

# **The Governance of Global Issues through Regionalism: NAFTA as an Interface between Multilateral and North-South Policies**

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## **Abstract**

The core argument of this article is that the regionalization process formalized under the North American Free Trade Agreement (NAFTA) has become a major strategy of U.S. trade diplomacy for advancing and expanding a new regulatory framework for dealing with the pressure of globalization. After assessing the outcomes and shortcomings of the NAFTA, it purports to analyze the potential deepening and/or widening of the NAFTA. The integration path is accelerating fragmentation trends. Thus, bridging gaps, increasing social opportunities and maintaining social cohesion remain the challenges to be handled for the future, either at the local, national and regional levels.

**Key Words:** NAFTA, global governance, antidumping duties(AD), countervailing duties (CVD), Free Trade Area of the Americas (FTAA)

## **1. Introduction**

The core argument of this study is that the regionalization process formalized under the North American Free Trade Agreement (NAFTA) has become a major strategy of US trade diplomacy for advancing and expanding a new regulatory framework for dealing with the pressures of globalization. Those pressures feature the re-organization of corporate competitive strategies, as well as a new disciplinary body for regulating market access in trade, investment and other related issues. The first part of this study suggests that regional clubs are called for to play a major role for better internalizing global rules at the bilateral level. I argue that regional regimes, such as NAFTA, are becoming the major locus upon which new governance mechanisms are being grounded, mainly in the trade and production domains. The second part is aimed at explaining how Washington conceived NAFTA as an interface between multilateral and bilateral policies, and between a North-South agenda. A third section attempts to make a balance-sheet of the regional experience, at least in some key domains. It is clear that this assessment does not focus on the economic impact of the regional experience in the three countries. Our goal is to explore the benefits of the trade

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regime as a policy tool for facilitating the governance of specific issue-areas. Lastly, the final part is devoted to the analysis of the potential deepening or widening of the regional mechanism.

## II. Institutional regionalism as the foundation of global governance

Globalization, understood as a reconfiguration of space, time and productive organization, has eroded the notions of state-state cooperation grounded on state-centered hegemonic architectures, mainly due to the transformation that states themselves are witnessing. One of these major transformations has been the fragmentation of state's power and authority. Today, state authority is not bound to a specific territory, as the classic concept of sovereignty used to do. State authority is being overlapped, in its own territory and beyond it, by multi-leveled layers of authoritative institutions that remain well-differentiated in spite of being intertwined with the state. This explains why the term of governance is becoming more accurate for explaining the new relationship that globalization is establishing between states, power, markets and non-government actors. We understand governance as the capacity for steering, shaping, managing, yet leading the impact of transnational flows and relations in a given issue-area, through the interconnectedness of different polities and their institutions in which power, authority and legitimacy are shared (See also Rosenau, 1997).

A major trait of governance is that in most of cases power and authority is exercised as a means for steering, shaping and inducing a certain behavior, or a certain approach, in order to deal with transnational problems, rather than imposing a coercive action. Governance means that institutional attributions and capabilities are distributed, although in an asymmetrical way, throughout a net of linkages. If global governance in certain issue areas is to be assured in the post Cold-War era, the regional club seems to be the most adequate device for dealing with it. Regional clubs, that is, principled-regimes or organizations grouping different states around common interests, reduce the political cost for building and maintaining a minimum threshold of governance on specific global issues, such as trade, finance, technology, monetary policies, etc. The major goal of the regional club is to make members become institutionally consistent with the structural transformations taking place in their external environment.

Economists have largely argued about the advantages and attractiveness of these policy regimes<sup>1</sup>. They stress mostly the supply of "public goods" these regimes normally provide, that is, goods that are in general terms non excludable and non-rivals in their consumption (Kaul, *et al*, 1999: 5). Most of these goods have intangible properties, such as is the case with peace, security, macroeconomic or financial stability, trade openness, etc. Public goods could be offered at the national, regional yet global level. The boundaries between

these functional levels are not only defined by geographic considerations, but also by the positive externalities they may entail to the global system even if public goods are supplied locally. Lastly, the economic argument says that public goods have supply problems, because private agents can not bear the cost nor reap the benefits of providing those goods. There is a "market failure" problem that makes state intervention and cooperation highly demanding.

Institutional economics approaches have also suggested that "global" public goods could be the by-product of a pressing demand for institutional change. If we assume that markets are, above all, transactions governed by institutions under a polity, those institutions are doomed to change once major actors have realized that the costs of maintaining them are higher than the anticipated benefits of transforming them. For centuries, markets, either local or "international," were organized under national lines and priorities. For the past three-four decades, financial markets began to be organized according to a cross-border rationale, which became later extended into the production and consumption domains. The digitalization of informational processes and the emergence of the virtual space as a territory of exchange moved banks and companies to re-structure their corporate operations according to transnational guidelines. Hence, policies governing markets according to national calculations became inefficient and more costly to maintain in some areas. Market actors started to press for a redefinition of market polices at the mini-lateral and regional levels, conforming to a so-called demand for regime creation (Lawrence, 1996).

The role performed by regional regimes explains in many ways their impressive proliferation during the past years. During the last decade, more than 70 regional agreements of integration or trade cooperation were notified to the General Agreements on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO) (The Economist, 1998: 19). The bottom line of these different types of clubs is to create through different means a minimum of policy convergence towards trade, investment and financial openness. Some of them, such as the European Union (EU), the North American Free Trade Agreement (NAFTA), yet Mercosur has devised wider goals and more sophisticated mechanisms of enforcement. At the same time, those clubs have become an interface between unilateral and multilateral actions, as long as they provide better benefits and gains than unilateral or multilateral agreements.

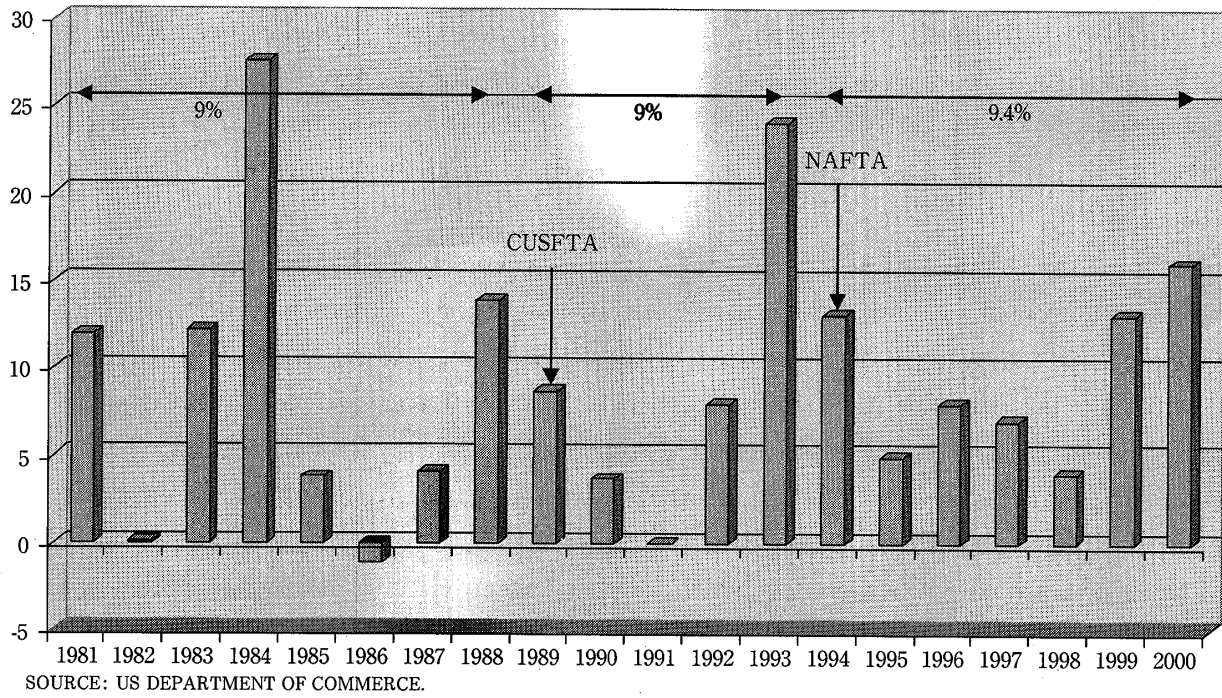
Regimes are thus important because of their direct impact on the exercise of relational

