States. He added that it would increase sales for US firms and improve their operating efficiency by eliminating trade barriers with Mexico, creating the largest market in the world. Importantly, NAFTA would also help secure the reduction of trade barriers and market openings that Mexico had unilaterally undertaken in recent years. Ambassador Zoellick also referred to broader US foreign policy objectives: achieving a historic reconciliation with Mexico; giving economic and political impetus to address pressing bilateral issues, including illegal immigration, narcotics and environmental protection; promoting closer cooperation to address other common foreign policy issues such as conflicts in Central America; and sending a strong and encouraging signal throughout Latin America regarding the United States' commitment to free trade and open markets and its desire to remain at the forefront of international economic policy (US Department of State 1991). However, Paul Krugman bluntly summarized the United States' main policy objective as follows:

> The truth about NAFTA may be summarized in five propositions:
>
> - NAFTA will have no effect on the number of jobs in the United States;
> - NAFTA will not hurt and may help the environment;
> - NAFTA will, however, produce only a small gain in overall U.S. real income;
> - NAFTA will also probably lead to a slight fall in the real wages of unskilled U.S. workers;
> - For the United States, NAFTA is essentially a foreign-policy rather than an economic issue. (Krugman 1993, 13)

Krugman explained that NAFTA's labour and environmental costs to the United States would be minimal and its economic benefits, while real, would also be small. But Mexico had embarked on a significant market-oriented reform, the success of which was not guaranteed. Mexico needed NAFTA for the reform to succeed and, in light of the risk of financial and political crisis and "the return to the bad old days of U.S.-Mexican relations," the United States had a strong interest in helping Mexico achieve success (ibid., 18-19). Thomas A. MacDonald concurred in not-so-harsh words, but was still on point. He noted that United States' participation in NAFTA was founded on the recognition "that an economically prosperous Mexico was in the US best interest — from the point of view of immigration policy, foreign policy, drug control, as well as mutual economic benefit" (MacDonald 1998, 60).

Mexico

In the 1970s, Mexico's economy was characterized by high barriers to trade, import substitution, limitations on foreign investment, significant government intervention in economic activities through regulatory barriers, activities reserved to the state and state-owned enterprises, including through expropriation and nationalization. It was supported in large part by high oil prices and heavy borrowing. Mexico initially relied on financing from international institutions intended to stimulate economic development. Loans often carried requirements to ensure that financing would be used in economic development programs under international supervision, and that they would be repaid according to schedule. However, in later years the increased availability of private capital, along with high oil prices, made it easier to borrow from private lenders who did not have a stake in how funds were used (MacChiarola 1990).

During this period, Mexico toyed with the idea of joining the General Agreement on Tariffs and Trade (GATT). It became an observer and, in fact, a working group was established to discuss and negotiate the conditions for Mexico's accession. The working group made significant progress but did not complete its work.

Mexico's prosperity made it politically easier to conceal inefficiencies and low productivity (of state-owned enterprises, in many instances) and to delay — or rather avoid — other alternatives such as devaluation, increasing taxes and domestic prices, as well as to ignore social aspects and national economic goals in how it used borrowed funds (ibid.). Mexico was also able to postpone reducing trade barriers and making regulatory and other changes that were required in order for it to accede to the GATT. Indeed, in May 1980 Mexico announced it would postpone indefinitely its accession to the GATT.

The government's focus turned to "administering its wealth" (Carmona 2015) — as it was described by President José López Portillo at the time — until oil prices dropped and it could no longer meet its payment obligations. The ensuing economic crisis compelled Mexico to restructure its foreign debt and prompted a dramatic shift in its economic policy with the change of the administration in 1982. In little more than a decade, Mexico's economy was transformed. Between 1982 and 1994, Mexico undertook a major tax reform; it privatized most government-owned enterprises; it conducted an agrarian reform, which modified the land tenure system that stemmed from the Mexican Revolution, thereby allowing small land owners to transfer their lands, and larger extensions of farmland to be owned privately; it finally joined the GATT in 1986 and implemented the required changes by reducing tariffs, eliminating import quotas and enacting legislation to comply with other international obligations such as those dealing with customs procedures, technical barriers to trade and trade remedies; it began an extensive deregulation program, which included the elimination of limits on foreign investment; and it adopted sound macroeconomic and monetary policies, which included giving independence to its central bank, Banco de México.

Against this backdrop, Mexico proposed to the United States that the two countries negotiate an FTA. The United States required that it be a comprehensive agreement, building on the CUSFTA and the proposals that it had tabled in the Uruguay Round on tariffication of import quotas, trade in services, investment and intellectual property. The United States also required complete elimination of tariffs in bilateral trade. Mexico agreed.

Political rhetoric aside, for Mexico, NAFTA was a catalyst more than anything else. In addition to the obvious benefits of increasing the much-needed trade and investment flows, policy makers saw it as an opportunity to deepen and consolidate, and a means to cement the economic reform that they had already embarked on. For Mexico — more so than for the United States — it was clear that without an international agreement such as NAFTA, there was no guarantee of a long-lasting economic reform. Mexico's post-revolution history was marked by six-year political cycles: every time a new president took office, new and different policies were adopted, more often than not disregarding what had been done before and losing continuity. That was not what Mexico's policy makers needed.

Mexico became a full participant, and one of the most active ones, in the Uruguay Round. It tariffied all its import quotas early on, and in NAFTA it agreed to phase out all tariffs in its trade with the United States within 15 years, except for one sector — used cars.[4] This was something that Canada and the United States had not been able to accomplish in the CUSFTA or even later in NAFTA. Indeed, Canada and the United States were unable to move beyond what they had agreed to in the CUSFTA on agriculture, and thus simply agreed to incorporate the corresponding CUSFTA chapter into NAFTA, along with its exceptions, such as for Canada's supply management policy for dairy, poultry and eggs, and sugar for the United States.[5]

In NAFTA, Mexico committed to further liberalization of trade in goods and services, and of investment, than what it had achieved unilaterally and as a result of its accession to the GATT. But then it went further, and enacted laws as part of the NAFTA implementation package that essentially extended those benefits to service providers and investors from anywhere else. For instance, it amended its laws on telecommunications, land transportation — both road and railway — financial services and expropriation, among others.

Mexico also enacted new laws on foreign trade, customs, competition policy, industrial property, trade in seeds and protection of plant varieties, to name a few. It created modern regulatory bodies and granted them autonomy, such as the Federal Competition Commission, the Commission on Energy Regulation, the Federal Commission for Improving Regulation (in charge of publicizing draft government regulation related to economic activities, receiving public comments, streamlining regulation and reducing associated costs),

4 Mexico agreed to phase out tariffs on used cars over 25 years from the date that NAFTA entered into force — the longest phase-out period in the agreement.

