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U.S.-Mexico Free Trade Agreement

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I. INTRODUCTION

Attorneys, economists, and politicians have recently been focusing their thoughts toward Europe, as the creation of the European Economic Community (EEC) approaches in 1992. However, here in the United States, talks about a North American Free Trade Area (NAFTA) in the near future may prove even more exciting than the creation of the EEC. Actually, a NAFTA, as compared to the EEC, would have even greater legal, economic, and political ramifications for the United States, North America, and the entire world.[1] A NAFTA comprised of the United States, Canada, and Mexico would have a combined population of about 355 million people and a combined annual output of about U.S. $6.4 trillion.[2] Comparatively, the twelve-nation EEC will contain only 324 million people and produce U.S. $4 trillion annually.[3]

The possible creation of a NAFTA began on January 2, 1988 when Prime Minister Brian Mulroney and President Ronald Reagan signed the United States-Canada Free Trade Agreement (FTA).[4] Subsequently, talks about a United States-Mexico FTA indicate that a trilateral trade agreement may be imminent.[5] Although a U.S.-Mexico FTA appears to be the next logical step in forming a NAFTA, such an agreement may not come easily.[6] The difficulties inherent in establishing a U.S.-Mexico FTA are better understood by examining the trade history of Mexico and the United States.

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1. Wickens, *A Giant Marketplace*, MACLEAN'S, Jan. 25, 1990, at 20. *See A NAFTA: Progress and Obstacles*, Bus. Latin Am., Apr. 30, 1990 [hereinafter *A NAFTA*].

2. Wickens, *supra* note 1, at 20. *See* McClenahen, *Road to Mexico Will be Long: A Free Trade Pact is Still Five Years Away*, INDUSTRY WK., July 16, 1990, at 74.

3. Wickens, *supra* note 1, at 20.

4. D. STEGER, A CONCISE GUIDE TO THE CANADA-U.S. FREE TRADE AGREEMENT 1 (1988). The agreement between Canada and the U.S. became effective on January 1, 1989. *Id.*

5. *President Salinas Pledges Support for FTA*, Bus. Latin Am., May 28, 1990. *See Mexico-U.S. Accords Could Speed Up Future NAFTA*, Bus. Latin Am., March 5, 1990 [hereinafter *Mexico-U.S. Accords*]. *But cf. The Mexico-Canada Trade Framework Agreement*, Bus. Int'l, June 11, 1990 (Progress needs to be made before a North American trade union is achieved) (LEXIS, Report library, Busint file).

6. *Difficulties Seen for U.S.-Mexican Free Trade Agreement*, Reuter Lib. Rep., March 30, 1990 (LEXIS, Nexis library, Lbyrpt file).

II. TRADE HISTORY OF MEXICO AND THE UNITED STATES

A. Mexico

Since the late 1930s, Mexican trade policies have protected local producers and industries through enforced import licensing requirements, high tariffs, and official import reference prices.[7] Such measures encouraged foreign companies to construct plants in Mexico, rather than export to Mexico and, thus, did not stimulate sufficient development of Mexico's raw materials and agriculture.[8] Some Mexican economists recommended that the government expose Mexican industry to greater price competition by shifting from absolute protection of domestic industries, characterized by import licensing, to more modest price protection.[9]

In the past, the U.S. complained that Mexico was along for a free ride in the international trading system, and sought to remain so.[10] Additionally, the U.S. felt that Mexico, a relatively advanced country with a reasonably well-developed industrial structure, should make reciprocal contributions in international trade negotiations.[11] In sum, the unpredictable Mexican trade policy displeased the U.S.[12] Furthermore, Mexico's protectionist industrial and trade policies differed from those prescribed in the

7. Review of Trade and Investment Liberalization Measures by Mexico and Prospects for Future United States-Mexican Relations, Phase 1: Recent Trade and Investment Reforms Undertaken by Mexico and Implications for the United States, USITC Pub. 2275, Inv. No. 332-282, at 4-1 (Apr. 1990) [hereinafter ITC Phase 1] (LEXIS, Itrade library, ITC file).

8. *Id.*

9. S. WEINTRAUB, FREE TRADE BETWEEN MEXICO AND THE UNITED STATES? 41 (1984). Mexico could achieve price competition with moderate tariffs varying according to the degree of protection the country wished to grant different industries. *Id.*

10. *Id.* at 55. In negotiations on tropical products, which preceded the multilateral trade negotiations in the GATT, the U.S. insisted on some degree of reciprocity in the 1977 agreement. In the multilateral trade agreements themselves, U.S. negotiators complained that Mexico should show some reasonable token of reciprocity to reflect its stage of development. *Id. See generally* The General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, A7, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

11. S. WEINTRAUB, *supra* note 9, at 56.

12. *Id.*

General Agreement on Tariffs and Trade (GATT) to which the U.S. was accustomed.[13]

During negotiations for Mexico's possible accession to the GATT, Mexico clearly sought treatment as a developing country.[14] When Mexico's balance of payments began to deteriorate in 1980, Mexico initially chose not to enter the GATT and resorted to licensing to protect itself against imports.[15] However, the weakness of the world oil market and the 1982 debt crisis, which hurt Mexico's national economy, caused Mexico to reassess its traditional trade policies.[16] Thus, in 1983, President De La Madrid's administration announced its intention to open and modernize the Mexican economy and make necessary structural adjustments.[17] Slowly, Mexican policy makers began replacing protectionist policies and reliance on oil exports with policies to attract foreign investment, lower trade barriers, and increase competitiveness in nonoil exports.[18]

By August 1986, several months after a working party examined Mexico's possible membership to the GATT, accession took place and Mexico became the ninety-second contracting party

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13. *See id.* at 40-41.

14. *Id.* at 42. The implications of being treated as a developing country include: entitlement to receiving benefits from developed countries without being expected to provide equivalent benefits, using export subsidies more freely than developed countries, reducing contention with other contracting parties when nontariff techniques are used to develop domestic industry, and receiving nonreciprocal preferential treatment from industrial countries. *Id.*

15. *Id.* at 45. *See* ITC Phase 1, *supra* note 7, at 2-1 (explaining that in 1986 Mexico was the world's largest market economy country outside of the GATT).

16. ITC Phase 1, *supra* note 7, at 4-1. *See* Trigueros, *A Free Trade Agreement Between Mexico and the United States?*, in FREE TRADE AREAS AND U.S. TRADE POLICY 255 (J. Schott ed. 1989) (maintaining that the extraordinary economic performance of some Southeast Asian countries following export led growth economic strategies may also have played an important role in Mexico's decision to break with traditional import substitution).

17. ITC Phase 1, *supra* note 7, at 4-1.

18. *Id.* Mexico introduced trade liberalization in three stages. First, Mexico gradually opened up its markets to foreign participation by simplifying the import tariff schedule, reducing import license requirements, and eventually removing import license requirements from over 2000 categories on Mexico's tariff schedule. Second, Mexico announced it would reapply for entry to the GATT and actually acceded to the GATT in 1986, which in turn encouraged Mexico to remove import license requirements, reduce tariffs, and generally move to a regime in which quantitative restrictions applied only to a few selected economic sectors. Finally, President Salinas currently wishes to consolidate and extend the reforms promulgated in the prior stages. *Id.* at 4-3.

to the GATT.[19] As part of its contribution to the GATT, Mexico agreed to make tariff concessions, bring all customs valuation procedures for imports into conformity with article VII of the GATT,[20] and eliminate its official pricing system.[21] By entering the GATT voluntarily, Mexico expressed a new policy of commercial openness.[22] Some believe that the U.S. response to Mexico's commercial openness was discouraging, because the U.S. imposed new restrictions in its commercial law, bound tariffs to Mexican exports of steel, and sustained textile quotas.[23] The trade history of the U.S. illustrates how and why the U.S. responded to Mexico's liberalization of its trade policy.