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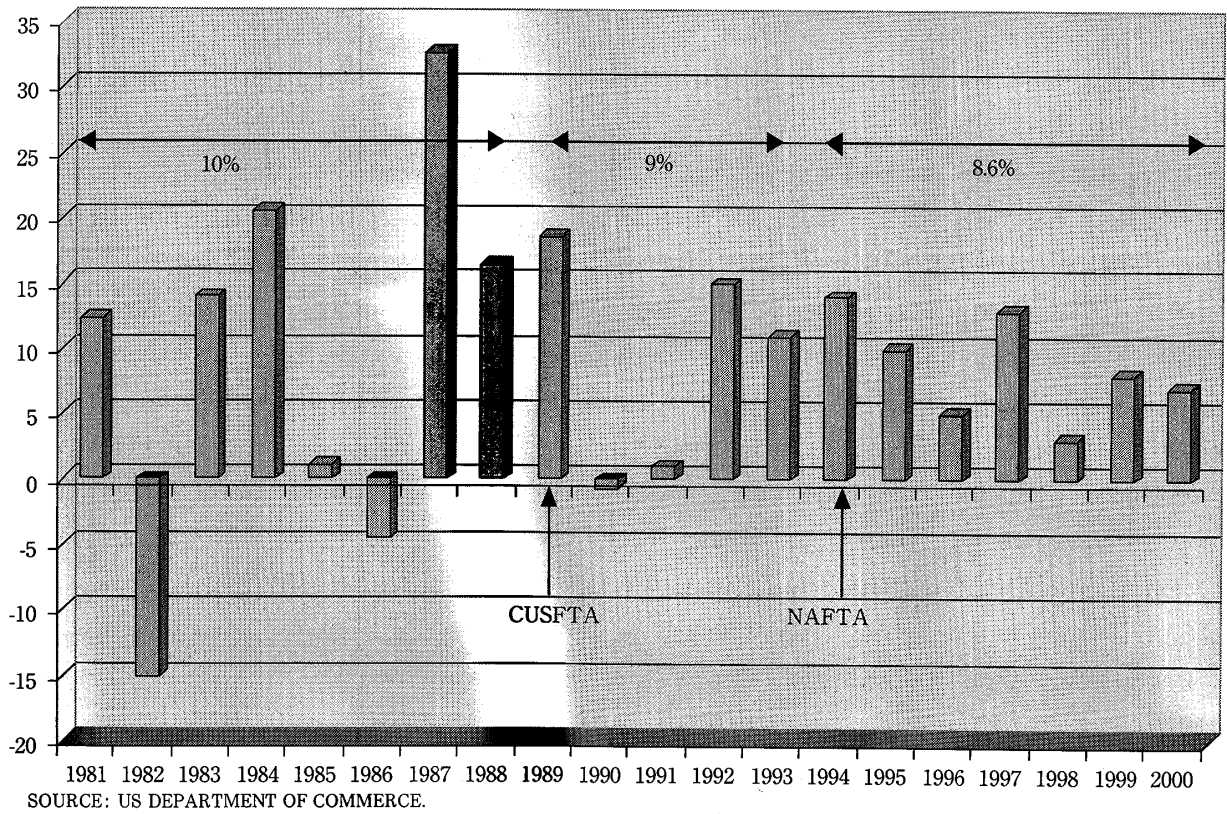
1) As we know, these policy mechanisms are institutional arrangements normally bound by agreements or organizations through which consultation, negotiation, monitoring treaty compliance and other type of information is facilitated among members. As Stephen Krasner in a classical definition conceived them, regimes embody a set of principles, rules and decision making procedures, both formal and informal, around which expectations of participants converge in a given issue-area. Krasner, (1983), p. 186.

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1. US Imports from Canada. 1981-2000. Annual Rate of Growth.



2. US Exports to Canada. 1981-2000. Annual Rate of Growth.



power, that is, in the way actors shape their policy options and behavior. As R. Keohane has stated it, they create "patterned behavior" through which actors do not have to recalculate their options each time they take a decision (Keohane, 1984). In this sense, regimes shape policy change both internationally and domestically. They facilitate policy convergence around shared values and rules that make sense to collective action, and they restrain local actors from undertaking policy options that play against those rules agreed upon.

Principled regimes are not politically neutral; they are rather the product of political bargaining and undertakings that reflect both interests of state-bureaucracies and interests of domestic constituencies. A whole literature highlighting a double-edged diplomatic game, both international and domestic, suggests that any agreement facilitating cooperation is possible if a coalition of interests is at stake (Putnam, 1988). This explains why all regimes encompass a set of "shelter" domains and devices, through which states or specific local actors escape to the governance of the regime (See Rugman and Verbeke, 1994). Those shelter domains are the product of a political exchange that makes the regime feasible and sustainable. In the case of NAFTA, Canada sheltered its cultural industry, the US some high technology sectors and Mexico the oil and energy industries as part of their strategies to make NAFTA possible and sustainable.

If the regional club is not politically neutral, but the product of a political coalition clustering interests that express themselves at international and domestic levels, regional clubs are thus nested on political asymmetries and bargaining capabilities. Nobody doubts that without US leadership and hegemony the foundations and functioning of the so-called Bretton-Woods system would have been impossible. This very same leadership has been crucial in order to transform and adapt to that system once the impact of globalization became manifest. The US has played a major role in redefining both multilateral and unilateral rules on the economic front, as witnessed by the launching and conclusion of the Uruguay Round, the creation of the WTO, and the creation of NAFTA.

Although political asymmetries explain the creation and transformation of principled regimes, their adaptability and sustainability depend on the anticipated gains, both political and economical, they entail to other members. These anticipated gains must be higher than those potentially obtained through unilateral or multilateral action. Nobody doubts that small, yet less developed countries have benefited from their membership in the European Union, regardless whether or not France, Germany or Italy remain the major players. Canadians and Mexicans agree, although on different bases, that the two of them have benefited from NAFTA, in spite of the US remaining the major player. As long as benefits are obtained, gains anticipated, and some asymmetries balanced, though not eliminated, regimes remain enduring, sustainable and open to further transformations.

However, the effectiveness of governance through principled-regimes will depend not only upon the degree of interconnectedness among the different polities and institutions in a

given issue area, but also on their capacity to construct and maintain a community of shared beliefs that gives consistency to the whole connection. In fact, the legitimacy and maintenance of the whole club remain anchored, in the long run, to matters of interconnectedness and shared values. As Manuel Castells (1997: 171) has already suggested, the major attributes for making a network to perform effectively are its connectedness (its ability to transmit noise-free communication among its members), and its consistency (the sharing of interests between the network goals and the goals of its components). If a regime could be compared to a network of shared authority and power, and of informational and other institutional resources, the strategic role they play in the construction of a new economic order lies in their ability and capability of being interconnected and consistent. How is this reflected in the case of NAFTA?