5 Since Canada would not agree to eliminate tariffs on dairy, poultry and egg products, Mexico adopted reciprocal restrictions, a decision based on reciprocity rather than conviction.

the Mexican Industrial Property Institute, the National Copyright Institute and several others. It also continued privatizing state-owned enterprises.

Even without NAFTA, Mexico's policy makers would surely have carried on with their economic reform. However, it is unlikely that it would have been as profound, and very uncertain how long the changes would have lasted. Thus, NAFTA was an instrument of economic policy. In addition to the obvious improvement of the trade and investment flows, NAFTA was seen as a means to provide certainty and long-term economic stability, as well as self-discipline to Mexican authorities, especially through the dispute settlement mechanisms.

Of course, Mexico was well aware of the size of its economy, as compared to that of Canada and especially that of the United States. Therefore, as for Canada in the CUSFTA, the general dispute settlement mechanism between states was a cornerstone for maintaining the balance of the negotiations. Neither Mexico's policy makers nor its negotiators had any expectation that NAFTA would turn Mexico into a developed country, much less catapult it into becoming one. It was clear that, however important the economic benefits, NAFTA would not eliminate the asymmetries among the three countries, but the general dispute settlement mechanism would ensure that the deal that was ultimately reached would be respected and preserved in the long run.

ASSESSING NAFTA 20 YEARS LATER: HAS NAFTA ACHIEVED ITS GOALS?

Trade and Investment Flows

In analyzing the NAFTA strata, one must start with the topmost layer: trade and investment flows. As noted, for each of the NAFTA parties it was evident that entering into an FTA would boost trade and investment flows. If anything, such expectations were exceeded.

NAFTA had a significant impact on Mexico's trade and investment flows, since it is heavily dependent on trade with the United States. About 80 percent of its exports are to the United States, and slightly more than 50 percent of its imports come from there. Mexico's total trade reached $794 billion in 2014.[6] Its exports soared from $15.5 billion in 1980 — before President Miguel de la Madrid, who initiated the country's economic reform, came into office[7] — to $397.5 billion in 2014, 20 years after NAFTA came into force (Figure 1).[8]

6 All figures in this paper are in US dollars.

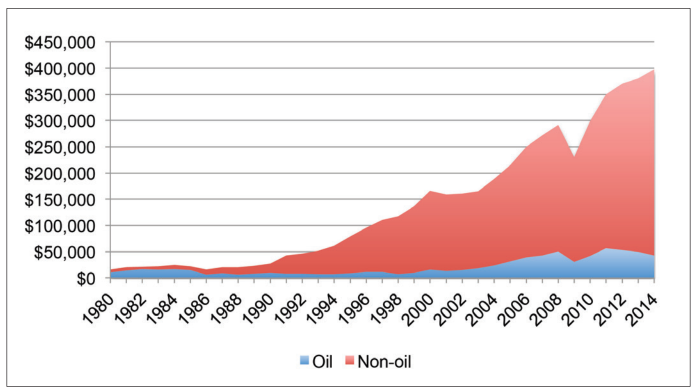
7 President Miguel de la Madrid Hurtado took office on December 1, 1982.

8 Data from Mexico's Instituto Nacional de Estadística y Geografía is used. It may vary from data reported by US and Canadian sources.

Looking more closely at the picture, however, we can see how Mexico's reform was reflected in its trade flows. First, non-oil exports began increasing significantly after Mexico joined the GATT in 1986, and the ratio between oil and non-oil exports inverted and grew. Between 1987 (the first full year after Mexico joined the GATT) and 1993, the year prior to NAFTA coming into force, exports increased from $20.5 billion to $51.9 billion. However, they increased significantly, almost 60 percent, in 1991, the year the NAFTA negotiations were launched, rising from $26.8 billion in 1990 to $42.7 billion the following year. In the 20 years that NAFTA has been in force, Mexico's exports have increased a staggering 553 percent. While oil remains Mexico's single-largest export product, it went from representing more than 67 percent of its total exports in 1980 to less than 11 percent in 2014.

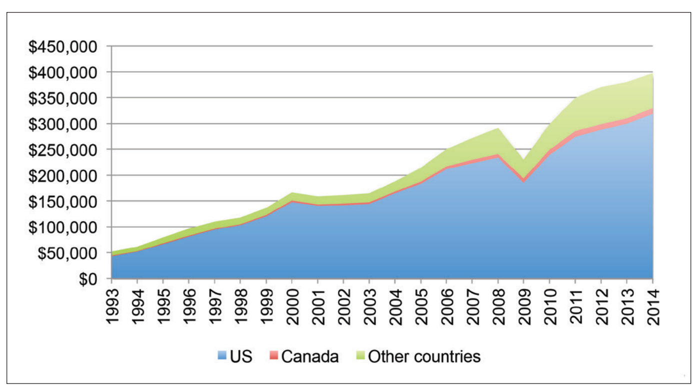
Exports from Mexico to the United States increased 643 percent since NAFTA came into effect, from $42.9 billion in 1993, the year prior to the agreement's entry into force, to $318.9 billion in 2014. Exports from Mexico to Canada increased almost 583 percent (although trade between Mexico and Canada is much smaller than trade between Mexico and the United States) (Figure 2). They rose from $1.6 billion in 1993 to $10.7 billion in 2014.

Figure 1: Mexico, Total Exports (US$ millions)



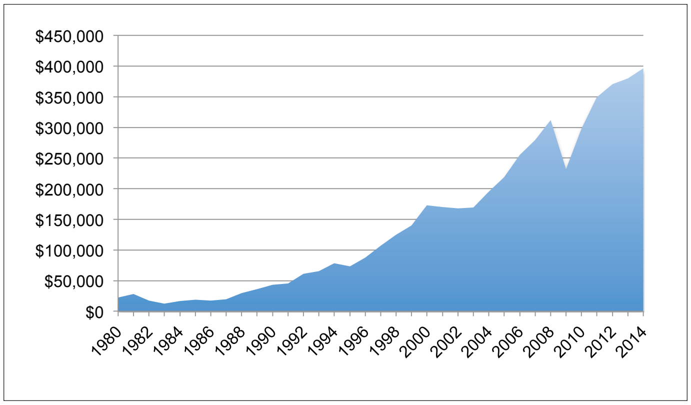
Source: Instituto Nacional de Estadística y Geografía, Mexico.