B. United States

Traditionally, the United States has practiced multilateralism throughout its external trade policies.[24] The U.S. has used the GATT as its principal forum to launch major trade initiatives to reduce trade barriers and discuss trade agreements.[25] Actually, the GATT articles of agreement reasonably summarize the philosophy that guides U.S. trade policy.[26]

Historically, the U.S. has been one of the most open world markets; duties are low and customs procedures are highly transparent and predictable.[27] As a result of this ease of export to the United States, domestic U.S. competitors ensure that products are free of injurious dumping or subsidization.[28] Without such

19. *Id.* at 2-1. Mexico was permitted to accede to the GATT as a developing country.

20. *See* R. FOLSOM, M. GORDON & J. SPANOGLE, JR., 1989 DOCUMENTS SUPPLEMENT TO INTERNATIONAL BUSINESS TRANSACTIONS 30 (1989) (Article 7 of the GATT provides for valuation of products for customs purposes).

21. ITC Phase 1, *supra* note 7, at 2-2.

22. Lande, *Posibilidades Para Ampliar El Intercambio Comercial Entre Estados Unidos y Mexico*, in LA ADHESION DE MEXICO AL GATT 304 (B. Torres ed. 1989).

23. *Id.* at 313.

24. S. WEINTRAUB, *supra* note 9, at 40.

25. *Id.*

26. *Id.*

27. Rosenbaum, *U.S. Trade and Investment Policy Toward Latin America*, in TRADE, AID AND U.S. ECONOMIC POLICY IN LATIN AMERICA 28 (H. Wiarda & J. Perfit eds. 1983).

28. *Id.*

protection, the U.S. government could not command the political support necessary to keep an essentially open market.[29]

Through the passage of the Smoot-Hawley Tariff Act of 1930, the U.S. Congress had reigned supreme in regulating international commerce.[30] With the enactment of the Reciprocal Trade Agreements Act of 1934, however, the U.S. Congress began to opt out of regulating international commerce.[31] From World War II until the late 1960s, industries such as textiles, oil, and steel, which were threatened by imports, sought protection and most actively attempted to affect U.S. trade policy.[32]

During the late 1960s and 1970s, competitive performance decreased in a succession of U.S. industries and the U.S. economy grew increasingly dependent on trade.[33] Imports captured growing shares of U.S. markets, initially in labor-intensive industries such as apparel and footwear, and later in capital-intensive industries such as automobiles and steel.[34] High-technology industries from Japan and Western Europe now pose challenges to the U.S.[35] Since trade growth accompanied the U.S. decline in the relative world economic position, more businesses sought trade protection.[36]

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29. *Id.*

30. Destler, *U.S. Trade Policymaking in the Uruguay Round*, in DOMESTIC TRADE POLITICS AND THE URUGUAY ROUND 192 (H. Nau ed. 1989). *See* Devine, *Free Trade with the United States*, in ASSESSING THE CANADA-U.S. FREE TRADE AGREEMENT 160 (M. Smith & F. Stone ed. 1987) (The Smoot-Hawley Tariff Act doubled tariffs and led to world-wide retaliation). Article I of the U.S. Constitution grants Congress the sole power to "regulate Commerce with foreign Nations" and also provides Congress with the authority to "lay and collect . . . Duties." U.S. CONST. art. I, § 8. In contrast, article II of the U.S. Constitution, which sets forth the powers of the President, does not address international trade. U.S. CONST. art. II.

31. Destler, *supra* note 30, at 192.

32. *Id.* at 195.

33. Morici, *Impact on the United States*, in BUILDING A CANADIAN-AMERICAN FREE TRADE AREA 46 (E. Fried, F. Stone & P. Trezise eds. 1987).

34. *Id.*

35. *Id.* Japan and Western Europe are challenging U.S. high-tech industries such as commercial aircraft, advanced electronics, and industrial machinery. *Id.*

36. Destler, *supra* note 30, at 196. Large, multinational corporations generally backed open trade policies and though they did not typically take the initiative in lobbying politicians on trade issues, they gave U.S. trade leaders their support. *Id.*

In contrast to a surge of exports in the late 1970s,[37] the 1980s saw the sharpest rise in imports in U.S. history.[38] The ratio for exports was plummeting.[39] The egregious trade imbalance alarmed virtually all U.S. producers of traded goods.[40] Many producers increased the pressure for strong government action to force markets to open abroad or to close markets at home.[41] Legislators grew more conscious of the trade issues.[42] Figures from the early 1980s illustrate the upward trend in U.S. protectionism toward Mexican products in the U.S. market.[43]

U.S. trade policy in the early 1980s focused on launching a new round of multilateral trade negotiations under the GATT to extend or expand the GATT's coverage of services, investment, intellectual property, and agriculture.[44] The U.S. viewed bilateral agreements as building blocks for potential GATT accords and as a fall-back in case the GATT talks failed.[45]

The FTA negotiation with Israel was the first U.S. attempt to negotiate comprehensive trade liberalization on a bilateral basis.[46] The U.S.-Israel FTA will result in the elimination of all tariffs on

37. *Id.* at 197. The overall export surge from 1978 to 1980 built a consensus for the Tokyo Round agreements. *Id.*

38. *Id.* The 11.2%, as a share of U.S. goods production, to 15.7% increase from 1980 to 1985 was by far the sharpest such increase in modern U.S. history. *Id.*

39. *Id.*

40. *Id.*

41. Destler, *supra* note 30, at 197.

42. *Id.* at 198. Eventually, Congress adopted the Gephardt Amendment mandating U.S. retaliation against nations that run larger trade imbalances with the U.S. unless these nations took action to reduce such imbalances. *Id.* at 199.

43. Trigueros, *supra* note 16, at 265.

44. Schott, *The Free Trade Agreement: A US Assessment*, in FREE TRADE AGREEMENT: THE GLOBAL IMPACT 10 (J. Schott & M. Smith eds. 1988).

45. *Id.* The bilateral approach also seemed to fit better with congressional skepticism about the GATT. The 1982 GATT Ministerial badly damaged the credibility of the GATT and led to efforts to develop new U.S. trade legislation that would protect U.S. trading interests more effectively and expeditiously than GATT procedures. *Id. See* Schott, *More Free Trade Areas?*, in FREE TRADE AREAS AND U.S. TRADE POLICY 7 (J. Schott ed. 1989) (voicing concern of whether the GATT negotiations can actually achieve substantial trade reforms that promote the economic welfare of the member countries, expressing criticism that the GATT process is too slow compared to the shorter time needed to establish bilateral agreements, and that the GATT talks, which must accommodate the interests of the 96 member countries, has become too complicated).

46. Schott, *supra* note 45, at 5. However, Israel does not account for a significant share of overall U.S. trade. *Id.*

bilateral trade by 1995.[47] Building on the success of the U.S.-Israel talks, the U.S. and Canada subsequently entered into FTA negotiations.[48] The U.S.-Canada FTA aims to eliminate tariffs and nontariff barriers (NTBs), reduce restrictions on trade in services and investment, and promote entry of business persons into each country's territory.[49] The U.S.-Canada FTA illustrates the issues a U.S.-Mexico FTA will need to address.

III. THE ARCHETYPAL U.S.-CANADA FTA

A. *Accomplishments of the U.S.-Canada FTA*

The U.S.-Canada FTA, which entered into force in 1989, eliminates all tariffs on bilateral trade within ten years. It also opens up more government contracts to competitive bidding and bars most border restraints on bilateral energy trade. The U.S.-Canada FTA establishes innovative approaches to dispute settlement.[50] Under the U.S.-Canada FTA, negotiators will establish new channels for intergovernmental communication and consultation as well as bilateral mechanisms for dispute settlement.[51] If the U.S. and Mexico were to enter into an FTA, the U.S.-Canada FTA could serve as the archetype for such an agreement.

