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Convergence: Future Integration Between Mexico and the United States

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CONVERGENCE: FUTURE INTEGRATION BETWEEN MEXICO AND THE UNITED STATES

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This article will explore the commonalities and differences between NAFTA and other integration arrangements. I will attempt to prove that NAFTA, the European Union and perhaps even Mercosur are similar in many important dimensions. This comparative method will be utilized in order to identify the type of integration arrangement that NAFTA represents.

There are very striking differences in terms of scope, depth, origins, and degree of institutionalization and centralization that would seem to indicate that NAFTA is not moving toward the European model, at least not for the short term.

Currently, NAFTA is probably the most important free trade agreement short of a common market. NAFTA was not simply a result of negotiations that took place only in the 1990s. Rather, it was the product of a long-term process whereby the Canadian and the Mexican economies were integrated with that of the United States. At the present time, for instance, eighty percent of Mexican and Canadian trade is with the United States.[1] Around thirty-two to thirty-five percent of United States trade is with Canada and Mexico.[2] Canada is the largest trading partner of the United States, while Mexico, in 1997, became the second largest.[3]

However, this trade integration is not a recent development. The United States, at the end of the nineteenth century, made up thirty-eight percent of Mexico's total trade, while thirty-five percent of total investment in Mexico came from the United States.[4] Certainly, there is a long tradition of U.S. investment in Mexico, stemming from the distance of alternative markets, the availability of mining resources in Mexico and the need for foreign capital. It is clear that NAFTA was a recognition of these historical ties.

In addition to trade integration, the degree of labor market integration between the Mexican and U.S. economies is very high, even though a lot of it is undocumented migration. Even so, it is a higher integration than that existing at the

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1. Trade Statistics, STAT-USA Business Trade & Economic Information, (last visited March 24, 2002) <http://www.business.gov/busadv/maincat.cfm?catid=107>.
2. Id.
3. Id.
4. PATTERNS OF UNDOCUMENTED MIGRATION: MEXICO AND THE UNITED STATES, (Richard C. Jones, Ed., Rowman & Littlefield 1984).

present time between some European countries, despite the fact that the European Union contemplates the free movement of labor.

Again, this labor exchange is not a new development, having existed since the nineteenth century. Historically, there was a free movement of labor between Mexico and the United States. It was very easy for employers to come to Mexico and hire Mexican workers in the 1800s to build the roads in the southwest. In fact, most of the economy of the U.S. southwest was built with Mexican labor. Only recently, in the early twentieth century, were regulations imposing control on Mexican labor implemented.[5] For example, the *bracero* program, which was instituted in 1942, was a program that only reflected the reality that had been in place decades before.[6] Mexican labor was necessary during the war effort and it created strong labor integration.[7]

But despite all that existed prior to the treaty, NAFTA has achieved an amazing reduction of barriers to trade. NAFTA is an agreement that has attained, in most instances, a depth of integration that is more important and more compelling than, for instance, APEC, the Andean Pact, or even the Mercosur agreement.

When comparing these achievements with those of the European Union, the differences are striking in terms of the depth variable, for instance. The European Union, as we know, has created coordinated policies in a variety of areas that NAFTA has not yet even contemplated, such as social security, tax legislation, health programs, competition, and quality issues. Additionally, the European Union has already implemented coordinated policies regarding a common external policy with other countries, which is also not contemplated in NAFTA.

These differences are largely attributable to the divergent goals of the two agreements. The goal of the European Union, from the beginning, was to establish a common market. As evident in the Treaty of Rome, the parties to the agreement also sought mutual respect, protection and improved social conditions.[8] In the European Union, there are policies that are common and are binding on the countries. In fact, the EU has had several institutions that create common policies that are binding on all the members, including the European Court of Justice.