Figure 2: Mexico, Exports under NAFTA (US$ millions)



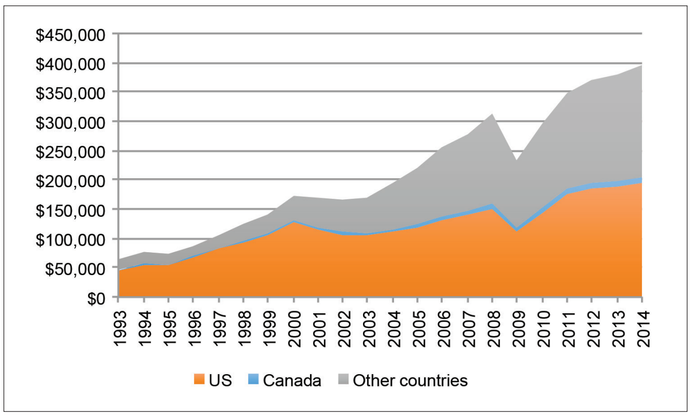
Source: Instituto Nacional de Estadística y Geografía, Mexico.

Figure 3: Mexico, Total Imports (US$ millions)



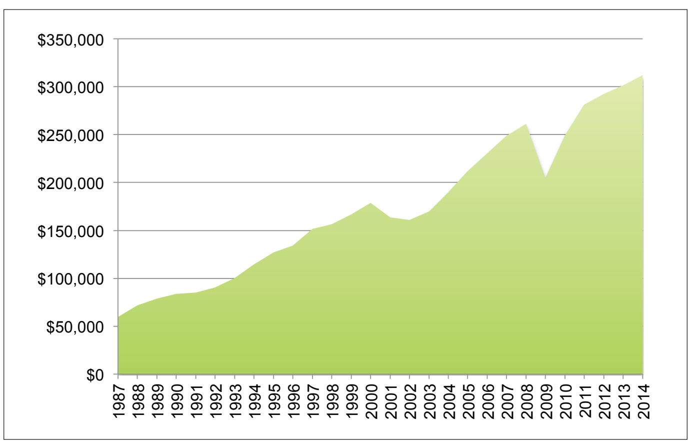
Source: UNCTAD Statistics (for figures from 1980–1990) and Instituto Nacional de Estadística y Geografía, Mexico (for figures from 1991–2014).

Figure 4: Mexico, Imports under NAFTA (US$ millions)



Source: Instituto Nacional de Estadística y Geografía, Mexico.

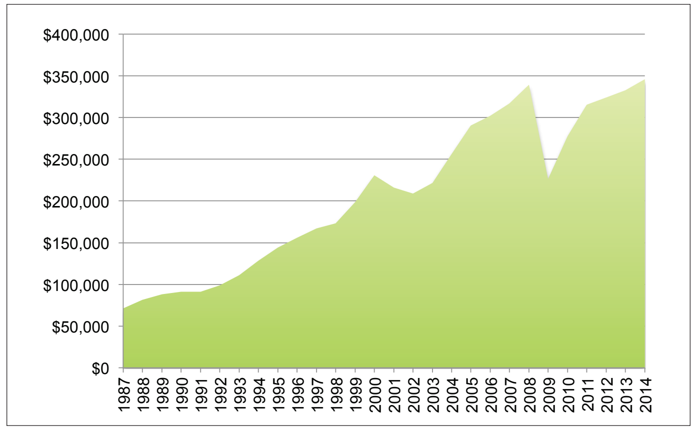
Figure 5: US Exports to Canada (US$ millions)



Source: US Census Bureau.

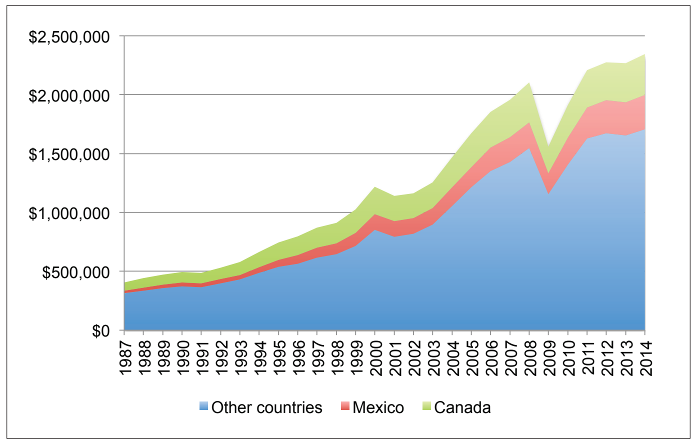
Imports paint a similar picture. They increased from $22.1 billion in 1980, to $396.5 billion in 2014. From 1980 to 1993, they increased from $19.7 billion to $65.1 billion. In the 20 years that NAFTA has been in force, imports into Mexico have increased almost 407 percent, going from $78.2 billion to $396.5 billion (Figure 3). Imports into Mexico from the United States under NAFTA have increased 331 percent, going from $45.3 billion in 1993 to $195.3 billion in 2014. Imports from

Figure 6: US Imports from Canada (US$ millions)



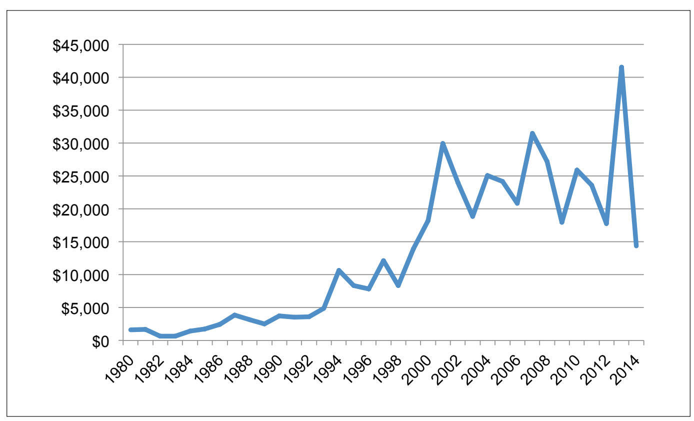
Source: US Census Bureau.

Figure 7: US Foreign Trade (US$ millions)



Source: US Census Bureau.

Figure 8: Mexico FDI Inward Flows (US$ millions)



Source: Secretaría de Economía de México.

Canada increased almost 755 percent. They went from $1.17 billion in 1993 to a little over $10 billion in 2014 (Figure 4).