Trade experts view the U.S.-Canada FTA as a success because it increases access to the U.S. market and creates the opportunity for even greater entry in the future.[52] In addition, proponents of

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47. *Id.* The FTA also includes a framework agreement which commits each country to make best efforts to negotiate substantive rules on services. *Id.*

48. *Id.*

49. D. STEGER, *supra* note 4, at 2.

50. Schott, *supra*, note 45 at 6. Generally, Canada sought more secure access to the U.S. market through both trade liberalization and greater certainty about how the U.S. would administer its trade laws. The U.S. focused primarily on improved rulemaking as well as trade liberalization for its industries. *Id.*

51. D. STEGER, *supra* note 4, at 2.

52. M. GOLD & D. LEYTON-BROWN, TRADE-OFFS ON FREE TRADE 65 (1988). The FTA also increased Canada's security of access to the U.S. market. *Id.*

the U.S.-Canada FTA feel that the FTA will not constrain Canada's government from enacting policies in the country's best interest.[53]

Tariff reductions and rules of origin should instantly affect the production plans of most businesses.[54] Under the FTA, the countries will remove some tariffs immediately and others in equal stages over several years.[55] The FTA classifies all dutiable products into different categories for this purpose.[56] Under the rules of origin, the FTA only entitles preferential treatment to dutiable goods originating in either Canada or the United States.[57]

The FTA, although ground-breaking in the area of trade services, remains cautious in this area.[58] The FTA covers services such as agriculture, forestry, mining, construction, distributive trades, insurance, and real estate.[59] Under the GATT concept of national treatment of services, the two countries have agreed to treat persons or firms of the other country no less favorably than their own nationals with respect to covered services.[60] Additionally, a separate chapter in the FTA covers federally regulated financial services.[61] However, this chapter only applies to insurance services and excludes securities, banks and trusts, and loan companies.[62]

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53. *Id.* at 66. This expert explained that the FTA would not constrain Canada's policies since the principle of national treatment allows each country the sovereign right of independent policy as long as that policy does not act as a discretionary trade or investment barrier. *Id.*

54. D. STEGER, *supra* note 4, at 3.

55. M. SMITH & F. STONE, ASSESSING THE CANADA-U.S. FREE TRADE AGREEMENT 7 (1987).

56. D. STEGER, *supra* note 4, at 6. Either country may accelerate bilateral tariff reductions where both countries agree. *Id.*

57. *Id.* at 8. Without rules of origin, a foreign company could simply export goods to the U.S., pay the U.S. duty and then arrange to ship the goods duty free, thus avoiding the Canadian duty that would otherwise have been payable if the goods were exported directly. As a general principle, goods will be considered to originate in either country, or both, where they are wholly produced or obtained in either Canada, the U.S., or both, or where they have been sufficiently changed in either country so as to meet the FTA rules of origin tests. *Id.*

58. *Id.* at 11.

59. *Id.* at 54.

60. *Id.* The FTA provision of covered services includes (1) production, distribution, sale, marketing, delivery, and purchase of a covered service; (2) access to and use of domestic distribution systems; (3) establishment of a commercial presence for distributing, marketing, delivering or facilitating the covered service; and (4) any investment for the provision of a covered service. *Id.* at 55.

61. *Id.* at 57.

62. *Id.*

B. Concerns the U.S.-Canada FTA Raises

Experts argue that under the U.S.-Canada FTA, Canada did not achieve its objectives but the U.S. did.[63] Opponents of the FTA believe that Canada gave the U.S. greater access to the Canadian market and to investment opportunities than Canada received in return.[64] Thus, Canada's bargaining position may be weaker in future negotiations.[65] Some experts also believe that Canada's access to the U.S. market is no more secure now under the FTA than it was before its inception.[66] Finally, opponents argue that Canada has suffered a serious loss of political authority and that Canada will inevitably be forced to harmonize their policies with those of the U.S.[67]

One major barrier that concerns Canadians is the U.S. application of countervailing duties (CVDs) against subsidies and alleged dumping. Canadian firms have less financial resources to undertake such expensive legal battles.[68] Canadians maintain that U.S. firms bring frivolous suits as a way of discouraging fair competition when it hurts them and what Americans define as subsidies are what Canadians view as legitimate regional and industrial assistance programs.[69] The threat of U.S. CVD cases constrains Canada's ability to undertake regional development and

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63. M. GOLD & D. LEYTON-BROWN, *supra* note 52, at 65.

64. *Id.* Arguably, since Canada receives less from the U.S. in return, this exacerbates the existing economic and political imbalance between the two countries. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 66. Such a loss in Canada's political authority may constrain the future Canadian government from making policy in Canada's national interest.

68. Morici, *supra* note 33, at 55. *See generally* Pattison, *Antidumping and Countervailing Duty Law*, in INTERNATIONAL BUSINESS TRANSACTIONS 502 (R. Folsom, M. Gordon & J. Spanogle, Jr. eds. 1986). A countervailing duty is a customs levy designed to offset the effect of government payments and other economic benefits, generally referred to as subsidies, granted to foreign producers or exporters which distort competition in international trade. *Id.* at 527. The U.S. also regards selling goods at less than fair value (so-called "dumping") as an unfair trade practice. Fair value is the amount charged for a good in the nation from which the good was exported. An antidumping duty is imposed when such sales threaten material injury to a domestic industry or retard its development. *Id.*

69. Morici, *supra* note 33, at 55.

industrial adjustment policies and discourages small Canadian firms from exporting to or pricing aggressively in the U.S. market.[70]

However, the two countries have agreed under the FTA to develop and implement, within a period of five to seven years, a substitute system of antidumping and CVD laws applicable to Canada and the U.S.[71] As a joint working group develops the new system of laws, both countries will continue to apply their own antidumping and CVD laws.[72] Meanwhile, a new binational panel will review final antidumping and CVD orders in the countries.[73]

Canada's preoccupation with the U.S.-Canada FTA stems from a fear of the large and affluent American market, and the pervasive influence of U.S. investment, culture, and politics on the Canadian economy and social institutions.[74] However, all international trade agreements by their nature involve some sacrifice of national sovereignty if they are adhered to and respected.[75] Actually, the Canadian government has already shared with Mexican officials their fears, as well as their knowledge, gained during the U.S.-Canada trade negotiations.[76] A U.S.-Mexico FTA presents some of the same concerns which the U.S.-Canada FTA raised.

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70. *Id.*

71. D. STEGER, *supra* note 4, at 73.

72. *Id.* Thus, Canadian and U.S. firms may continue to bring antidumping or countervailing duty cases against importers from the other country under the current domestic laws and procedures. *Id.*

73. *Id.* The binational panel review process offers several major advantages over the current system. The binational panel process will reduce the time for final resolution of antidumping and CVD cases. Also, with binational panelists rather than with a single judge, the review panels should encourage different interpretations of U.S. and Canadian trade laws. Further, the binational review procedure will provide a cost advantage for small and medium-sized businesses. *Id.* at 74.

74. Morici, *supra*, note 33 at 44.

75. *Id.* at 45. Trade agreements between nations are analogous to contracts between individuals since both constrain signatories to undertake or abstain from actions even if circumstances should change. Countries accept such constraints on their future policy options in return for perceived benefits. *Id.*

76. Green, *Mexican Businesses Welcome Move Toward Free Trade Pact*, J. COM. & COM., June 13, 1990, at 4A.

IV. IMPLEMENTING THE U.S.-MEXICO FREE TRADE AGREEMENT

A. *The Growing U.S.: Mexico Trade Relationship—Groundwork for a Possible FTA*

In recent years, the U.S. and Mexico have gradually improved bilateral trade relations.[77] By 1986, Mexican exports to the U.S. accounted for as much as sixty-seven percent of Mexico's total exports.[78] Recently, Mexico has been importing at least two-thirds of its total imports from the U.S.[79] For the U.S., trade with Mexico has also been growing.[80] Mexico is now the third highest importer of American exports and fourth highest source of American imports.[81] At the Mexican Senate's recent National Consultation Forum on Commercial Relations of Mexico with the World, President Carlos Salinas de Gortari called for additional growth in Mexico's international trade and explained that no nation in the next century can isolate themselves from the new currents of changes.[82] The maquiladora industry illustrates this growing U.S.-Mexico trade relationship and marks some of the first steps the countries took toward trade union.[83]

The maquiladora industry, commonly referred to as the in-bond industry, was established in 1965 under Mexico's Border Industrialization Program (BIP), as an experiment in production sharing.[84] Under the BIP, the Mexican government authorized

77. K. FATEMI, U.S.-MEXICAN ECONOMIC RELATIONS 4 (1988).

78. *Id.* at 4. This figure surpassed 70% in 1987. *Id.*

79. *Id.*

80. *Id.* at 5.