### **III. NAFTA as an US-led building block promoting policy change and convergence**

#### **a. From free trade to fair trade. Leveling the playing field**

Though NAFTA was discussed and legitimized under an economic rationale (welfare gains from liberalizing trade and investment) in the US, Canada and Mexico, it was mainly nested as a major strategy of US trade diplomacy aimed at including new fields under GATT jurisdiction. Since the turn of the eighties, and during the past two decades, Washington has followed a three-tier approach on foreign trade issues: multilateral, unilateral and minilateral (Saborio, 1992). At the multilateral level, the US made all its efforts for ending the Tokyo Round and for initiating the Uruguay Round in order to negotiate a more ambitious trade agenda. At the unilateral level the US Congress activated old jurisdictions and initiated new ones in order to abate, though with a wider and enlarged meaning, unfair trade practices. And finally, at the minilateral or regional level the US first engaged in free trade talks with Canada, its main trade partner, in order to further include Mexico in what later became NAFTA. Both the Canada and US Free Trade Agreement (CUSFTA) and NAFTA had the role of widening the agenda on trade negotiations and abating unfair trade practices.

This three-level approach on US trade diplomacy made trade negotiations and bargaining appear at times contradictory, at times complementary. However, in many respects Washington committed to a cross-cutting agenda, the common aim of which was to "level the playing field", as it was called. This concept was the rationale under which both multilateral talks under the Uruguay Round were pursued, and bilateral negotiations with both Mexico and Canada undertaken. Though through different means, this was also the rationale under which Capitol Hill mandated and/or activated unilateral relief vis-à-vis unfair trade practices.

By framing key policy initiatives under the major goal of “leveling the playing field”, Washington sent the message to its major partners that non-compliance with old principles (such as non-discrimination or Most Favored Nation (MFN) treatment), or with new ones (such as “barring structural impediments” to trade), will be punished either at the multilateral or unilateral levels. In other words, with the notion of leveling the playing field US trade diplomacy aimed at obtaining symmetrical treatment from its trade partners; that is, a similar treatment to that given by the US. The quest for “symmetry” of treatment is deeply rooted in the policy debates of the seventies and eighties, under which key economic problems and transformations were perceived as the costs of supporting “free riders” in the international economic arena.

The very best example of this new trend inaugurated at the unilateral level was the Trade Act of 1974 and its Section 301, through which Washington enlarged the notion of “unfair trade” practices. This section defined two types of targeted practices: those that violate agreements that the US has with any of its partners, and those that are “unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce” (Grier, 1993). In order to restrain the proliferation of these newly-defined unfair trade practices, Congress gave the President the capability of enforcing trade sanctions in order to make conflicting parties to abide by them. These sanctions could consist of denying or modifying any trade concessions or in increasing any tariff or non-tariff barrier.

The use of economic sanctions for making states respect agreements is not new in US foreign trade diplomacy. What became new in this legislation was the faculty given to the US president for imposing sanctions even in those cases when no violation exists, that is, when foreign practices are being judged as “unjustified, unreasonable and discriminatory”. Discriminatory practices were already proscribed under the GATT, but the two first practices were not. Washington understood as unjustifiable those policies or practices that are inconsistent to international agreements; that is, practices that are not illegal—according to bilateral or multilateral agreements—but that play against the rules of the game as understood by the US. “Unreasonable” was defined as any act, policy or practice which, although not violating international legal rights of the U.S., is otherwise unfair or inequitable (Grier, 1993). Through such a wide and vague definition almost any economic practice playing against US interest could be targeted by unilateral sanctions. (See also Goldstein, 1993: 195).

Section 301 and its later refinement by the Omnibus Trade Act of 1988 (the so-called Super 301) has never been perceived as a protectionist legislation in the US. By prosecuting practices that either violate legal rights or discriminate against the US, or that are just simply “inconsistent” or “inequitable” to US practices, the US Congress sent the message to the world that it was not targeting the entry of imports, but rather the enhancement of exports by inducing partners to play by the rules. Congress was however cautious and granted to the President the discretionary faculty for using sanctions. If the Executive

judged that national security concerns were at stake, or that the use of sanctions would imply political costs to be borne, sanctions could be waived.

This explains why petitions under this section have been rather few (Goldstein, 1993: 216-217), compared, for example, to other "classical" unfair trade remedy practices such as antidumping (AD) and countervailing duties (CVD). However, the importance of Section 301, Super 301, and any other similar legislation was that they enlarged the conceptual scope under which "unfair trade practices" was understood in the US. "Unfair" was not only to mean a violation of an agreement or a discrimination against a partner, but also practices that were also inconsistent, unjustifiable, unreasonable and inequitable to US commerce. By using the "threat" of imposing trade sanctions for abating "unfair" practices, Washington aimed to expand market access by "leveling the playing field" with the rest of its trade partners.

Traditional tools such as AD and CVD were preferred instead as a mechanism for dealing with unfair practices. Unlike the faculties stemming from Section 301, procedures for imposing AD and CVD levies are rather quasi-adjudicative mechanisms not subordinated to political or strategic consideration by the White House. Final decisions are being taken by the Department of Commerce (DOC) and the International Trade Commission (ITC), with no interference by the US Trade Representative (USTR). AD petitions became a major tool for American producers to seek relief from "unfair" practices. CVD petitions increased as well, though the rate of acceptance did not follow the same trend as that of AD (Goldstein, 1993: 217-219). The flexibility introduced by Congress for activating those mechanisms made them a major sign of US "neo-protectionism". This became materialized as the proliferation of "managed-trade" deals throughout different industry sectors.

The activation of AD and CVD, combined with other relief mechanisms and the enactment of Super 301 in 1988, increased the uncertainties for the access to the US market. By increasing the uncertainties and consequently the costliness of accessing its own market, the US increased the incentives for its trade partners to join trade negotiations either at multilateral or bilateral levels. Incentives became higher once trade partners realized that market access was not the only issue of the problem. By legitimizing the use of unilateral retaliation as a means for enhancing export, the US also increased the costs for their trading partners of keeping the status-quo in their respective trade policies. This explains why the US could simultaneously pursue multilateral and minilateral trade negotiations while maintaining an aggressive unilateral trade agenda.

#### **b. The road to NAFTA**

The opening of the minilateral track in US trade diplomacy was nested, so to speak, in the midst of mounting unilateral trade actions propelled by the American Congress since the first part of the seventies, followed by the new profile of the multilateral agenda the



White House tried to advance since the mid-eighties under GATT. The first step was to reach a Free Trade Agreement (FTA) with Canada. For the US, to strike a whole trade package with this country, at a time in which American unilateralism became highly criticized by many countries, was a way to curb domestic protectionist pressures at home and demonstrate renewed commitments towards a liberal and open trade agenda. At the same time, it was a way to advance what Washington understood as leveling the playing field with its major partners, either at the bilateral, regional, or multilateral levels.

As for Canada, going into trade talks with its powerful neighbor and most important partner had also both domestic and foreign policy implications. The Canadians entered into bilateral negotiations once the Trudeau years were over and the Conservative party won the elections in the fall of 1984. The Conservative Party with Brian Mulroney as Prime Minister came into power with a new policy agenda, which in many ways announced the end of the "inward oriented" option that prevailed during the seventies.

Mulroney's Conservative administration made clear the end of an economic policy based on resource wealth exploitation. The new policy goal was to increase Canadian competitiveness in manufacturing and services, and for that, the elimination of domestic non-tariff barriers was necessary in order to attract foreign investment. Thus for Mulroney, entering into bilateral trade negotiations with the US had the double aim of locking in domestic policy changes that signaled the end of the Trudeau era, and negotiating a whole package for guaranteeing market access to its major trading partner.

In parallel to the progressive suppression of remaining tariffs between the two countries in a span of ten years, the importance of the CUSFTA was that the core of what Washington was negotiating at the multilateral level could be obtained more rapidly and effectively at the bilateral level. Canada and the US agreed, for example, to eliminate all tariffs to agriculture, an opening that both Europe and Japan had been very reluctant to accept under GATT rules (see, Hart, 1989: 131). On the sectoral level, ad hoc agreements were reached in the fields of the automotive, wine and spirits and energy industries. The latter became fully deregulated, ending the state-led energy policy followed in previous years. In relation to government procurement, a reduction of the threshold established in the GATT was obtained<sup>2)</sup>, although this threshold only included purchases of the federal governments, not state and provincial ones.