Trade between the United States and Canada reflects a similar trend. In the first decade of the CUSFTA/NAFTA, trade between the two countries increased almost 139 percent, rising from $153 billion in 1988 to $365.3 billion in 1999. In the two decades that NAFTA has been in force, trade has increased more than 200 percent. US exports to Canada rose from $100.5 billion in 1993 to $312 billion in 2014 (Figure 5), while its imports from Canada increased from $91.4 billion to $346 billion over the same period (Figure 6).

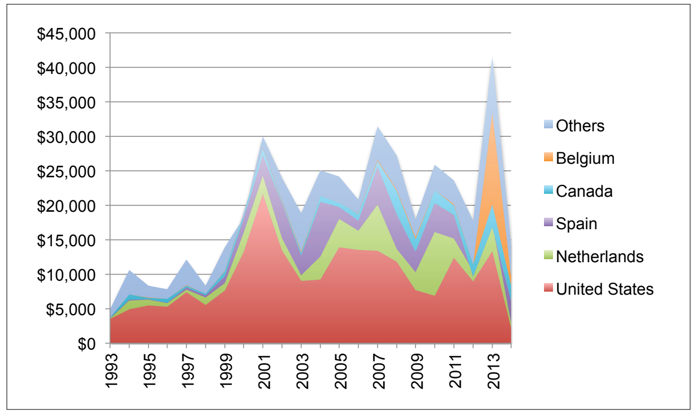
It should be noted, however, that both Canada and Mexico represent a much smaller proportion of the United States' trade and, therefore, NAFTA had much less of an impact on US overall trade flows (Figure 7).

Foreign investment in Mexico also reflects a trend similar to that of its trade flows, although results are far less impressive. Foreign direct investment (FDI) inflows increased significantly from 1987 (the year after Mexico joined the GATT) onward, and especially since NAFTA entered into force in 1994 (Figure 8). As in the case of trade flows, because Mexico's economy is so heavily dependent on the United States, the correlation between NAFTA and its trade and investment flows can readily be seen, as Figures 2, 4 and 8 show. However, this success cannot be attributed exclusively to NAFTA. It is principally a result of Mexico's overall economic policy, as described above. Mexico's FDI inflows initially maintained an upward trend. However, from 2000 onward, Mexico has been unable to maintain a steady increase in its investment inflows, as shown in the number of peaks and valleys on Figure 8. It should be noted also that statistical information does not paint an accurate picture, because many of the record figures of FDI inflows respond to individual transactions, for instance: the sale of one of Mexico's largest banks to Citigroup in 2001 for more than $12 billion; the sale of Mexico's second-largest brewery to Heineken in 2010 for more than $7 billion; and the sale of Mexico's largest brewery to Anheuser-Busch Inbev in 2013 for more than $13 billion. If those transactions are averaged out, the figures would show a more modest — but by no means negligible — average of about $20–$22 billion in yearly FDI inflows.

This is due to the fact that most of Mexico's economic reforms were undertaken in the early and mid-1990s, but no further significant changes occurred until it reformed its energy sector in 2013 and 2014. The sectors that were not liberalized in the 1990s remained unchanged in terms of Mexico's NAFTA reservations. Mexico has yet to carry out a substantive tax reform, requires further investment in infrastructure and faces numerous other problems that affect its ability to attract foreign investment, such as insecurity, corruption, poverty and income disparities, and the educational gap, to name a few.

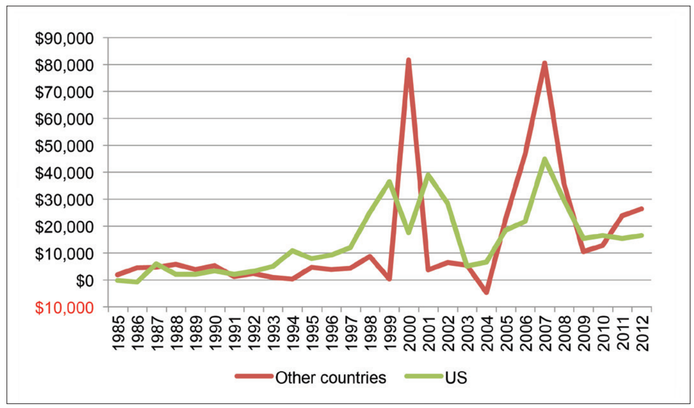
In the case of Canada, an upward trend in its inward and outward investment flows can be seen since NAFTA came into force, but it is not clear that a correlation can be established as in the case of Mexico (Figure 10 and Figure 11). The United States has consistently been the main source of FDI inflows into Canada. There was an important drop in US FDI inflows in 2000, in marked contrast with

Figure 9: Mexico, FDI Inward Flows by Country (US$ millions)



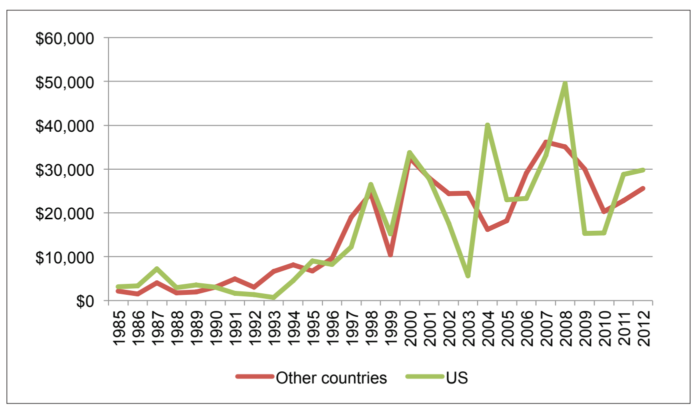
Source: Secretaría de Economía de Mexico.

Figure 10: Canada, FDI Inward Flows (US$ millions)



Source: OECD.

Figure 11: Canada, FDI Outward Flows (US$ millions)



Source: OECD.

a significant spike in FDI inflows from other parts of the world. The year 2000 has, nonetheless, been characterized as an anomaly from an FDI perspective, driven by the exuberance in the stock market that led to a surge in the number and value of acquisitions of Canadian companies by foreign, non-US entities (Parliament of Canada 2004). A similar trend was observed in 2006 and 2007, when foreign, non-US investors' acquiring of major Canadian firms led to a sharp increase in FDI inflows in Canada, which again contrasts with lower performance of FDI inflows from the United States (Government of Canada 2007; Government of Canada 2008). As for the United States, it has certainly benefited from greater market openness in Canada and Mexico but, again, because it is a much larger economy, regional FDI has had much less of an impact.