81. *Id.*

82. Salinas, *Cinco premisas sobre las relaciones comerciales con el exterior*, in FORO SOBRE LA POLITICA COMERCIAL DE MEXICO 524 (1990). Salinas further explained that the sign of the times is in the end of the rigidity of political thought and of closed practices. *Id.*

83. *See* L. LANGLEY, MEXAMERICA 32 (1988); ITC Phase 1, *supra* note 7, at 5-13. *See also* Timmins, *Come Canada, Come Mexico, Come All the World*, FOREIGN SERV. J., Mar. 1990, at 28 (The Mexican state of Sonora shares a unique relationship with its northern neighbor, Arizona). Sonora and Arizona constitute the first province-level binational commission in the world, where the governors of the two states meet regularly to discuss cross-border problems and policies. They have created a special development fund financed by the states and their private sectors.

84. K. FATEMI, *supra* note 77, at 105.

businesses to establish industrial plants for the assembly, processing, and finishing of foreign materials and components.[85] The Mexican government collects no duty on these imports provided all finished products are exported and none are kept or sold in Mexico.[86] In the U.S., industries took advantage of two special tariff provisions, Tariff Schedule of the U.S. (TSUS) items 806.30 and 807.00, where U.S. Customs levies duty only on the value added by the foreign processing on the U.S. products processed or assembled in Mexico.[87]

The maquiladora program aims to generate foreign exchange, develop employment opportunities for a rapidly expanding labor force, and foster increased regional development.[88] In sum, the maquiladora industry has created employment opportunities, trained and developed employees, and transferred knowledge at the technical and administrative levels.[89] The maquilas allow American companies to compete effectively with aggressive competitors abroad.[90] The recent U.S.-Mexico trade harmonization merely begins with the maquiladora industry.

In late 1987, the United States and Mexico concluded negotiations on the Framework of Principles and Procedures for Consultation Regarding Trade and Investment Relations [hereinafter Framework Agreement].[91] The Framework Agreement, emphasizing the importance of liberalized trade between the two

85. *Id.* Under the BIP, the Mexican government allows the businesses to import the equipment, machinery, materials and component parts necessary for production.

86. *Id.* The Mexican government has expanded the BIP to permit establishment of plants in economically depressed areas in the Mexican interior. *Id.*

87. *Id. See* L. LANGLEY, *supra* note 83, at 35. Although Mexican labor was more expensive than Oriental labor, companies realized early that the savings in shipping and the ability to pull out quickly in case of political trouble made the Mexican border towns more attractive for investment. *Id.*

88. K. FATEMI, *supra* note 77, at 106. Supporters of the maquiladora industry believe the industry continues to train people in the industrial process and contributes to a knowledge transfer that will spill over into other parts of the Mexican economy. *Id.*

89. *Id.* at 112. As the more technologically advanced companies use more sophisticated methods of job design and provide more advanced training, employees have greater opportunities for participation and decision making. *Id.* at 113. *But cf.* L. LANGLEY, *supra* note 83, at 37, 39 (explaining some of the negative aspects of the maquiladora industry).

90. K. FATEMI, *supra* note 77, at 36.

91. ITC Phase 1, *supra* note 7, at 2-3.

countries, served as a catalyst that improved U.S.-Mexico trade and investment relations.[92] Primarily, the Framework Agreement provided a mechanism for Mexico and the U.S. to consult on trade issues, to resolve disputes, and to negotiate the removal or reduction of trade barriers.[93]

Since the Framework Agreement, the two countries have reached additional agreements.[94] One of the agreements, the Textile Agreement, expanded textile trade between the two countries.[95] The Textile Agreement raised the U.S. import quotas on Mexican textile and apparel products and reserved a portion of the increased quota for a special regime of textiles.[96] Under the Textile Agreement, Mexico increased its textile exports to the U.S. annually by 60%.[97] In return, Mexico lowered its trade barriers to U.S. exports of yarns and so-called "white goods" fabrics and began phasing out import license requirements for most textiles and garments.[98]

Most recently, the Mexican and U.S. Presidents signed the Understanding Between the Government of the United Mexican States and the Government of the United States of America Regarding Trade and Investment Facilitation Talks (TIFTs).[99] The TIFTs build on the continuing work of the 1987 Framework Agreement.[100] However, the TIFTs may represent a more significant milestone for bilateral commercial relations between the two countries than does the Framework Agreement because (1) it provides for comprehensive trade and investment negotiations, (2)

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92. *Id.* at 2-4 to -5. The Framework Agreement highlighted the elimination of nontariff barriers, detrimental effects of protectionism, export earnings' effect on Mexico's ability to meet its foreign debt obligations, GATT's role in the bilateral trade relationship, and increased significance of services in both countries. *Id.* at 2-3.

93. *Id.*

94. *Id.* at 2-5.

95. *Id.* Another agreement covered steel and alcoholic beverages. *Id.*

96. ITC Phase 1, *supra* note 7, at 2-5. Under the special regime a portion of each quota, ranging from 50% to 90% is reserved for imports manufactured from U.S.-formed and U.S.-cut fabric. The countries negotiated this agreement under the auspices of the Multifibre Arrangement. *Id.*

97. *Id.*

98. *Id.* White goods fabrics include bleached cotton and linen used in the production of domestic products such as tablecloths, sheets, and pillow cases. *Id.*

99. *Id.* at 2-6.

100. *Id.*

negotiations under the TIFTs focus on both specific product areas and cross-sectoral issues, and (3) binational teams of government experts conduct information gathering and analysis prior to negotiations in order to facilitate the resolution of issues.[101]

Apparently, U.S.-Mexico economic agreements over the past few years have cemented an already strong U.S.-Mexico relationship.[102] Most recently, President Salinas strengthened this bilateral relationship by reshaping Mexico's economic policy with a market-oriented framework.[103] Because the U.S. has always been Mexico's largest trading partner, Mexican officials say that a FTA would not change anything but would merely formalize an existing relationship.[104] In the words of the U.S. Trade Representative, Ambassador Carla Hills, "With the change we have seen in Latin America, and certainly very, very visible . . . in the Salinas Administration . . . we want to capitalize on that change, make it permanent and create the opportunity for expansion of trade."[105]

B. Specific Issues the U.S.-Mexico FTA Should Consider

1. Tariff Laws and Nontariff Trade Barriers

When negotiating a FTA, the U.S. and Mexico should consider eliminating import tariffs as well as nontariff barriers including: import quotas, licenses, technical barriers, differences in product

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101. *Id.*

102. Oppenheimer, *Mexico Boosts Ties with U.S. as Pact on Free Trade Nears*, Miami Herald, Aug. 19, 1990, at 28A, col. 1. As the percentage of Mexico's total exports going to the U.S. has been increasing, the percentage of Mexico's total exports going to Latin America and the Caribbean has been decreasing. *Id.*

103. *Bush and Mexican President Salinas Agree to Move Toward Free Trade Agreement*, 7 Int'l Trade Rep. (BNA) 834 (June 13, 1990) [hereinafter *Bush and Salinas*]. The Salinas administration has already set tariffs at 20%, eliminated most import licensing requirements, liberalized foreign investment rules, committed to strengthen intellectual property rights protection, and has privatized many state enterprises. *Id.*

104. Oppenheimer, *supra* note 102, at 28A, col. 1.

105. *Hearing of the Trade Subcomm. of the House Ways and Means Comm. on US-Mexico Relations*, Fed. News Serv., June 14, 1990 [hereinafter *Trade Subcomm.*] (statement of Ambassador Carla Hills).

specifications and standards, subsidies,[106] lack of access to services,[107] and intellectual property rights such as patents and copyrights.[108] One expert contends that if free trade means merely dismantling tariffs, although free trade would significantly affect some Mexican products sold in the U.S., free trade would not significantly affect all products.[109] Actually, some believe U.S. tariffs are no longer overwhelming.[110] However, because Mexican tariffs and nontariff barriers are substantially greater than those in the U.S., eliminating these barriers could stimulate U.S. export to Mexico.[111]