In relation to unfair trade practices, a mixed balance was achieved. Although Canada wanted to negotiate a common code regulating subsidies and dumping, no common jurisdiction could thereafter be obtained in this agreement under NAFTA. What was obtained, by contrast, was the introduction of an alternative dispute settlement mechanism under which arbitration panels could substitute for domestic courts in reviewing administrative

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2) Government purchases above US \$ 225,000 were submitted to competitive bidding by the GATT. The CUSFTA reduced the threshold to US \$ 25,000.

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decisions related to dumping or subsidies. As previously stated, it was in the field of unfair trade legislation that the US Congress and trade agencies did not have the counterbalancing faculties of the White House. Hence, much of the so-called "neo-protectionism" of the late seventies and eighties was the by-product of a flexible interpretation and implementation of the rules regulating dumping and subsidies. Although no better definition of subsidy could be obtained under the CUSFTA, what Canadians obtained from this agreement was the right to challenge American administrative agencies under bilateral panels whose faculties and attributions were precisely defined by the two countries. All this was stipulated under Chapter 19, considered for some Canadians as the jewel of the agreement. By substituting domestic courts with arbitrated panels for challenging administrative decisions, it was anticipated that the "overzealous" use of American legislation for masking protectionist interests could eventually be reduced. The way Chapter 19 was designed in fact made possible that the panelist's awards could be expedited, be decided on an adjudicative basis and be binding to the parties. Such an effective and expeditious dispute settlement mechanism had not been possible to reach at the multilateral level.

The CUSFTA also included a more flexible dispute settlement mechanism embodied in Chapter 18 addressing any action that could violate, impair or nullify the agreement. Under this case, a so-called "Free Trade Commission" (composed of cabinet-level representatives of the two governments) should mediate under the disputing parties in order to facilitate consultations and reach a possible negotiation of a mutually satisfactory solution. If a solution was not reached, the conflict could be addressed by a panel, whose goal would be to draft an "action plan" under which the disputing parties could negotiate a solution. If this was not the case, the claiming party had the right to impose economic sanctions equivalent to the damage infringed upon it. In so doing, the CUSFTA legitimized the use of trade sanctions as a means of compensating the breach or the impairment of what was agreed upon. Until then, the use of trade sanctions for compelling partners to comply by the rules remained a unilateral decision, mainly by the US, as long as the decisions taken under the GATT panels remained declaratory, due to the rule of the "positive consensus."

Finally, the CUSFTA made what Michael Hart considers a "cautious start" on what was defined at the time on the "new issues" of agendas such as services, business travel, investment, intellectual property rights and financial services (Hart, 1989: 75).

Two years after CUSFTA came into force, Mexico and the US initiated negotiations for a rather similar agreement. Once Canada joined the negotiations, under the condition that nothing that was agreed upon in CUSFTA would be revised, Washington confirmed its unilateral approach not only to its major two trading partners, but to the rest of the Western Hemisphere. In fact, parallel to the opening of the NAFTA talks, President George Bush launched in Miami his so-called Enterprise for the Americas Initiative (EAI), aiming at the creation of a whole free trade area with the rest of the continent. The fact that

Mexico accepted negotiating an integration package with Washington earmarked the beginning of a new era of Inter-American cooperation, ending the traditional Mexican suspicion vis-à-vis US foreign policy towards Latin America that prevailed during the Cold War. Thus, NAFTA became not only an interface between US unilateral and multilateral trade policies, but also a bridge between a North and South agenda. Through NAFTA and the EAI, already announcing the launching of talks for a Free Trade Area for the Americas (FTAA), Washington initiated a building bloc in order to internalize and make more acceptable its trade agenda to developing countries.

Mexico joined NAFTA for similar reasons to those that explained Canada's signature of the CUSFTA. Although less industrialized and developed than Canada, for Mexico, the US has become its major exporting market and source of investments, as is the case with Canada. The surge of contingent protectionism in the US since the mid seventies increased the tensions on bilateral commercial relations. Similar to what happened with Canadian exports, Mexico was suddenly threatened by dumping and countervailing duties in the US. As in the case of Canadian political circumstances, the decision in Mexico to negotiate came from a new political administration which made economic liberalization its major political banner. Entering into trade negotiations with the US had the intention of locking in the domestic economic reforms the Mexican government initiated since 1986 but that gained decisive momentum during the Salinas de Gortari years (1988-1994). At that time, the government decided to negotiate a CUFTA-like package in order to obtain major concessions that otherwise could not be struck.

Although the content of NAFTA as well as the organization of negotiations were highly inspired by the US-Canada deal, the scope of the negotiations widened. The liberalization of tariff barriers to trade in goods was designed and decided following the CUSFTA model. Sectoral provisions became better specified, as for example in agriculture, textiles, automotive and energy industries. Similar to what Canada did with its cultural industries, Mexico refused to open its energy sector.

As for the additions, NAFTA explicitly deregulated the service sectors, including finance, against which Mexico was originally reluctant to negotiate. Whole new chapters were drafted on property rights ruling and investment measures. A great innovation introduced by the NAFTA was in fact its Chapter 11, through which private corporations could directly challenge government decisions concerning expropriation and/or investment regulations against international tribunals. Another innovation was the negotiation of two side agreements dealing with labor and environmental issues. These two agreements were nested in the original NAFTA agreement once Bill Clinton became the president of the US, and were intended to obtain the support of the American Congress in passing the agreement. Through these two side agreements, Mexico accepted the use of sanctions, in the form of fines, if there was a "persistent failure" to comply with its domestic environmental legislation. A similar situation was accepted if there was a "persistent failure" to comply with la-

bor legislation regulating minimum wages, safety and security standards at work and child labor. Canada refused to accept sanctions from another country and agreed that any claim regarding a failure to comply with its environment and labor standards would be handled by their domestic Courts.

Notwithstanding, NAFTA became the first trade agreement legitimizing the use of sanctions in order to induce a country to comply with its respective labor and environmental legislation.

#### **IV. The governance of economic openness at the regional level**

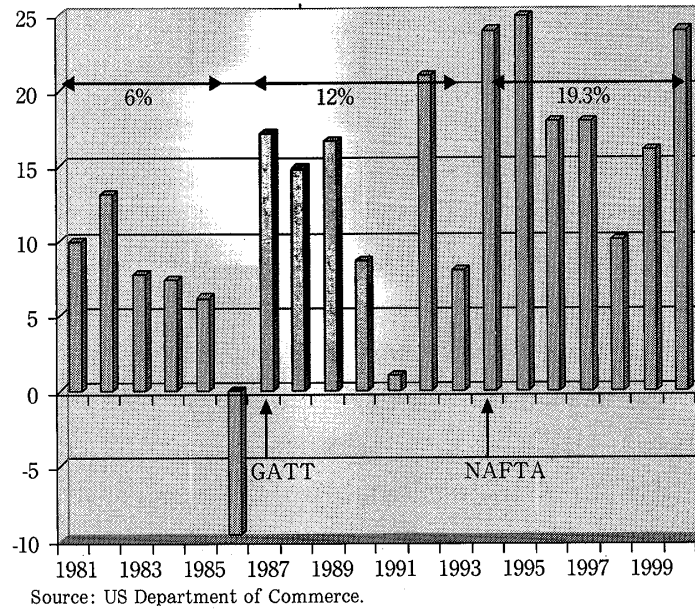
##### **a. Market access. Outcomes and problems**

Although the goal of this essay is not to assess the economic impact of NAFTA at the regional level, Graphs 1 to 4 suggest that the agreement has been successful at least for fueling trade exchange from Canada and Mexico to their major trading partner. Mexico has benefited the most from the deal. Mexican exports to the US have grown at higher rates than pre-NAFTA years, notwithstanding that export expansion started since Mexico joined GATT (Graph 3); US exports to Mexico have also grown considerably, though this growth seems to be initiated since Mexico joined GATT. As for Canada, CUSFTA and NAFTA have not modified previous commercial trends (See Graphs 1 and 2), probably because tariffs between the two countries were already low (at least lower than tariffs prevailing between US and Mexico), and their economies were already integrated in terms of productive chains. We should also consider that Canada's and Mexico's trade with the US is mainly intra-industry, and multinational corporation have internalized cross-border markets through intra-firm transactions. Furthermore, monetary and exchange-rate policies have had a bigger impact on trade flows than the sole phase-out of tariffs. Mexico's booming exports after NAFTA could be partially explained by the major devaluation of early 1995, and the strength of the US economy.