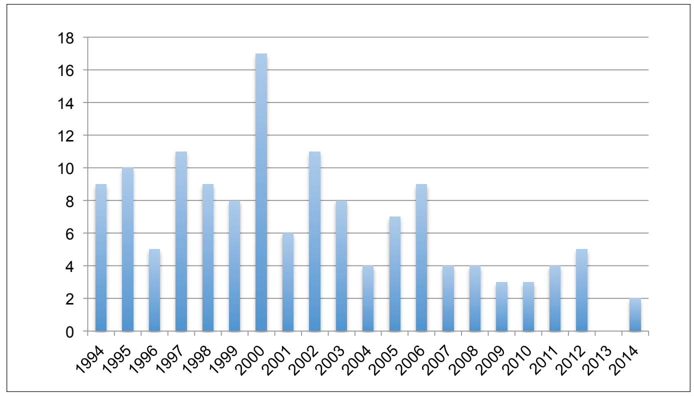
Policy Objectives

It should be kept in mind at the outset that, as already noted, to a large extent — but by no means exclusively — NAFTA was about Mexico. For Mexico, it was about Mexico and its economic reform; for the United States it concerned its foreign policy, mainly toward Mexico; and for Canada it meant improving the CUSFTA, gaining direct access to the Mexican market (rather than having to work through intermediaries in the United States) and pursuing North American market integration.

Looking deeper, there is little question that 20 years of NAFTA have succeeded in consolidating Mexico's economic policy. Indeed, having concluded the NAFTA negotiations, Mexico, as already noted, amended many of its laws or enacted new ones that essentially incorporated the degree of liberalization achieved in NAFTA on trade in services and investment, thereby extending those benefits to all investors, regardless of their nationality. It also conducted an aggressive negotiations program that, in addition to further consolidating liberalization on services and investment, extended preferences on trade in goods to its trading partners.

Mexico concluded NAFTA-like agreements with some Latin American countries. When it faced another severe financial crisis at the end of 1994 and into 1995, rather than backing out or availing itself of the agreements' exception clauses, such as those allowing it to adopt restrictions for balance-of-payment purposes, it pushed ahead with further liberalization in certain sectors where it had successfully negotiated reservations in NAFTA and subsequent agreements — for instance, it liberalized investment in the railway transportation sector — and it carried on with its trade negotiations program. Mexico extended NAFTA benefits to other countries through FTAs with the European Union and the European Free Trade Association countries, which it supplemented with bilateral investment treaties with many individual European nations (as no substantive investment protections were incorporated into the FTAs, given the different competences that were delegated to the European Commission and the EU member states). Mexico also entered into FTAs with Japan, Israel and other Latin American countries. While in later years that impetus declined, there is no doubt that Mexico achieved the goal of cementing its economic policy based on open markets. Indeed, more recently, Mexico has further liberalized sectors subject to NAFTA reservations, notably by opening up its energy sector.

Figure 12: Number of Cases Initiated under NAFTA Chapter 19



Source: NAFTA Secretariat, www.nafta-sec-alena.org.

The US foreign policy objective of helping Mexico achieve that goal was, therefore, also accomplished and, as the graphs show, the United States has certainly been the greatest beneficiary of such policy. By incorporating disciplines on trade in services and intellectual property, and completing tariffication of non-tariff barriers with Mexico, the United States also advanced its position in the multilateral negotiations.

Canada had different policy objectives. One was to gain access to the Mexican market. As shown, it achieved that goal. But Canada also saw the NAFTA negotiations as a way of improving the CUSFTA. NAFTA does go beyond the CUSFTA in certain important respects: it included enhanced liberalization on trade in services, as well as rules for the protection of intellectual property rights. It incorporated an investor-state dispute settlement (ISDS) mechanism. In light of the current discussion surrounding ISDS, some might debate whether this was an improvement. Nonetheless, there is little question that it is an enhancement to investment protection, which is the main concern of the investment chapter. At the conclusion of the negotiations, the Canadian government released a text documenting improvements to the CUSFTA that had been achieved through NAFTA (Government of Canada 1992, v and vi).

As for dispute settlement, the CUSFTA provisions were essentially carried over to NAFTA. The binational panel review of anti-dumping and countervailing duty orders has been used extensively, and in general it has functioned effectively (McRae and Siwiec 2010). The NAFTA Secretariat reported 139 cases initiated under NAFTA Chapter 19 since the agreement came into force, in addition to 33 cases initiated under the corresponding chapter (also Chapter 19) of the CUSFTA. Seventy-two of the NAFTA cases were terminated by withdrawal of the complaint, or by agreement of the parties without a decision having been reached by the panel; 63 were completed (in some cases with as many as six decisions by the panel of the new administrative decisions); and four were still active. A total of 22 cases have been initiated against Canada, 21 against Mexico and 96 against the United States. The number of cases initiated has declined in later years, but private parties continue to use the binational panel review system.

The development of new rules for trade remedies did not take place in the CUSFTA, and they were neither carried over nor addressed in the NAFTA context. However, it was the subject of negotiations in the Uruguay Round, which produced enhanced agreements on anti-dumping and countervailing duties. They did not go as far as Canada had intended — or would have wanted in its trading relationship with the United States, as Canada had taken the position in the CUSFTA negotiation that an FTA partner should not apply anti-dumping or countervailing duties on another FTA party — but enhanced rules did emerge, albeit in the multilateral context.

However, the NAFTA dispute settlement between states, which was seen as the ultimate safeguard of the balance of negotiations, fell short. This topic will be addressed below in the context of the sugar dispute between Mexico and the United States.

ANALYZING NAFTA ON ITS OWN TERMS

Compliance with NAFTA by the Parties

The great majority of the transactions happening daily take place uneventfully, in accordance with the NAFTA rules. There have been investment cases brought against each of the NAFTA parties by investors of another party: to date, Canada has reached a settlement in some cases and paid the awards in those that have been decided against it; Mexico has also paid awards in those cases that it has lost; and the United States has successfully defended all cases that it has been involved in. Yet, in general, the ISDS mechanism has worked well. Thus, NAFTA overall has worked well and largely as intended. There are, however, certain disputes that remain unresolved.

Transportation

Notwithstanding its NAFTA obligations, the United States has refused to open its transportation sector to Mexican service providers. Gradual opening was due to begin in December 1995 (three years after the date of signature of the agreement) and conclude in 2001. However, even though transportation authorities of both parties had prepared to open up cross-border transportation services, for political reasons the United States refrained from carrying through at the last minute. The two parties held negotiations for more than two years without success. Mexico then initiated a dispute settlement proceeding against the United States. In 2001, a five-member panel decided the case in Mexico's favour. However, at the time of writing, the United States has failed to comply with its NAFTA obligations. Mexico eventually suspended NAFTA benefits, in accordance with the agreement's dispute settlement provisions, by raising tariffs in August 2010 on 99 products imported from the United States, with an estimated impact of $2.5 billion (International Centre for Trade and Sustainable Development 2010). While this move did not result in an immediate solution, it focused minds in Washington, DC, on the need to address Mexico's legitimate concerns.