On the other hand, under TSUS items 806.30 and 807.00, some assembly industries in Mexico produce products which, when reentering the U.S., benefit from the necessity to pay duty only on the value added outside the U.S.[112] Further, two protectionist aspects of current Mexican trade policy still exist: the lack of uniformity of import tariffs and the prevalence of import permits in some sectors of the economy.[113] As Mexico negotiates a FTA with the U.S., it will probably focus on tariffs on its labor-intensive

106. Morici, *supra* note 33, at 53. Subsidies raise the concern of foreign governments' use of direct and indirect financial incentives to maintain employment in industries. *Id.*

107. *Id.* at 54. Access to services concerns clear rules of market access in areas such as accounting, insurance, investment, and commercial banking. *Id.*

108. *Id. See Trade Subcomm., supra* note 105 (Negotiators may consider patent law covering pharmaceutical products). *See also AFL-CIO Tells House That New FTA Between U.S.-Mexico Would Harm U.S. Workers*, 7 Int'l Trade Rep. (BNA) 1001 (July 4, 1990) [hereinafter *AFL-CIO*] (A FTA also warrants establishment of a trade and investment dispute settlement mechanism).

109. S. WEINTRAUB, *supra* note 9, at 5. *But cf.* Barreda, *Tariffs and Customs Rules*, in UNDERSTANDING THE FREE TRADE AGREEMENT 132 (D. McRae & D. Steger ed. 1988). As was the case with Canada, removal of tariffs could help U.S. and Mexican firms service both markets and allow factories to achieve greater economies of scale. The countries would become more competitive worldwide, and consumers could benefit from lower prices as well as higher quality goods. *Id.*

110. S. WEINTRAUB, *supra* note 9, at 5.

111. *Id. But see* Trigueros, *supra* note 16, at 259. Mexican tariffs have reached reasonably low levels as of December 1987, having been reduced from a range of 0% to 100% to a range of 0% to 20%. *Id.* Additionally, one expert's figures show that the incidence of nontariff barriers (NTBs) on Mexican potential exports is particularly low, although the effects of nontariff barriers on some specific economic sectors at times is dramatic. *Id.* at 264-65.

112. S. WEINTRAUB, *supra* note 9, at 5. Since January 1, 1988, the comparable provisions are Harmonized Tariff Schedule of the United States (HTSUS) items 9802.00.6000 and 9801.00.8000, respectively.

113. Trigueros, *supra* note 16, at 259.

intensive products, which provide the greatest competitive advantage because of low Mexican wages.[114]

Additionally, the two countries may consider the order of eliminating tariffs. Perhaps the countries will develop a classification scheme, similar to the U.S.-Canada system which designates when particular products attain duty free status. Initial agreements between Mexico and the U.S. already call for the countries to identify industries and export products that could benefit from lower tariffs.[115] As the countries eliminate tariffs, they should ensure that tariffs on both sides are cut at equal rates and on products of equal value.[116] A tariff-cut on a certain product in the U.S. could have disparate ramifications when cut on the same product in Mexico. Thus, both countries need to take into account the effect such a product and its tariff have on each country's overall economy.

As the U.S. and Mexico determine what products qualify for duty-free treatment, they will also need to establish clear rules of origin.[117] Rules of origin provide that a significant change in an imported product allows the product to qualify for duty-free treatment.[118] The U.S.-Mexico FTA should consider what constitutes or defines origin as did the U.S.-Canada FTA.[119]

Finally, although recent agreements call for an increase in quotas on both sides of the border, this area of trade law still mandates equal changes from both countries. As previously discussed, the Textile Agreement recently increased textile trade

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114. *Bush and Salinas*, *supra* note 103, at 835.

115. Crow, *U.S.-Canada Free Trade Agreement to End Smooth First Year, Face Tests*, OIL & GAS J., Dec. 11, 1989, at 18.

116. *See* Barreda, *supra* note 109, at 131.

117. Ritchie, *The Canada-U.S. Free Trade Agreement*, in UNDERSTANDING THE FREE TRADE AGREEMENT 10 (D. McRae & D. Steger eds. 1988).

118. *Id.*

119. BARREDA, *supra* note 109, at 132. Canada objected to having the rule of origin based on substantial transformation since it is a subjective rule. Therefore Canada wanted to follow its current practice of using value to determine the country of origin. Since the U.S. believed it was difficult to verify value and such a practice would create a great burden for businesses, the two countries had long negotiations to determine what should constitute sufficient processing or assembly to confer origin. *Id.*

between the two countries by raising quotas.[120] Although few quotas actually remain, Mexico still requires domestic content in specific products.[121] Furthermore, the U.S. Senate continues to pass legislation curbing textile and apparel imports.[122] Thus, a FTA's cutting tariffs and quota restrictions should have great appeal to both countries.

2. *Services and Investment*

The elements of services and investment are still new territory for most international trade agreements.[123] Although not normally included in FTAs, initial talks show that Mexico and the U.S. intend to deal with investment issues.[124] The countries may establish sectoral policies, as in the U.S.-Canada FTA, which maintain restrictions for investment in some industries while keeping other industries open.[125] When investors determine which industrial sectors offer the greatest benefits, and they invest, this will show which sectors provide investors with enhanced, secure access to the market as a whole.[126]

Furthermore, Mexico has greatly liberalized its investment rules.[127] In many instances, foreign companies are allowed 100% ownership and the government grants quick investment

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120. ITC Phase 1, *supra* note 7, at 2-5.

121. IBC USA LICENSING, INC., POLITICAL RISKS SERVICES, COUNTRY REPORT ON MEXICO: 18 MONTH FORECASTS OF TRADE RESTRICTIONS (Aug. 1990) (LEXIS, Report library, Rptibc file).

122. Barrett, *Senate Passes Textile Bill, 68-32*, WOMEN'S WEAR DAILY, July 18, 1990, at 15.

123. Ritchie, *supra* note 117, at 13.

124. *Agenda for Bilateral Free Trade Agreement Talks Said to be Wide Open at this Point*, 7 Int'l Trade Rep. (BNA) 956 (June 27, 1990).

125. *See generally* Ritchie, *supra* note 117, at 14.

126. *Id.*

127. Mongelluzzo, *U.S. and Mexico Seen Poised For Trade Pact*, J. COM. & COMMERCIAL, July 3, 1990. *See* BUS. INT'L FORECASTING SERVICES, MEXICO: POLICY TOWARDS FOREIGN INVESTMENT (Oct. 1989) (LEXIS, Report library, Bifsvc file). Mexico's new foreign investment regulations automatically permit 100% foreign ownership provided that the following six conditions are met: "(1) new investment sh[all] not exceed $100 million; (2) investment funds come entirely from abroad; (3) projects are outside the congested industrial zones . . . ; (4) imports and exports are kept in balance during the first three years; (5) investments create permanent jobs and provide training, educational and personal development programmes for workers; and (6) [investors use] technology adequate to the project" and obey environmental regulations. *Id.*

approval.[128] Actually, U.S. investors may even have opportunities to finance increased oil production.[129]

The Banco Nacional de Comercio Exterior [hereinafter Bancomext], Mexico's national bank for foreign trade, conducts most of Mexico's financing and promotional programs for exports.[130] Historically, Mexico's principal mechanism for providing credit to its export sector has been the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX).[131] FOMEX will merge with Bancomext in 1990 as the programs of the two combine into the Bancomext structure.[132]

Although the Mexican government continues to prohibit foreign banks from operating in Mexico, recent Mexican law contemplates new foreign bank branch offices opening in Mexico that could perform certain banking functions with nonresidents.[133] The creation of large financial groups is an important step in preparing local financial institutions for direct foreign bank participation in Mexico.[134]

Additionally, recent Mexican law allows foreign participation, of up to 49%, in Mexican insurance companies.[135] Some economic analysts believe that President Salinas will negotiate foreign majority ownership in the insurance companies as part of a FTA with the U.S. Finally, new technology transfer rules recognize franchises by name and allow the parties in an agreement

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128. *See* Mongelluzzo, *supra* note 127; BUS. INT'L FORECASTING SERVICES, *supra* note 127.