Nonetheless, as long as trade among the economies keeps the momentum, there is ground for saying that NAFTA works. The fact that Washington has proved to play the "paymaster" of this venture, witnessed by the financial bailout offered to Mexico at the beginning of 1995, has reinforced the supportive coalitions under which the NAFTA was built.

In terms of an architecture for the regional governance of trade and investment flows, we should ask ourselves whether NAFTA has guaranteed access to the American market for both Canada and Mexico; or leveled the "playing-field" among the three partners. In general terms we could say that NAFTA has made protectionist policies coming from the US more manageable. The incorporation of alternative dispute settlement mechanisms, designed to operate either on adjudicative or conciliatory bases, has modified the institution-

3. US Imports from Mexico. 1981-2000. Annual Rate of Growth



al context where protectionist policies took place before the trade agreement was signed (Morales, 1999). Of the three cases arbitrated and finalized under Chapter 20, panel awards confirmed the complaints of Canadians (one complaint) and Mexicans (two) against the US. Arbitration panels under Chapter 19, that is those reviewing the imposition of AD and CVDs by national administrative agencies, have been more popular. As of October 2002, 84 cases have been submitted, out of which 36 have been awarded, 27 have been suspended or the claiming Party has declined its complaint, and the remaining cases are still waiting for a decision. Most of the disputes under this chapter are related to dumping procedures, rather than subsidies, and most of the reviews target US agencies.

Though panel procedures concerning dumping and subsidies have not been as speedy as anticipated, panelists have proved to be professional and balanced. 6 out of 17 cases reviewing US agencies decisions have been completely remanded by panel's awards, and 4 partially remanded. The rest have been fully confirmed. That is, more than 50% of all awarded cases reviewing administrative decisions of US authorities have been judged as inconsistent with US legislation. This rate of "success" benefiting either Canada or Mexico was much more elusive in a pre-NAFTA scenario, according the empirical record shown by some studies (Goldstein, 1996). We could even say that, at least in the field of unfair trade practices, the playing field has been leveled vis-à-vis the other NAFTA partners. One out of twelve final awards reviewing Canadian agencies has been fully remanded, three have been remanded in part, and the rest of them fully affirmed. One out of 7 cases involving Mexico has been fully confirmed, and the rest of them fully remanded or remanded in part (See: [www.nafta-sec-alena.org/](http://www.nafta-sec-alena.org/)). In other words, Mexico is still on the learning curve in managing its rather recent unfair trade legislation.

NAFTA has indeed corrected some protectionist biases on administrative agencies of the

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three partners; however, it has failed to deter strongly rooted protectionist interests in the region, mainly those coming from the US. The saga of the softwood lumber dispute between Canada and the US epitomizes the nature of conflicts involving trade disputes among the partners. As known, US lumber producers have claimed since 1981 that Canadian imports of lumber are subsidized and causing damage to their production<sup>3)</sup>. The controversy reached its climax when it was handled under the rules of the CUFSTA. Panels reviewed and remanded both DOC's decision on subsidy and ITA's decision assessment on material injury. In the case of subsidy, panelists did not find that Canadian stumpage fees were provided on a specific basis, nor that the ban on exports of logs from British Columbia had specific benefits for considering it a countervailable subsidy. However, US agencies confirmed their positions that led to a second remand from the panelists. The second remand confirmed the panel's original position, but this time panelists split along national lines<sup>4)</sup>. The US finally activated the Extraordinary Challenge Committee (ECC) agreed under the CUFSTA (and passed into NAFTA) and the judges confirmed the panel's decision although not by unanimity.

As for the test of injury the panel awarded that there was no evidence, according to US laws, that Canadian lumber imports were damaging the US industry. This decision had to be remanded two more times before the US agencies finally accepted it, without any split in the members of the panel. These two awards provided evidence, as Gilbert Gagné asserted, that the definitions of "subsidy" and "injury" in US law and practice had become so flexible to accommodate almost any petition for a trade relief. (Gagné, 1999: 85). The fact that Canada had joined CUFSTA was precisely to make more transparent both the interpretation and implementation of US trade legislation. In this sense, the work of the panel groups and Chapter 19's mechanisms (i. e. the role of the ECC) were successful.

However, the role of the CUFSTA panels could not avoid the politicization of what had

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3) On the grounds of the conflict there are differences in the regimes of land ownership between the two countries and in the political organization of Canadian provinces vis-à-vis US federal states. Although US trade agencies decided in 1983 that timber allocation and stumpage rights were not countervailable, in 1986, once the powerful "Coalition for Fair Lumber Imports" (CFLI) was created, a renewed file submitted to the Department of Commerce (DOC) found that both the allocation of timber and stumpage fees were provided on a discretionary and specific bases, and were hence countervailable. Canadian has since alleged that stumpage fees are a matter of public and development policies, and that US agencies cannot decide how provincial governments must manage their natural resources. Anticipating the final decision of the Department of Commerce, the Canadian government decided to sign a Memorandum of Understanding (MOU) under which a tax of 15% was imposed to Canadian softwood lumber exports, and that was terminated in late 1991. The DOC initiated its third countervailing investigation, which, as expected, was affirmative. This time Canada decided to challenge US decision under Chapter 19 of the CUSFTA. See Ek, (2001) and Gagné, (1999).

4) The dissident vote came from the two American panelists. For further information on this see, Davey, (1996), pp.172-182.

already become the most sensitive trade dispute between the two countries. The US government invoked Section 301 of 1974 Trade Act in order to force a deal with the Canadians. Once the dispute was handled under the CUFSTA mechanism, proceedings were initiated in order to challenge the constitutionality of panel's decision under US courts. Once panels finalized the case, the US government delayed the reimbursement of duties collected, and the CFLI threatened to open the case as soon as it was possible. All these political pressures ended up with the signing, in 1996, in a new ad hoc agreement through which lumber exchange between the two countries became subjected to a tariff-rate quota<sup>5)</sup>. The agreement contemplates its own dispute settlement mechanism which permits contending parties to circumvent the dispute mechanisms of the CUFSTA and NAFTA. This five-years peace agreement expired in March 31, 2001, and in April of that year the CFLI filed once again AD and CVD petitions asking the DOC to investigate Canadian lumber imports. Most probably, the Agreement will be renewed, though without avoiding political tensions, for another five-year period.