Both parties had agreed to implement a pilot program whereby the United States would gradually allow Mexican long-haul carriers access to the US territory, but the program recently expired and the United States has still not granted Mexican service providers access as required by the agreement.[9] This failure by the United States to comply with its obligations significantly increases costs in bilateral trade because of the inefficiencies it creates at the border. About 80 percent of the goods traded between Mexico and the United States are transported by road. On average, about 14,000 trucks cross the border from Mexico into the United States each day. Instead of one driver taking the cargo from the point of origin to its destination across the border, and returning to the country of origin with cargo to be delivered there, long-haul carriers are forced to stop within commercial zones located on a strip that does not extend beyond 25 miles on each side of the border , transfer their cargo to short-haul carriers (also called drayage trucks or transfers), which then take the cargo through customs on the export side, cross the border, go through customs on the import side and again transfer the cargo to long-haul carriers that will then take it to its destination (Frittelli 2014, 19). When the US Congress defunded the pilot program in 2009, Mexico suspended benefits amounting to $2.5 billion a year, which was Mexico's estimate of the cost that Mexican carriers incur by reason of the US violations of NAFTA.

Sugar

Even though the United States committed to — and indeed required — eliminating tariffs and other barriers so that there would be free trade in all goods, it has also failed to live up to its obligations as regards trade in sugar. This breach of NAFTA has had far-reaching consequences, because in practice it has meant the cancellation of the general dispute settlement mechanism between states.

First, the sweeteners dispute. The United States has long maintained a supply management program for sugar that artificially increases domestic prices: domestic production is controlled through a system of production quotas, and

9 The United States has implemented two pilot programs. The first was in force for a short time during the Bush administration, but it was terminated after one and a half years in operation because the US Congress withdrew the necessary funding. The second program was implemented in April 2011 by the Obama administration, and expired under its own terms in October 2014. At the time of writing, no follow-on pilot program has been implemented, nor has access been granted in compliance with NAFTA.

imports are also restricted through tariff-rate quotas with high import duties. Mexico and the United States agreed to liberalize trade in sweeteners (sugar and high-fructose corn syrup [HFCS]) in different stages. Import duties on HFCS, a lower-cost substitute for sugar in many industrial uses, such as soft-drink production, would be phased out over a 10-year period. Tariffs on sugar would phase out in 15 years, but the United States would grant Mexico increasing yearly duty-free quotas beginning roughly around the middle of the phase-out period,[10] if Mexico became a net surplus producer of sugar.[11] Mexico also agreed to tie its most-favoured-nation tariffs for sugar to those of the United States, thereby imposing a common external tariff that would maintain high prices for sugar in the region.

After NAFTA was signed — but before it obtained legislative approval in the United States — US producers argued that HFCS (imported from the United States) would displace sugar from the Mexican market and generate an artificial surplus (i.e., a surplus resulting not from excess production of sugar but rather from sugar displacement by HFCS) that Mexico could then export to the United States duty-free under NAFTA. They threatened to oppose approval of the agreement in the US Congress if certain adjustments were not made to account for such sugar displacement. In order to secure legislative passage of NAFTA, both countries reached an agreement that was formalized through an exchange of letters between trade ministers (referred to as the "sugar side letters" in policy circles). However, the agreement reflected by each party in its respective letter differed in how the surplus would be calculated and, thus, on the amount of sugar that Mexico could export duty free to the United States beginning in year seven of the phase-out period. The United States' letter provided for a lower quota.

Mexico and the United States held consultations over this issue throughout the phase-out period, but did not reach a solution. In 2000, Mexico initiated a dispute resolution proceeding. However, the United States blocked the establishment of a panel and refused to submit to the dispute settlement process.[12] Rather, it imposed its understanding of the 1993 side letters until the transition period was over. In the meantime, Mexico attempted to retaliate at different times by raising tariffs on imports of HFCS, imposing anti-dumping duties and adopting taxes on soft drinks sweetened with HFCS.

Even though there was no disagreement between the parties as to what rules applied after the transition, and the United States began granting access to Mexican sugar in accordance with NAFTA, the dispute has never really been resolved. In 2014, the United States initiated anti-dumping and countervailing duty investigations against imports of Mexican sugar, once again threatening to restrict access to its market. Mexico has generated a significant production surplus over the past several years, in large part because of the prospect of increased access to the US market and resulting, in part as well, from increased imports and domestic production of HFCS.[13] This is, in fact, how the market was expected to behave under NAFTA, once the transition was over: Mexico was intended to become a net surplus producer of sugar; and HFCS was intended to come into the Mexican market and displace sugar (both by way of imports from the United States and through domestic production by US enterprises established in Mexico[14]). The total surplus was intended to be exported to the United States. Therefore, given the threat of being unable to export a significant amount of sugar that would otherwise remain in the Mexican market and create a significant downward pressure on prices, and the time that dispute settlement proceedings would take (whether at the

10 The quotas were reciprocal, but the United States has historically been a deficit producer and thus a net importer of sugar.

11 Because of the high most-favoured-nation duty, Mexico would not be able to import sugar from the rest of the world to satisfy its own needs and export to the United States sugar produced domestically. In other words, bilateral trade in sugar was intended to be only of surplus production.

12 NAFTA provides that in every dispute each party shall appoint two panellists and agree on the fifth one, who shall act as chair. If a party does not make any of its required appointments or if they do not agree on the appointment of the chair within a specified time, the remaining panellists are selected by lot from a roster. The parties were required to establish a roster of up to 30 individuals willing and able to serve as panelists by the date of entry into force of NAFTA. However, the roster members had to be appointed by consensus and their terms lasted only three years (although they could be reappointed by consensus as well). Either disputing party may exercise a peremptory challenge against any individual proposed as a panellist who is not on the roster. The parties did establish a roster in 1995 but, by the time Mexico initiated dispute settlement proceedings, it had already expired. (Indeed, it had expired even before Mexico initiated the proceedings on transportation; in that case, however, the United States agreed to appoint panellists.) The United States refused thereafter to renew the roster or to appoint panellists in the sugar dispute.