129. Marquis, *Trade Ties to Mexico in '91 Seen*, Miami Herald, Sept. 18, 1990, at 12A, col. 1.

130. ITC Phase 1, *supra* note 7, at 4-19.

131. *Id.* FOMEX provides an array of programs for Mexican manufacturers and exporters but its major offerings are preexport and export financing. *Id.*

132. *Id.*

133. *Law on Sale of Commercial Banks to Private Investors Introduced*, BUS. INT'L, July 9, 1990 (LEXIS, Report library, Busint file).

134. *Id.* Officials of the Salinas administration will likely use the prospect of foreign bank competition as a bargaining chip to obtain certain concessions from the U.S. during FTA negotiations. *Id.*

135. *British Insurance Firm Acquires 43% of Seguros La Republica*, Bus. Latin Am., Aug. 20, 1990.

to set their own terms and conditions.[136] Lawyers claim that the government has curbed much of its discretionary power in this area.[137] Franchising complements the underlying theory of the U.S.-Mexico FTA, since a franchise enables a company to expand in a new market and also obtain royalties.[138]

Although Mexico has already enacted reforms in both the service and investment sectors, Mexico retains broad restrictions on foreign ownership of existing assets and on foreign firms in the financial services sector.[139] Thus, a U.S.-Mexico FTA will need to fully contemplate how accessible each country's banking, financing, and investment services will be to the other.[140] It remains to be seen whether negotiators will adopt national treatment of services, characteristic of the U.S.-Canada FTA, and whether negotiators will also harmonize the countries' financial services such as banking. Although the FTA would probably first address the merchandise trade, a FTA would probably include services and investments later.[141]

3. *Antidumping and Countervailing Duty Laws*

Every postwar agreement creating a free trade area has raised the issue of how to treat antidumping and countervailing duty (CVD) laws.[142] Some policy experts argue that existing national laws, such as antitrust laws, already address concerns about unfair business practices.[143] Most legislators, however, do not view

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136. *Franchises Fast Becoming New Business Option*, Bus. Latin Am., July 2, 1990. New interest in franchises stems from Mexico's entry in the GATT, new rules governing foreign investment and technology transfer, some recovery in GDP growth, and a stable peso-dollar parity. *Id.*

137. *Id.*

138. *Id.* However, Mexican retailing and business practices which are significantly different than those of the U.S. may provide an obstacle to opening a successful franchise in Mexico. *Id.*

139. *The Whole Nine Yards*, J. COM. & COM., June 13, 1990. However, under the GATT, bilateral free trade agreements must span all areas of trade covered by the GATT in order to be legal. *Id.*

140. *See* Ritchie, *supra* note 117, at 13.

141. Green, *supra* note 76, at 4A.

142. Hudec, *An Approach to Antidumping and Countervailing Duty Laws*, in BUILDING A CANADIAN-AMERICAN FREE TRADE AREA 111 (E. Fried, F. Stone & P. Trezise eds. 1987).

143. *Id.* at 113.

unfair trade laws as fundamentally wrong policy since such laws have become an economic necessity in many political systems.[144] Some experts claim to improve antidumping and CVD laws by correctly defining basic concepts inherent in the laws, such as dumping, subsidy, or industry.[145] The U.S. and Mexico will need to consider how to standardize their antidumping and CVD laws as they negotiate a FTA.[146]

The antidumping and CVD laws between the two countries differ from each other in a number of respects.[147] Under its laws, Mexico may impose a provisional duty within five working days after initiating a proceeding, before foreign exporters or Mexican importers have notice of or have an opportunity to participate in the proceeding.[148] The analogous U.S. law requires posting a cash bond for each importation of allegedly dumped or subsidized merchandise.[149] In contrast, the bond in the U.S. provision cannot be imposed until at least eighty-five days after filing a CVD petition or 160 days after filing an antidumping petition.[150] Furthermore, unlike Mexican law, U.S. law provides parties to an antidumping or CVD investigation access to confidential information submitted during the investigation and the ability to participate in public hearings.[151] U.S. proceedings also move more rapidly than Mexican proceedings.[152]

Potentially, a U.S.-Mexico FTA would tend to create an almost automatic self-help remedy.[153] A duty-free border could permit competitors in the importing country to ship dumped imports back to the point of origin.[154] Such reverse dumping could act as an

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144. *Id.*
145. *Id.* at 114.
146. *See generally* ITC Phase 1, *supra* note 7, at 4-16 to -17 (Mexico has seldom initiated CVD investigations, although it has used antidumping procedures more extensively, and that Mexico has directed considerably more antidumping cases against the U.S. than any other country).
147. *Id.* at 4-15.
148. *Id.*
149. *Id.*
150. *Id.*
151. ITC Phase 1, *supra* note 7, at 4-16.
152. *Id.*
153. Hudec, *supra* note 142, at 115.
154. *Id.*

deterrent to dumping.[155] Ideally, the U.S.-Mexico FTA should contain provisions, such as a right to return any exported good to the country of origin, which explicitly promote reverse dumping.[156]

Fortunately, both countries have already reached some agreement regarding antidumping and CVDs which should help the U.S. and Mexico during their FTA negotiations.[157] In April 1985, the U.S. and Mexico concluded a three-year bilateral Understanding on Subsidies and CVDs [hereinafter Subsidies Agreement].[158] Under the Subsidies Agreement, the U.S. agreed to conduct an injury test in CVD investigations of Mexican imports; in exchange, Mexico agreed to eliminate the export subsidy elements on its CEDI tax incentives program.[159] In contrast, the Canadians and Americans had not reached a similar agreement regarding their antidumping and CVD provisions upon entering into their joint FTA.[160] However, a recent International Trade Commission (ITC) decision illustrates the frictions that still persist between the countries in the dumping area.[161]

The countries need a bilateral mechanism to resolve future disputes.[162] Perhaps, as part of the solution, the countries will adopt a binational panel review process similar to the one which the U.S.-Canada FTA provides. As the countries explore the

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155. *Id.*

156. *Id.* In addition, resale price maintenance laws which enforce exclusive licenses or distributorship may prove valuable in the area of dumping. Ultimately, Mexico and the U.S. may use such laws to prevent price discrimination along with the uniform application of antitrust and other competition laws. *Id.*

157. *See generally* ITC Phase I, *supra* note 7, at 4-18.

158. *Id.* at 4-18.

159. *Id.* The CEDI is the Rebate Certificates for Indirect Taxes program. In addition to this concession, Mexico would not establish or maintain pricing practices concerning energy or basic petrochemical products that were export subsidies and Mexico would also phase out the export subsidy element of its pre-export and export financing programs. *Id.*

160. *See generally* D. STEGER, *supra* note 4, at 73.

161. *US-Mexico Trade Tensions Follow US Anti-Dumping Case*, Bus. Latin Am., Sept. 24, 1990. An ITC ruling that Mexican cement producers have dumped cement on the US market hurt giant Mexican cement firms such as Cemex. Cemex products now face a 58% duty, meanwhile, the company has forfeited approximately $16 million in bonds to compensate aggrieved cement producers in the U.S. *Id.*

162. *Id.*

possibility of a FTA, Mexico and the U.S. should exhibit care and restraint before initiating unfair trade practice investigations and should not entertain frivolous complaints.[163]

C. Advantages and Disadvantages of a U.S.-Mexico FTA

1. Advantages for Mexico

Most experts cite the many advantages that would accrue to Mexico from a FTA with the U.S. First, a FTA between the two countries could provide Mexico with secure access to the U.S. market and reduce the frequency of U.S. unfair trade sanctions on Mexican imports.[164] Access to the U.S. market would provide Mexico with greatly needed technology, heavy machinery, and high-tech products.[165] Optimistic Mexicans believe that access to the U.S. will also help resolve trade disputes.[166]

Second, a U.S.-Mexico FTA could increase employment in Mexico due to a creation of jobs from the anticipated increase in investment and the opening of the U.S. market.[167] It is not necessarily true that one, large barrier-free market would lead to the concentration of complex industrial production jobs in the U.S. and would leave raw material and simple processing jobs in Mexico.[168] A gradual movement to a large, bilateral free market for goods could enable Mexico to begin to resolve its pressing problems of employment and income distribution.[169]

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163. *Id.* One Mexican attorney complains that companies still use antidumping suits in Mexico as some kind of fishing expedition and that the companies do not realize that the Mexican government does not have the resources to investigate such complaints. *Id.*

164. Review of Trade and Investment Liberalization Measures by Mexico and Prospects for Future United States-Mexican Relations, Phase II: Summary of Views on Prospects for Future United States-Mexican Relations, USITC Pub. 2326, Inv. No. 332-282, at 1-23 (Oct. 1990) [hereinafter ITC Phase II].