By contrast, in NAFTA, the goals were not as ambitious. The primary goal of the agreement was simply the elimination of tariff and non-tariff barriers to trade and the establishment of reciprocal national treatment obligations regarding trade, services and investment. Unlike the EU, NAFTA did not establish any obligation to harmonize or converge. During the working committees, no institution in NAFTA was given the authority to establish directives or policies that are binding upon the countries, nor was such an institution contemplated. Admittedly, the Trade Commission does operate as a dispute resolution mechanism, which perhaps creates a dimension of supranationality since the decisions of the panels in Chapter 11 and Chapter 19 are somewhat binding on the governments. However, this supranationality is very limited in scope because it simply was not contemplated in NAFTA. We did not aim to achieve a common set of goals or policies that would be superimposed on the participating countries.

5. Id.
6. Id.
7. Id.
8. Treaty Establishing the European Economic Community, Mar. 25, 1957, art. 118, 298 U.N.T.S. 11.

When examining the variables of depth, centralization and the lack of institutions to create common policies, NAFTA and the EU become even less similar. The European Union started in the 1950s and took forty years to develop into its current form. Political and economic integration theorists propose that once an integration agreement is initiated, even at the lower levels, there are forces that cause it to deepen.[9] For the European Union, that is probably the case. You can see that it began as a sectional agreement, then achieved the free-trade area, followed by a customs unit and a common market. Currently, they are trying to achieve the level of a whole-Europe economic community. However, the process has not been smooth. For instance, the adoption of the common currency has been rejected several times by the Danish, the British and other electorates.

Clearly, integration is not a simple, quick process. But according to these theories, once the process is initiated, it continues inexorably. Therefore, we must consider whether this will be the case in NAFTA. NAFTA does not include a very liberal chapter on financial liberalization, for example, and some in Mexico argue that that is one of the reasons why the crisis of 1994-1995 took place.[10] However, several years ago, NAFTA was not aiming at that level of integration and it has already been forced to go toward a higher degree of harmonization than was contemplated. Therefore, in a few years we might see higher levels of integration.

The original goal of the European Union was political. The idea was that European countries could not afford war as a solution to common problems or disputes. The founding fathers of the European Union have always claimed that the main goal of the European Union was the elimination of war between the countries, and they believed that the way to achieve that goal was economic integration and common benefit to all the countries involved.

NAFTA was not created with this sort of political goal in mind. The countries negotiated with a common vision, which was supporting Mexico in the process of becoming a stable country.

The European community decided that in order to attract countries like Portugal, Greece and Spain to the community, they would have to invest in the structural development of those countries to enable them to achieve higher levels of development. The European Union invests in infrastructure so that poorer regions of the Community can achieve higher levels of development sooner than if they were just left to the rules of the market. This investment was also used as a payoff. If they wanted Spain, Greece and Portugal to commit to the adjustment process that liberalization would entail, they would have to be willing to invest and to create these common funds in order to support the adjustment process.

Nothing of this sort exists in NAFTA. As a result of pressure from the environmental community and the labor community when NAFTA was negotiated, the negotiators were forced to include two side agreements on environmental and labor cooperation. But if you study what has happened—for instance, in the environmental side agreement—there was pressure to create a common policy, a

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9. See, e.g., Marta Haines-Ferrari, *MERCOSUR: A New Model of Latin American Economic Integration*, 25 Case W. Res. J. Int'l L. 413 (1993).

10. Enrique R. Carrasco and Randall Thomas, *Encouraging Relational Investment and Controlling Portfolio Investment in Developing Countries in the Aftermath of the Mexican Financial Crisis*, 34 COLUM. J. TRANSNAT'L L. 539 (1996).

sort of a commission that would create policies that would force Mexico to raise its standards. They even decided to create what was called the NAD bank.[11] However, in seven years, the NAD bank has done little. There has not been sufficient investment in projects on the border.[12]

When he took office, President Fox immediately suggested that there was a need to invest more money in that bank in order to tackle the problems of the border. Despite NAFTA and the benefits it has had in the last seven years, there are sectors, such as the agricultural sector, that have been negatively affected by the liberalization and the adjustment process. However, others, such as textiles, apparel, electronics, automotive, are growing tremendously.