13 Mexico produces about 7 million tons (all measurements are metric tons) of sugar each marketing year (from October of one year to September of the following year), but consumes about 5 million tons. Mexico also produces about 0.5 million tons (dry basis) of HFCS and imports approximately 1 million tons each year. HFCS and sugar are in a 1:1 ratio: one ton of HFCS displaces 1 ton of sugar.

14 HFCS is made from cornstarch. There were two Mexican companies that produced it. Since the NAFTA negotiations were announced, two of the largest US HFCS producers began negotiations with the Mexican owners to buy their plants and did so in the 1990s. This was well known to the US and Mexican NAFTA negotiators.

World Trade Organization (WTO) between Mexico and the United States, before a NAFTA binational panel between the Mexican sugar producers and the US Department of Commerce (the investigating authority) or before the US courts), an agreement was reached — or rather forced — in December 2014. This agreement restricts the volume of sugar that Mexico may export to the United States, and specifies the prices below which Mexican sugar may not be sold for export. Thus, rather than having achieved free trade in sugar, there is currently a managed trade arrangement in place.

But the more serious consequence of the sugar dispute is the practical elimination of the NAFTA state-to-state dispute settlement mechanism, as if the chapter had been ripped out of the agreement. There were four dispute settlement proceedings under NAFTA Chapter 20: one concerning Canada's ability to carry over the WTO tariffication of its import quotas on dairy, poultry and egg products to NAFTA; a second one regarding a safeguard action of the United States against Mexican broomcorn brooms; the third one was the transportation case; and the fourth was the sugar dispute. After that, there have been no further cases submitted to dispute settlement under NAFTA Chapter 20, not because there haven't been any disputes, but rather because of the futility of bringing a claim, in light of a party's ability to block the process.[15]

For Canada and Mexico, as the smaller economies, the dispute settlement mechanism was a key element in securing access to the US market and preserving the balance of the negotiations. As the sugar dispute clearly shows, in the absence of an effective dispute settlement mechanism, it is not difficult to alter that balance — more often than not, to the detriment of the smaller economy.

In sum, while the vast majority of trade and investment flows in the NAFTA region takes place uneventfully, the importance of the status of compliance with the agreement's obligations should not be underestimated. In the case of transportation, in addition to the impact on the specific sector itself (i.e., the inability of operators on both sides of the border to provide cross-border services), keeping the sector closed generates significant inefficiencies that undermine the trade benefits of the tariff concessions negotiated in the agreement by raising the cost of cross-border trade. The yearly $2.5 billion in lost benefits estimated by Mexico is only part of the picture, because it takes into account crossings from Mexico into the United States, but not the other way around. It ties in as well to other border inefficiencies, such as security checks and customs processing.

In the case of sugar, the impact of restrictions on the Mexican industry's ability to export larger amounts of the sweetener to the United States is self-evident. Even if today there may be doubts as to whether the US authorities or the US producers abused the trade remedy system to force restrictions on Mexican exporters, or whether the latter were selling sugar at dumped or subsidized prices in the US market, the end result is not free trade in sugar, but rather managed trade. One of the obvious benefits of free trade is increased competition, which in turn promotes lower prices that benefit the consumer. That objective has not been met. Managed trade hinders competition and impedes a decrease in prices.

More importantly, the sugar case had the very significant spillover effect of cancelling the state-to-state dispute settlement mechanism for resolving trade disputes. The consequences, as noted earlier, are far-reaching. It is not only that one dispute remained — or remains — unresolved. The unavailability of a dispute settlement mechanism has of course prevented the parties from submitting other disputes to arbitration, but it has also rendered the system opaque, since information on what other disputes have arisen, their status and, therefore, their effects is difficult to gather. Finally, it has prevented Canada and Mexico from achieving one of the central goals of negotiating an FTA with the United States.

IMPROVING NAFTA?

Deepening the analysis again, 20 years after, one of the questions that lingers is: can NAFTA be improved? The simple answer is yes, it can. Whether it will happen is uncertain and, in any event, it is unlikely to occur any time soon. It also depends on the type of improvements concerned. This too can be looked at on different planes.

First, there are the persisting breaches of NAFTA. It is not simply that compliance with an international agreement's provisions that have been breached would in and of itself be an "improvement." Two particular breaches of NAFTA — namely, the United States' refusal to comply with its obligations on transportation and its refusal to submit to the state-to-state dispute settlement mechanism — affect the agreement's overall operation and, therefore, compliance would bring about an overall improvement.

The continued breach by the United States in the transportation sector does not account for all the

15 It should be noted that there is considerable overlap between WTO and NAFTA obligations in some areas — for example, national treatment for trade in goods under GATT 1994 Article III and NAFTA Article 301 — so that the NAFTA parties can and do seek to resolve disputes with each other regarding measures covered by NAFTA disciplines using the WTO dispute settlement process. Thus, in December 2008, Canada and Mexico challenged, under the WTO Agreement on Technical Barriers to Trade, the US country of origin labelling requirements, which were also subject to Chapter 9 of NAFTA. Yet NAFTA is a preferential trade agreement and, by definition, many NAFTA obligations do not have analogues in the WTO agreement. Accordingly, the real price of the United States' actions in the sugar dispute is the denial to all three NAFTA parties of the tools to enforce NAFTA preferences that were secured at considerable effort at the bargaining table.

inefficiencies and costs incurred in transporting goods across the border (Frittelli 2014), but it ties into the latter undermining or impairing NAFTA preferences and preventing traders or carriers from finding more cost-effective alternatives to get their goods across. Compliance by the United States would improve much-needed border efficiency.

NAFTA could also be greatly improved by revising the dispute settlement provisions in order to allow the mechanism to operate automatically when faced with a disputing party's lack of cooperation or its inaction. The WTO dispute settlement mechanism was greatly improved over the system available in the GATT 1947 as a result of the Uruguay Round, which eliminated the ability of members to impede the proceedings' progress. The ISDS mechanism does not allow a disputing party to block the proceedings either. There are no complexities involved, but the United States would have to forgo the leverage that being able to block the proceedings gives it.

There are other areas where NAFTA could also be improved.

Government Procurement

The NAFTA parties agreed to begin negotiations by 1994 (and, in any event, by no later than the end of 1998) in order to further liberalize their respective government procurement markets, including by extending the agreement's coverage to state and provincial government entities and enterprises.[16] While some discussions took place in the 1990s, the NAFTA parties soon desisted and were content to maintain coverage as originally agreed to in 1992, when the NAFTA negotiations concluded. Although negotiations under the auspices of the WTO led, in April 2014, to a revised procurement agreement in which Canada and the United States are parties, Mexico is not. This is an area where improvement of NAFTA has long been stalled.