165. *Id.*

166. *Id.* at 1-25.

167. *See generally* Green, *supra* note 76, at 4A.

168. *Id.*

169. ITC Phase II, *supra* note 164, at 1-16.

Third, a U.S.-Mexico FTA could increase Mexican productivity and competitiveness in the world market.[170] When President Salinas visited Europe, he was disturbed to discover that the previous foreign interest in Mexico had turned to new opportunities in the Eastern Bloc.[171] A FTA would permit Mexican companies to gain access to U.S. technology by encouraging production sharing and joint ventures.[172] U.S.-Mexico joint ventures would enable Mexico to develop expertise in international marketing and industrial techniques to attract foreign interest.[173] Initially, Mexico would enjoy economic and trade benefits in the world market as a result of its lower wages.[174] As a result of these international economic benefits, Mexico's inflation could decrease.[175]

Fourth, a FTA would increase and accelerate capital and investment flows.[176] A FTA will stimulate a considerable amount of direct investment from the U.S. in manufacturing, agriculture, computers, automobiles, and service industries such as banking, insurance, and securities.[177] Free trade will help Mexico attract U.S. capital. Additionally, Mexican consumers will enjoy a broader array of high quality imports.[178] With this increased economic activity, Mexico could begin to meet its foreign debt burden and generate more foreign exchange.[179]

170. K. FATEMI, *supra* note 77, at 6. *See* Green, *supra* note 76. Mexico's agriculture, cement and textile industries would be most likely to benefit from increased access to U.S. markets. *Id.*

171. *Bush and Salinas*, *supra* note 103, at 835.

172. ITC Phase II, *supra* note 164, at 1-17.

173. S. WEINTRAUB, *supra* note 9, at 175. However, Mexico is not a thoroughly underdeveloped country, but rather has a substantial and growing technically educated population with the ability to originate ideas and adapt research. *Id.* at 174.

174. *Id.*

175. ITC Phase II, *supra* note 164, at 1-17. *See generally* Trigueros, *supra* note 16, at 258 (explaining that the low price for oil in the 1980's and the debt crisis, resulting in an absence of foreign funds, led Mexico to seek a more open, foreign trade strategy). However, with a more open import strategy Mexico may no longer have as great a need to negotiate an FTA with the U.S.

176. McGreal, *Salinas Incentive Mission in Bid to Woo Japanese*, Independent, June 14, 1990, at 29.

177. ITC Phase II, *supra* note 164, at 1-17.

178. *Id.*

179. S. WEINTRAUB, *supra* note 9, at 173. "The investment in assembly plants, most of which are along the U.S.-Mexican border, demonstrates the attraction of low wages for labor intensive industries such as apparel and electronics." *Id.* at 174.

Finally, a FTA would increase the business confidence within Mexico.[180] One economist explains that

> the government has made a point of signaling its intentions to open up the economy and to begin implementing some changes, and this has raised business confidence, which is now essential to the ultimate success of the present economic program. Therefore, a signal that Mexico is willing to consider a trade agreement with the United States will open up new prospects for Mexican industry and foreign investors and will contribute to maintain confidence.[181]

2. *Disadvantages for Mexico*

Some experts cite the various disadvantages a U.S.-Mexico FTA would have for Mexico. First, a U.S.-Mexico FTA may not significantly benefit Mexican labor since a FTA would attract assembly type operations to Mexico.[182] Of all manufacturing jobs, assembly type operations are the lowest paying and add the least value to the economy.[183]

Second, a FTA could be detrimental for Mexico's small and medium-sized businesses.[184] As a result of a FTA, inefficient manufacturers would need to compete due to an uneven effect on Mexican companies.[185] In addition, small companies would have to learn to produce with quality.[186]

180. ITC Phase II, *supra* note 164, at 1-18.

181. *Id.* at 1-17.

182. *Id.* at 1-18.

183. *A Boost for Both Countries*, N.Y. Times, Jun. 16, 1990, § 1, at 20, col. 1. *See generally Free Trade Pact with Mexico Earns General Support, Though Reservations are Expressed*, 7 Int'l Trade Rep. (BNA) 1002 (July 4, 1990) [hereinafter *Free Trade Pact*] (Based on one expert's ratio, $1 billion in exports creates 25,000 jobs).

184. ITC Phase II, *supra* note 164, at 1-17.

185. *Agenda for Bilateral Free Trade Agreement Talks Said to be Wide Open at this Point*, 7 Int'l Trade Rep. (BNA) 956 (June 27, 1990).

186. *Id.*

3. Advantages for the United States

A U.S.-Mexico FTA could provide numerous advantages for U.S. trade. A FTA could improve U.S. access to a growing Mexican market.[187]Since Mexico recently began reducing its tariffs and liberalizing its import regime, U.S. exports to Mexico already have increased significantly.[188] Industries in the U.S. could gain a larger market for their products and gain access to a cost-competitive labor supply with the help of a FTA.[189]

If Mexicans prosper from a FTA, so too will Americans. Mexicans would generally spend in the U.S. revenue earned from Mexican exports to the U.S.[190] Actually, if low wage imports do not come from Mexico, they would likely come from Asia whose generated revenue would not be spent in the U.S.[191]

A FTA could create jobs in the U.S.[192] Although a FTA will likely encourage many U.S. manufacturers to move part of their production process to Mexico, most of the equipment and components the manufacturers use will be created in and supplied from the U.S.[193] In addition, employment would rise in high-tech export industries.[194] Recently, Ambassador Hills explained that it is not necessarily true that by reducing tariffs between two nations, where there is a combination of lower wage rates, it necessarily follows that one country will depress the others' wage

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187. ITC Phase II, *supra* note 164, at 1-19. As a result of an FTA, low-paying jobs would probably grow more scarce. *Id.*

188. *Id. See* Trautman, *U.S., Mexico Face Long Journey to Reach Free Trade*, Reuter Bus. Rep., June 12, 1990. Generally, many groups fear that free trade "will entice U.S. firms to set up shop in Mexico, where labor is relatively cheap, and flood the U.S. market with imports at a cost of thousands of American jobs." *Id.*

189. ITC Phase II, *supra* note 164, at 1-21.

190. Chute, *U.S.-Mexico Free Trade Alarms Some Producers*, Women's Wear Daily, June 13, 1990, at 24, col. 1.

191. *AFL-CIO*, *supra* note 108, at 1001. Beyond the wage differentials, the great differences in regulatory structures and social protections may also cause serious difficulties for U.S. production. *Id.*

192. Trautman, *supra* note 188. Some industries also voice concern that free trade would end the quotas that now protect American steelworks and textile mills from Mexican steel and textiles. *Id.*

193. ITC Phase II, *supra* note 164, at 1-21.

194. *A NAFTA*, *supra* note 1.

rates.[195] What is possible, according to Hills, is a relegation of the more primitive type of work to the country with the lower wage rates while the other country would handle different types of work.[196]

The FTA could solidify Mexican economic liberalization and provide greater certainty and predictability to U.S. investors.[197] A FTA creates potential for greater investment security as well as expanded investment opportunities attractive to industries.[198] Foreigners may also feel that when they invest in the U.S., they are truly investing in a still greater area, North America.