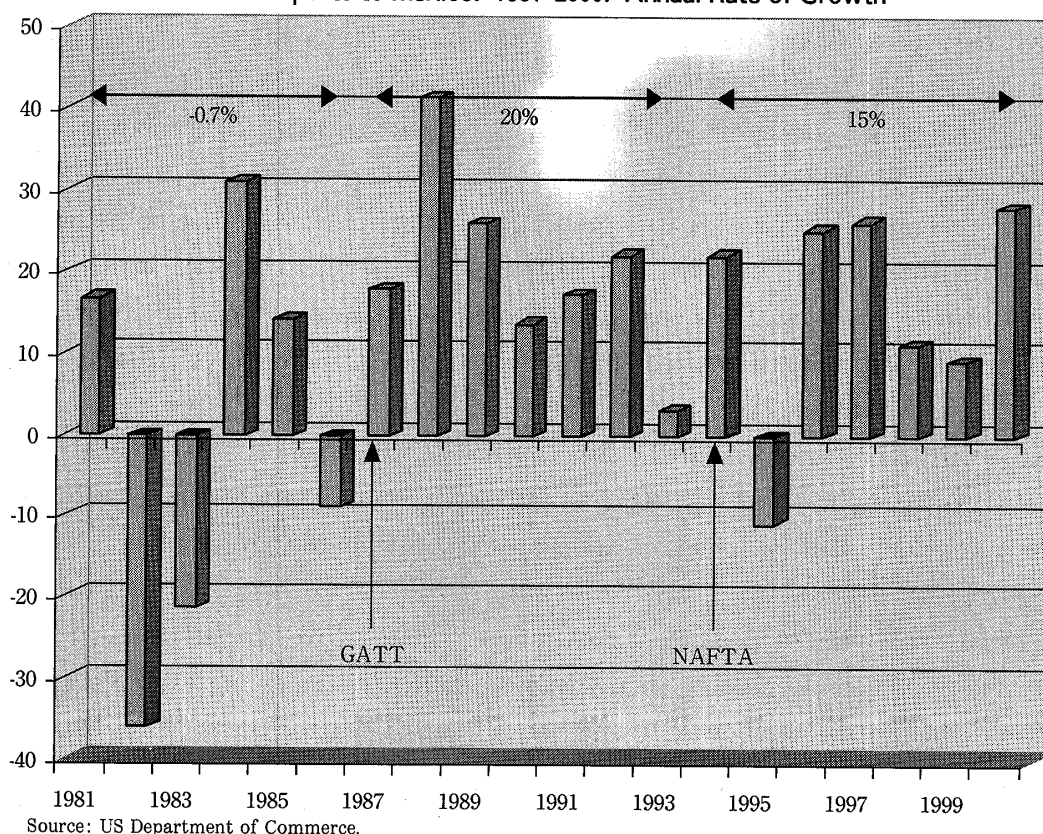
Many other trade-related disputes have emerged among NAFTA partners without being resolved under the formal dispute settlement mechanisms. Take for example the tomato and avocado disputes between Mexico and the US, or the Helms Burton Law that involved both Canada and Mexico against the US. In the first case price and quota undertakings—to some extent similar to those agreed under the softwood lumber case—were negotiated. In the second one, consultations were activated under Chapter 20, and the White House eventually declined to enforce the extra-territorial consequences of the Law.

A most recent case, involving cross-border trucking traffic between Mexico and the US, shows how domestic protectionist pressures could compromise US principled-obligations with its partners. According to NAFTA, the US should permit cross-border trucking services and related investment for Mexicans in border states at the end of 1995, and subsequently throughout the US as of January 1, 2000. Until recently, the US government denied access to any carrier or investor coming from Mexico, while entry barriers have already been barred to Canadians. The denial of US agencies was grounded on an over-interpretation of Articles 1202 and 1203 of the Agreement, by which Parties grant National and MFN Treatments to trucking services. Through these articles, a Party commits itself to grant a no less favorable treatment, "in like circumstances," to services provided by nationals or by other Parties. US agencies alleged that the inclusion of the phrase "in like circumstances", limits the National Treatment and MFN obligations "to circumstances with regard to trucking operations which are like, and that because 'adequate procedures are not yet in Mexico to ensure U. S. highway safety', NAFTA permits Parties to accord differential, and even less favorable, treatment where appropriate to meet legitimate regulatory

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5) Above that quota (which was fixed on 14.7 billion board feet per year with no tax), a progressive taxation was imposed on lumber imports suggesting that the aim of the US government was to restrain Canadian exports, regardless whether they were subsidized or not.

4. US Exports to Mexico. 1981-2000. Annual Rate of Growth



objectives” (See NAFTA Arbitral Panel Established Pursuant to Chapter Twenty, 2001: 3).

Mexico did reject this over-interpretation of Articles 1202 and 1203 of the Agreement, because it would have meant that Mexicans had to adopt the same standards in its regulatory trucking system to those prevailing in the US, something that was never raised nor discussed during the NAFTA negotiations. The Mexicans argued that the US inaction was motivated not by safety concerns but by protectionist pressures coming from organized labor in the US. The panel simply rejected the way US authorities abusively interpreted clear principles such as “national treatment” and “MFN” for masking protectionist interests. Very recently, the US government has accepted the panel ruling, which does not delete the obligation of Mexican trucking services to comply with US safety standards.

These disputes suggest that leveling the playing field among partners is far from being reached. This is not because Canada and Mexico are not as market-oriented as the US wished they were, rather that the US still remains a protectionist country pressing for unilateral arrangements when sensitive trade issues are at stake. Does this mean that both CUFSTA and NAFTA have failed to deliver the promises they originally entailed? After years of US-led free trade diplomacy, Canada and Mexico are still learning to cope with the two fronts opened by this venture. NAFTA not only promotes US foreign trade interests abroad, but also attempts to work as an institutional constraint to deter protectionist pressures at home. The first goal has been successful so far, as witnessed by trade performance and the institutional changes it has provoked in Canada’s and Mexico’s economic organization. As



for the second goal, NAFTA is still far from leveling the playing field among partners, this time vis-à-vis US practices. US protectionism has become more manageable under NAFTA, but it is still far from being policed under trilateral agreed-upon rules. However, managed-trade solutions have become the second best by which market access is not necessarily guaranteed, but at least negotiated. For avocado and tomato growers, lumber producers, and suppliers of cross-border trucking, these managed-trade solutions become less costly than making the US play by the rules. That is, when dealing with US-sensitive issues, NAFTA institutional obligations and enforcement mechanisms have helped to defuse the problems and facilitated reaching a compromise.

**b. Investment access. Outcomes and problems**

A second goal of NAFTA was to empower market actors vis-à-vis governments. For Washington, this goal was still framed in the wider principles of its trade policy, aimed at leveling of the playing field with its trade partners. If partners should be as open as the US economy, this openness should include the financial and services arenas. This was achieved when NAFTA partners accepted extending the principles of national treatment and MFN to investors, investments and services operating in the region. As for Canada and Mexico, the empowerment of market actors came from two fronts. By signing CUSFTA and later NAFTA, both countries engaged and/or deepened market-oriented reforms in their own economies. The most dramatic case was Mexico's, where economic reforms initiated and accelerated by then-President Salinas, became irreversible thanks to the new agreement, which according to Mexican legislative tradition, became part of its own Constitution.

The empowerment of private actors was also done at the judicial and governance level. Chapter 11 of the Agreement defines rules of thumb for dealing with foreign investors. Apart from granting national treatment and MFN status, under this chapter performance requirements are prohibited, nationality constraints are banned for the selection of CEOs and administrative boards of firms, free monetary transfers are guaranteed and expropriations or measures tantamount to expropriations are also proscribed, except under very specific circumstances. Chapter 11 also enables firms and investors to activate a panel dispute against a state, without having to go through their own governments if any of the above rules are breached. No other arbitration mechanism within NAFTA makes such an empowerment of private actors as this one. Final awards of arbitrated panels activated under Chapter 11 are binding, and in case they are neglected by governments, the complaining party has the option to activate a panel mechanism under Chapter 20.

Chapter 11 did not exist under CUSFTA, so in many ways it was envisioned as a device for deterring Mexico's discretionary policies concerning nationalization and foreign investment policies. In many ways, this chapter has meant a challenge to Mexico's and in some way Latin America's state-centered law paradigm regarding the treatment of foreign

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investments. It does substitute national tribunals for international arbitration when corporate property rights are at stake, and it overlaps with other legal systems still prevailing for national investors.