NAFTA was also negotiated with the idea that the border economy, the *maquiladoras*, would move into the rest of the country. The economic growth that would develop with NAFTA would provide enough resources for Mexico to invest in the development of its infrastructure. However, a recent study by the Institute for International Economics (IEE) in Washington shows that the border is doing terribly.[13] There is need for more investment. The study suggested that $12 billion should be invested in the NAD bank just to tackle the most pressing problems.[14]

It is clear that NAFTA has not been a solution to the border problems. NAFTA was negotiated for a very specific set of reasons. Mexico was saddled with debt in the 1990s. The country simply could not grow without foreign investment, so it was forced to negotiate an agreement with the U.S. The U.S. reacted to this need and, at a special moment in U.S. history, agreed to negotiate NAFTA. The U.S. saw the need to support Mexico and to find a way to support development in Mexico in order to prevent migration from taking place.

As you know, the U.S. normally has supported multilateral trade agreements; NAFTA is sort of an exception in U.S. policy. It is illustrative of this policy that there have not been any other trade agreements since NAFTA took place. Given the debate that took place during the NAFTA negotiations, it has been very difficult for the U.S. executive to obtain authority to negotiate further trade agreements. Obviously, NAFTA was an exceptional agreement for Mexico.

NAFTA did not intend to achieve the four freedoms of the European Union.[15] However, there may be a shift in policy from the Mexican government since it is now promoting free movement of labor and regularization. I believe that it will be very difficult to achieve migration reform in the short term. The countries' two leaders may now have the power to persuade Congress, but it will be difficult for them to effect any dramatic changes. Perhaps the most important development in Mexico in this area is the reduction of Mexico's birth rate. Although it used to be 3.5% in the 1960s,[16] it has now gone down to less then 2 percent.[17] If this reduction continues, it will reduce the pressure for job creation to accommodate as many new

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11. North American Development Bank, (last visited March 24, 2002) <www.nadbank.org/>.

12. Patricia Romano, *Sustainable Development: A Strategy That Reflects the Effects of the Globalization on the International Power Structure*, 23 HOUS. J. INT'L L. 91 (2000).

13. Richard E. Feinberg, *Summitry in the Americas: A Progress Report*, INSTITUTE FOR INTERNATIONAL ECONOMICS (April 1997).

14. Id.

15. Id.

16. Mexico People, (last visited March 24, 2002) <www.immigration-usa.com/wfb/mexico_people.html>.

17. Id.

entrants into the labor force, which will then sharply reduce the push factors for immigration. That may help to achieve an ordered, regulated agreement in the migration area.

Currently, there are pressures to go further into a customs union. The problem with that new step would be that customs unions require a common commercial policy. Mexico and Canada have always been very reluctant to adopt U.S. external trade policies toward Cuba, for example. But if a customs union can be attained without having a common external policy, the benefit of that would be that you would eliminate the need for rules of origin that have also become a problem in the development of NAFTA.

There are some possibilities for further integration in the agreement. However, there should be great care when presenting the need to revisit NAFTA. If Mexico were to say that they would like to reopen the agreement to negotiate one particular sector because it is not in Mexico's benefit, the United States would take that opportunity to seek changes in other areas.

There has been a process of accelerating the phasing out of tariffs, which were negotiated for ten years. In the last few years, Mexico has eliminated some tariffs before the original schedule. This strengthens the institutions in NAFTA. We need a very strong trade commission with a staff that could help committees to start working in different areas. That was the original idea, but it did not happen due to the 1994-1995 crisis. Everything was set aside for the sake of crisis management. But now the trade commission supports dispute panels. We need a staff that could try to identify common areas of interest for the three countries in which we can create a deepening of trade liberalization. There are possibilities within the agreement, but if it is presented as a reopening it may cause more problems than it solves.