Reservations

Each party adopted several reservations that could also be liberalized: supply management of dairy, poultry and egg products, and exceptions for cultural industries for Canada; supply management of sugar and maritime shipping for the United States; and energy goods, services and investment for Mexico; as well as other sectors that each country reserved from the liberalization provisions on cross-border trade in services and investment. A note about Mexico in this regard: because Mexico was transitioning from a closed to an open economy when it became involved in the NAFTA negotiations, it adopted a larger number of services and investment reservations than either Canada or the United States, but, for the reasons of economic policy noted at the outset, it has also continued liberalizing sectors previously reserved, following NAFTA's entry into force. Its more recent — and significant — effort was the liberalization of the energy sector in 2013 and 2014.

BEYOND NAFTA

Looking beyond NAFTA, there are several areas where there is room for improvement of regional trade relations.

Enhancing Border Crossings

Border infrastructure is an area that would greatly benefit from private and public investment in order to make border crossings more efficient and reduce costs, without compromising domestic security. NAFTA has been quite successful in integrating chains of supply. Efficient borders would promote an even greater integration. The importance of enhancing border infrastructure cannot be underestimated. Yet, for 20 years it has been relegated — indeed, neglected — especially by Mexico and the United States.

Transportation

Beyond trucking and compliance with the obligations undertaken more than 20 years ago, when the NAFTA was negotiated, the NAFTA parties should strive to create a true North American transportation network.

Inspection Services

The regional integration of animal and plant health and food safety inspection services would greatly enhance trade in agricultural and agro-industrial goods. Some examples already exist, for instance, inspection of certain Mexican meat processing plants by US authorities. However, the approval and certification processes in other sectors are slow and bureaucratic. Greater efforts could be made to promote such integration.

Regulatory Cooperation

Regulation can create significant barriers to trade, both domestic and international, and differing regulation in different countries creates additional barriers and

16 Article 1024 of NAFTA provides that the parties would commence negotiations "no later than December 31, 1998, with a view to the further liberalization of their respective government procurement markets," including by expanding coverage to state and provincial government entities and enterprises. Indeed, the NAFTA parties included a blank annex of state and provincial government entities (Annex 1001.1a-3), to be filled out as a result of those negotiations. However, if negotiations of the GATT Government Procurement Code concluded before that date, they agreed to begin consultations with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include procurement by state and provincial government entities and enterprises. The GATT Government Procurement Code negotiations (i.e., the Uruguay Round) concluded in April 1994, when the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations was signed in Marrakech, Morocco.

increases costs. A significant step toward North American integration would be to foster regulatory cooperation and education initiatives, with a view to achieving regulatory uniformity in sectors such as animal plant health, food safety, transportation safety and emissions, to name a few.

Upgrading NAFTA and Improving Regional Integration

There is also the question of whether the 20-year-old NAFTA rules continue to be adequate and current. As noted, NAFTA built upon the texts that were being negotiated in the Uruguay Round, which were well advanced by 1992. Hence, the level of liberalization aside (which in NAFTA is obviously much greater), NAFTA is generally in line with the WTO agreements, and in several respects contains enhanced rules, for instance, on investment protection and temporary entry of business persons.

Nonetheless, the three NAFTA parties have made enhancements to certain rules in more recent agreements that each has negotiated with other countries (for instance, the United States on labour and environment), all three have clarified certain investment protections, and specific disciplines are being negotiated regionally in the Trans-Pacific Partnership Agreement. Other topics are the subject of negotiations in the Doha Round, although no progress has been made in a long time, and there is no certainty of when — or if — it will be concluded successfully.

Because the revision of trade rules is being undertaken in the multilateral, regional and mega-regional fora, it is rather unlikely that they will be pursued trilaterally, and at this point there is no indication that the NAFTA parties would be willing to return to the trilateral forum, even though the Doha Round seems to be going nowhere and the conclusion of the Trans-Pacific Partnership Agreement continues to be pushed back. Their respective eyes are set on other fora.

Additionally, there are other related topics that the NAFTA parties could jointly address. All three NAFTA parties are producers of oil, natural gas and electricity. Therefore, it would do the parties well to enhance cooperation in the energy sector in order to address jointly key issues such as security of energy supply, energy efficiency, sustainable development and climate change, especially now that Mexico's energy reform will allow for participation of private parties in its energy sector (a sector that was previously reserved to the state), and US and Canadian companies are expected to play an important role in related activities. Other issues to be addressed trilaterally are the development and integration of regional energy infrastructure, the development of energy distribution networks, low-carbon technologies, carbon capture and the shift to alternative energy.

CONCLUSION

NAFTA essentially achieved the main policy goals that each party fixed for itself when setting out to negotiate the agreement. It has worked well to a large extent, even exceeding expectations. However, the parties have not been willing to move trilaterally beyond their 1994 deal, and in some cases they have even retreated. Today, the initiatives to further liberalize international trade and investment, and improve international rules, lie beyond the North American region. NAFTA has not lived up to its full potential and, beyond political rhetoric, there does not seem to be much interest in further developing that potential.

North Americans face significant global challenges. A fuller North American integration would greatly assist the NAFTA parties in successfully coping with those challenges, but this requires foresight, initiative and leadership, such as those that spurred the NAFTA negotiations and drove them to a successful conclusion 20 years ago.

Such leadership is not evident today. However, it is certainly possible to imagine renewed leadership and a strong vision of how the future prospects of North Americans would be improved through working more closely together. Indeed, improving the implementation of NAFTA would enhance the competitiveness of North American goods and services (and North Americans) in the face of fierce global competition.

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ABOUT CIGI

The Centre for International Governance Innovation is an independent, non-partisan think tank on international governance. Led by experienced practitioners and distinguished academics, CIGI supports research, forms networks, advances policy debate and generates ideas for multilateral governance improvements. Conducting an active agenda of research, events and publications, CIGI's interdisciplinary work includes collaboration with policy, business and academic communities around the world.

CIGI's current research programs focus on three themes: the global economy; global security & politics; and international law.

CIGI was founded in 2001 by Jim Balsillie, then co-CEO of Research In Motion (BlackBerry), and collaborates with and gratefully acknowledges support from a number of strategic partners, in particular the Government of Canada and the Government of Ontario.

Le CIGI a été fondé en 2001 par Jim Balsillie, qui était alors co-chef de la direction de Research In Motion (BlackBerry). Il collabore avec de nombreux partenaires stratégiques et exprime sa reconnaissance du soutien reçu de ceux-ci, notamment de l'appui reçu du gouvernement du Canada et de celui du gouvernement de l'Ontario.

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