But the most controversial issue about this chapter has become its “perverse” effects. Conceived as a mechanism for making state policies concerning investments and investors more accountable, the current record shows that these same investors have changed the defensive mechanisms of the chapter into an offensive tool. One of the most controversial cases, the so-called *Ethyl Corp. v. Canada*, showed that by skillfully interpreting the ambiguities of the agreement, private firms can overrule government policies aimed at the protection of the environment, a goal that ironically the NAFTA is also promoting. NAFTA ambiguities stem from a rather broader definition of an investment and the absence of a narrowed-frame definition of expropriation.

There is indeed very little limit to the scope of what Chapter 11 defines as a protectable investment. The latter could be understood as a business, shares in a business, a loan to a business, real estate bought for business purposes and the broad concept of “interest” arising from the commitment of financial or human resources to economic activity. In the case of *S. D. Mayers v. Canada*, for instance, the Tribunal ruled the scope of investment as including such assets as market share and access to markets in the host state, suggesting that almost any kind of business activity can constitute an investment that is subject to protection. (IISD, 2001: 23).

Chapter 11 prohibits three types of expropriations: direct expropriation, indirect expropriation and measures tantamount to expropriation. The record of cases for this chapter suggests that the two latter definitions have become the same. The *Ethyl Corp. v. Canada* becomes relevant. When the Canadian government banned the import of a chemical component (methylcycloentadienyl manganese tricarbonyl: MMT) into the country, as well as its inter-provincial trade, alleging environmental reasons, *Ethyl Corp.*, a subsidiary of an American firm, sued the Canadian government alleging that the ban amounted to an expropriation of its business in Canada, for which it should be fully compensated. Although the Canadian government justified the ban by its concern on the potential toxic properties of magnesium, a component of MMT, the Tribunal ruled the compensation of the firm and the Canadian government overruled the ban.

The arguments that environmental legislation could be interpreted as tantamount to expropriation are new, and have raised concerns that any foreign-owned corporation could use similar arguments to attack new environmental regulations that have a potential impact on its profits. In fact, Chapter 11 has been used by firms as a two-edged sword: for protecting their rights, and for refraining governments from enacting policies addressing public concerns. The fact that disputes under this chapter are rather settled in a secret manner, with no obligation of governments to distribute information, and with important impacts on public policies, have led to some environmental organizations to talk of a “dem-

ocratic deficit” in the field of the deregulation of investment.

**c. The use of sanctions for complying with domestic legislation. The case of labor and environment**

NAFTA has provoked the thriving of competing or alternative agendas coming from either domestic political parties, interest groups or non-state actors. It seems as if the pace towards continentalization could also be shaped taking into consideration non-mainstream debates and interests that are working either for a complementary or alternative agenda to that framed by NAFTA. A major characteristic of those agendas is that they are still rooted in national-based discussions. A further continentalization of production, exchange and capital mobility in North America under the principles of open regionalism will probably reinforce reactive strategies to the externalities provoked by cross-border regionalism. A divide between proactive and reactive policies vis-à-vis US-market-driven integration has already become the source of domestic and cross-border tensions within North America. However, this divide mainly reflects the interests and political calculations of U.S.-based organizations, which coalesce as supporting or blocking any trade-related initiative coming from the government.

In the US, labor unions, principled organizations, and other grass-root movements have traditionally opposed NAFTA and a further opening of the US economy. They argue that giving preferential access to the US market has led as a consequence to the loss of jobs in the US, and the degradation of the environmental and social conditions of trading partners. The arguments and votes of these organizations were so powerful that President Clinton in 1993 had to negotiate two side agreements, one for labor rights protection and other for environmental protection, in order to get NAFTA accepted by the US Congress.

In spite of the good record on trade performance for the three countries, these same advocate groups have severed their criticism against NAFTA and pressed Congress to impede the granting of fast track authority to the President. The refusal to concede for some years the so-called Trade Promotion Authority (TPA) was translated into a “vote of confidence” on NAFTA<sup>6)</sup>. Though some of the claims of those groups do not pass the economic and historical record, they have proved to be politically efficient for shaping the perception of the average US citizen in relation with NAFTA and other outward looking initiatives. According to some polls elaborated in mid 1997, 66% of Americans believed that free trade agreements between the US and other countries cost jobs to the US; 58% agreed that foreign trade has had a negative impact in the US economy because cheap imports have cost wages and jobs; and 81% said that Congress should not accept trade agreements that give other countries a leverage to overturn US laws (School of Real-Life Results, 1998).

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6) In July 2002, TPA was finally voted in by Congress.

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The weakness of the labor-environment reactive coalition lays in the job-creation/job-loss debate. Growing and competitive imports coming to the US will always mean exports of non-competitive jobs abroad, with or without trade agreements. Furthermore, job losses are not only a consequence of trade; macroeconomic and monetary policies could become more decisive for shaping the cancellation of job positions. By contrast, the strong argument of this inward-looking coalition lies in the environmental aspects, further reinforced by the "perverse" effects conveyed by some Chapter 11 awards.

Grass-root movements have however become empowered by trade integration, but those movements still reflect the interests of civil society groups that have a say in US politics. Some groups existing either in Canada or Mexico, striving for the defense of the welfare state or of collective indigenous rights, are still peripheral to the debate about the governance of externalities provoked by the integration process.

## V. The challenges and opportunities for the future

Though the drive towards integration in North America does not follow the European model, the evolving scenarios for the coming decades seem to point out similar trends already prevailing in Europe. Like the communitarian project, North America seems to be split between critical choices: to maintain the status-quo or to head towards a deepening and/or widening dilemma.

Although keeping the status quo seems to be the best choice for NAFTA critics and detractors, this scenario seems difficult to be maintained. A major point of this essay is that NAFTA, like any other regional option, must be seen as an interface among concurrent policy options. As long as this linkage role is perceived as desired and necessary, regional options will remain attractive vis-à-vis other governance devices. Conversely, as long as the concurrent governance architectures become more attractive and preferable in terms of policy options, regionalism will loose its appeal. Thus the so-called "demand" for regionalism will remain linked to the attractiveness and effectiveness of alternative governance mechanisms.

In the case of NAFTA, I have argued that this works as an interface between unilateral and multilateral US policies, and as an interface between North and South relationships. In other words, NAFTA is closer to a policy and functional regime than to a real device promoting and governing integration. It rather remains a major device of US trade diplomacy, through which Mexican and Canadian interests became accommodated. In this sense, keeping NAFTA as it is, that is, betting on the status quo, will depend on how functional trade and investment issues could be handled at the trilateral level, and how related issues, yet exogenous ones able to affect NAFTA fields, could be handled in alternative governance mechanisms.

Taking into account that NAFTA is mainly US-driven, the future of regionalism in North America raises the following questions:

- a) What is in the US interests to be changed? That is, how Washington political elites perceive the need for moving from a foreign policy device to a more integrative model, in which shared-authority mechanisms are put in place.
- b) How do domestic and international constraints facilitate or restrain a drive for change coming from American political élites? Here, the role of Congress, once again, becomes crucial. Think just about the difficulties of the Clinton administration for obtaining the TPA in order to give a decisive momentum to a panoply of multi-level negotiations, either within WTO, NAFTA or bilaterally.
- c) How will Mexican and Canadian interests be articulated and accommodated within US policy preferences?

US priorities will remain a decisive factor in the future of North American regionalism. After September 11, for instance, security and the struggle against terrorism became the priority in US foreign policy, subordinating bilateral and regional issues to this priority. A major consequence has been the redefinition of "security borders", in which the expansion of the so-called "security perimeter" has included Canada and soon will include Mexico. Canada is currently talking about "intelligent borders" in order to justify the American presence of customs and security officials within its own territory. How Mexico will be integrated in this expanding trilateral architecture is not yet clear. This suggests, however, that when US interests are at stake and Washington attempts to redefine the rules of the game, trans-border initiatives are being set up and internalized at the regional, yet hemispheric level.

In another completely different move, Mexico attempted to devise a kind of "NAFTA-plus" talks, when President Fox came to power and pushed the migration and development agenda at the bilateral level. Although migration also became a priority in the US agenda, the September 11 events subordinated any policy initiative coming from Mexico to the imperatives of Washington-framed policies of security. Nonetheless, Mexico and Washington could strike a deal on development policies when the so-called Alliance for Prosperity was launched at the Monterrey Summit in March 2002. This initiative became anchored in four pillars (See Sojo, 2002):

- a) Better access of private investment to push small and medium size enterprises. A major goal is to reduce the costs for transferring remittances coming from Mexican living in the US. According to this plan, Mexican migrants can now help to finance private construction projects, mainly private dwelling, for their families living in Mexico. Projects for obtaining credits in the US for being disbursed in Mexico are also being considered. To fund the selling of US franchises and tourist-oriented development projects is envisaged, as well as market-based mechanisms to enhance the rooting of Mexican population.

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- b) Transfer of technology. Targeted projects are being discussed such as offering courses on finances, administration, etc. for small and medium size businesses in Mexico by some American universities. The promotion of Mexican handicrafts in the US, through institutional mechanisms, is also considered. The goal is to upgrade entrepreneurial skills in Mexico.
- c) Investment in infrastructure. Mainly targeting transport, power transmission, telecommunications, etc. The promotion of US scholarships in order to train more human capital in the US is also being considered.
- d) Institutional interconnectedness. Linkages between federal government institutions and regional and multilateral organizations, such as the Inter-American Development Bank (IDB), the Eximbank, the WB and other organisms are desired.

A development approach like this remains loyal to the Washington Consensus policy options framed since the eighties and that have inspired structural reforms in Latin America and trade associations, including NAFTA. That is, they bet on a corporate-led agenda in which entrepreneurial skills and market mechanisms are the backbone of development policies. In contrast with the European model of integration, under this scheme there is no room for discussing the need for, say, structural funds for the most deprived regions within North America, nor targeted policies for maintaining social cohesion and regional balances. Furthermore, this is not a trilateral initiative, but a bilateral one. In this sense, sensitive key issues for Mexico, like migration or income and welfare disparities, will continue to be dealt under the priorities of US interests, and at the bilateral level. For Washington, there is no need to raise these issues at the trilateral level, as it was for its policy aimed at leveling the playing field with its partners.

Those two examples suggest that keeping the status quo within North America will remain difficult. There are areas, such as security, in which a trilateral move is already in the making, and there are other ones, like migration and economic equalization, in which bilateral relations will remain more important. This does not mean that discussions already opened in terms of creating a Trade and Investment Tribunal, a Customs Union, and even a monetary union will keep going, and will eventually gain momentum according to specific junctures (See Pastor, 2001). However, to "deepen" NAFTA solely in the trade and investment arena will further imbalance the representation of interests of societal groups. As it appears and works now, NAFTA remains a corporate-led device for fueling economic growth regardless of the social, political and cultural unbalances this may provoke.

The representation of corporate interests is already unbalanced in North America. Take for example the over-representation of corporate rights under Chapter 11 through which the governance of investment flows is privatized by granting firms the right and faculty to directly sue governments when their corporate rights are at stake. Under the experience of NAFTA, firms have been able to stop and revert environmental policies enacted by states that play against their interests. In some cases, public interests have been subordinated to

the primacy of private corporate interests thanks to this over-representation of corporate rights. Thus, a corporate-led, deeper integration risks deepening both integrative and fragmentation trends in North America. Take the case of Mexico, in which preliminary data show that is northern Mexico, and urban centers located in the central plateau, that are benefiting of export-oriented industries. Income gaps are being widened between northern Mexico and the South. But this seems to happen also at the regional level. Some studies point out towards the creation of a dynamic continental region within North America, located from the Great Lakes area up to New York (Paelinck and Polèse, 1999). This continental area encompasses key US states like Michigan and Illinois, and two key Canadian provinces like Toronto and Quebec. This is a kind of hub with a major spoke to California and Texas, where most of Mexican and American exchange take place. In other words, corporate-led integration is not evenly integrating the three countries, but rather linking in a differentiated way different productive spaces across the continent. How this reconfiguration of the productive space will impact social and political organization in North America remains a major trend to be depicted in the coming years.

Lust but not least, there remains the issue of widening NAFTA. As an interface between a North and South agenda, NAFTA has become a blueprint for the creation of a Free Trade Area for the Americas (FTAA). Launched in parallel to the NAFTA negotiations by former President Bush in 1990, former president Clinton and current President George W. Bush have made of this initiative a major policy move towards the hemisphere. After three summits and several ministerial meetings, a draft proposal is already available and ready to be discussed once the events of September 11 have prompted Congress to give TPA to the White House. For Washington, the hemispheric initiative aims to work as an interface between WTO negotiations, in which a new round of multilateral negotiations is attempted to be launched, and the regional initiatives already existing in the Western hemisphere. Apart from NAFTA, old and renovated integrative mechanisms have flourished in the past decades, the most important one assembling Caribbean countries, Central America economies, Andean nations, and the four southern countries clustered around Mercosur.

The proliferation of integration mechanisms all around the hemisphere has provoked the emergence of different trade and policy "hubs" in the region. By signing bilateral agreements and participating in different regional schemes, Mexico and to some extent Canada have become hubs in themselves. Doubtless Brazil has become another one. Venezuela and Colombia attempt to play their own sub-regional role. Though the US is only participating in NAFTA, it remains the major player in the hemisphere, due to the strength of its economy. Thus, acceding the US market on a preferential basis will remain a strategic card for Washington in order to negotiate alternative trade mechanisms to those already existing. In this sense, for Washington, the FTAA negotiations aim at reducing the role and importance of proliferating "hubs" in the region by centering the negotiations and disciplines around US-led market access negotiations (Weintraub, 2001). NAFTA-like treat-

ment will be promised and probably obtained in some fields, but not in all of them (thus, preserving NAFTA specificity for a span of time), and better concessions could be obtained by key hemispheric countries against concessions negotiated within WTO, for instance in the field of competition policies, and agriculture subsidies. As for the rest of Latin American concerns, in terms of bridging income gaps, reducing poverty, or protecting democratic institutions, they will probably be handled in alternative multilateral forums or become subordinated to Washington priorities.

## VI. Conclusions

Globalization and regionalism seem to be the faces of a same coin. The first one invokes a technological revolution that is transforming our notions of space, territory and time, and the latter refers to the policy mechanisms, rules and paradigms through which global issues are being governed by a cluster of countries. In this sense, NAFTA has been successful as a device for changing the rules of the game in trade and investment matters and for inducing participating partners to adapt their own economic regulatory mechanisms to a benchmark defined by Washington at the multi, mini and unilateral levels. As long as the US economy keeps innovating and growing, North American integration defined according to US standards will remain legitimated and a blue print for future negotiations, either at the WTO or at the FTAA talks.

As it stands, the future of North American integration will remain rooted under the primacy of market-oriented mechanisms and corporate rights protection. Regional imbalances, income, health and education gaps (mainly between Mexico and its two other partners), welfare policies, and differences in administrative organization within each country affecting cross-border issues, will be dealt on an ad hoc basis. Continentalism will remain subordinated to American interests, as demonstrated by the enlargement of the security agenda after the September 11 attacks. Thus, the challenge for "followers" will be to devise the institutional mechanisms for accommodating their own priorities within the continental agenda. To balance a corporate-led integration scheme, currently prevailing in North America, with a social, labor and welfare-led agenda remains important for the integrative efforts of the region. The integration path is accelerating fragmentation trends, similar to what globalization is provoking in other parts of the world. Thus, bridging gaps, increasing social opportunities—through public universal education and health care—and maintaining social cohesion remain the challenges to be handled for the future, either at the local, federal, regional and multilateral levels. The European experiment has shown that this governance challenge is possible to be addressed, with great success. Though the North America experience is grounded on different circumstances, its success and achievements should not be that different.



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