The flow of illegal immigration into the U.S. could decrease due to a FTA.[199] A strong and stable Mexican economy will greatly diminish the crossings of Mexican workers to the U.S. and consequently solve many illegal immigration problems.[200] The U.S. responds to Mexico's economic needs because of the impossible task of controlling the 3100 kilometer border and because of the wave of immigrants that would invade the U.S. labor market if the Mexican economy failed.[201]

A U.S.-Mexico FTA, in combination with the U.S.-Canada FTA, could help the U.S. compete more effectively in world markets.[202] The U.S. and Mexican economies complement each other; this is a principal reason a FTA would be advantageous.[203] Although the Mexican and U.S. economies have disparate levels of development, the two economies complement each other in important matters such as cost of labor, levels of technology, and growing seasons in the agricultural sector.[204] Mexico is richly

195. ITC Phase II, *supra* note 164, at 1-13.

196. *Id.*

197. Mongelluzzo, *supra* note 127.

198. *Free Trade Pact*, *supra* note 183, at 1002.

199. *Id. But cf.* ITC Phase II, *supra* note 164, at 1-22. On the other hand, opponents of the FTA argue that the U.S. would gain little from expanded access to the Mexican market given the relatively low level of disposable income available in Mexico. *Id.*

200. ITC Phase II, *supra* note 164, at 1-15.

201. *Id.* Additionally, a FTA may create an increased demand for skilled U.S. labor. *Id.*

202. *A Boost for Both Countries*, *supra* note 183.

203. *Trade Subcomm.*, *supra* note 105.

204. *Id.* Nevertheless, some opponents of a FTA contend that border areas would be hurt economically as a result of an FTA. *Id.*

endowed with what the United States needs: oil, raw materials, and cheap labor.[205]

The geography and culture of the two countries enhance the possibilities of a FTA. Most experts feel that because of the close proximity and cultural interaction that exist between the U.S. and Mexico, cultural differences will not hinder development of a U.S.-Mexico FTA.[206] Some have noted that during the U.S.-Canada FTA talks, Canada, being so similar to the U.S., was rightly concerned about U.S. cultural domination on its society.[207] In contrast, since Mexico's "culture is so strong and distinctive," its fear of U.S. domination should be minimal.[208]

Actually, the numerous similarities between the U.S. and Mexico could cause the U.S.-Mexico negotiations to conclude in considerably less time than it took to conclude the Canadian agreement.[209] The U.S.-Mexico FTA will have the advantage of building on the results of the GATT Uruguay Round negotiations.[210] Additionally, the two countries may rely on the Framework Agreement, Textile Agreement, and TIFTs which already provide for comprehensive trade negotiations. Some experts believe that negotiations could be completed as early as 1992.[211]

4. *Disadvantages for the United States*

A U.S.-Mexico FTA raises some concerns from U.S. opponents. First, a FTA could cause job losses in the U.S. as companies shift their production to a less expensive labor market in Mexico.[212] A

205. ITC Phase II, *supra* note 164, at 1-16.
206. *Trade Subcomm., supra* note 105.
207. ITC Phase II, *supra* note 164, at 1-16.
208. *Id.*
209. IBC USA LICENSING, INC. POLITICAL RISK SERVICES, COUNTRY REPORT ON MEXICO: INTERNATIONAL RELATIONSHIPS, Aug. 1, 1990. *But cf. A NAFTA, supra* note 1. One critical element the FTA needs to address is whether the U.S. would accept the free movement of people so that all the Mexicans who wanted to work in the U.S. could do so. ITC Phase II, *supra* note 164, at 1-6. Some experts fear that the disparity between the countries income will provide a strong inducement for illegal migration to the U.S. *Id.*
210. ITC Phase II, *supra* note 164, at 1-12.
211. *Id.* at 1-13.
212. Mongelluzzo, *supra* note 127.

FTA would most likely affect automobiles, steel, apparel, and electronics.[213]

Second, a FTA could hurt certain segments of U.S. industry because the low-wage Mexican laborers would make U.S. products noncompetitive.[214] For instance, the American Textile Manufacturers Institute has strongly opposed a U.S.-Mexico FTA because lower labor costs in Mexico could adversely affect their industry.[215] Economic officials with the AFL-CIO also warn that a U.S.-Mexico FTA will only encourage greater capital outflows from the U.S., lead to an increase in Mexican imports, and further harm U.S. industries.[216] In sum, opponents fear that a trade agreement would send American money flowing southward and a flood of Mexican labor northward.[217]

A third concern is that, as the FTA eliminates tariffs and as U.S. manufacturers of consumer goods gain more confidence in the Mexican market, manufacturers will sell directly to Mexican retailers and wholesalers; thus, retailers along the border will be hurt.[218] Formal integration sparks fears not only of bypassing the border but also of bypassing the entire U.S. since Japan, and other countries, could take advantage of the FTA by heavily investing in Mexico and entering the U.S. market in a less public manner.[219]

V. NORTH AMERICA, INCORPORATED: THE POSSIBILITY OF A NAFTA

With the possibility of a U.S-Mexico FTA in the near future, leaders have seriously proposed that Mexico join the U.S.-Canada pact to form a North American free trade area, or even a North

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213. K. FATEMI, *supra* note 77, at 3.
214. ITC Phase II, *supra* note 164, at 1-6.
215. *Id.*
216. *Id.*; *but see id.* at 1-5. However, some cite differences in traditions and languages as well as the different levels of experience in conducting FTA negotiations as barriers to a bilateral agreement. *Id.*
217. *Id.* at 1-7.
218. *Id.*
219. ITC Phase II, *supra* note 164, at 1-7.

American common market.[220] Given the geographic proximity and intensity of economic relations, the commercial nexus between the U.S., Mexico, and Canada has special importance.[221] Moreover, a clear complementary relationship exists between these countries to export in various economic sectors such as clothing, domestic appliances, plastic, and steel products.[222]

Immediately after Presidents Bush and Salinas met to begin negotiating a comprehensive free trade pact between their two countries, both U.S. and Canadian labor leaders quickly denounced the initiative fearing that employers would rush to take advantage of low Mexican wage rates.[223] Many felt Canada was vulnerable to the adverse effects from a U.S.-Mexico FTA.[224] Experts worried that Canada would suffer shifts in both investment and trade flows as businesses divert their investment to Mexico and the U.S.[225]

However, many Canadian businesses warned that Canada would be at a critical disadvantage unless they too secure guaranteed access to the huge new continental market.[226] Many Canadian businesses wish to protect the competitive advantages won under the U.S.-Canada FTA.[227] As a result, Canada recently decided to join the U.S. and Mexico in proposed free trade negotiations.[228] Likewise, U.S. and Mexican officials want Canada to join them in a continental free trade pact.[229] Meanwhile, some Mexican business leaders who expected negotiations with Canada to take place after the U.S.-Mexico FTA was underway are concerned that

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220. Timmins, *supra* note 30, at 28.

221. Puche, *Lineamientos para una estrategia comercial*, in FORO SOBRE LA POLITICA COMERCIAL DE MEXICO 529 (1990).

222. *Id.*

223. Wickens, *supra* note 1, at 20.

224. ITC Phase II, *supra* note 164, at 1-27.

225. *Id. See generally* Laver, *Continental Murmurings: Mulroney Monitors Mexico's Free Trade Moves*, MACLEAN'S, Apr. 16, 1990, at 16. In U.S. dollars, Mexican workers earn an average of $1.60 per hour compared with $12 to $14 per hour for Canadian workers. *Id.*

226. Wickens, *supra* note 1, at 20.

227. *Id.* at 21.

228. *Id.* at 20.

229. *Id. But see* Newman, *The Challenge from Mexico*, MACLEAN'S, June 25, 1990, at 68. (expressing Canadian discontent with the idea of a Mexican FTA).

Canada and the U.S. will form a common negotiating strategy that could block potential concessions to Mexico.[230] However, because the U.S. receives about 70% of Mexico's exports, while Canada receives a mere 1.5%, the U.S. has good reason to be careful and prudent when negotiating for a U.S.-Mexico FTA.[231]

Many obstacles to a NAFTA still exist, including issues of labor flows, Mexican industries' fears, and Mexico's stability. A NAFTA could in fact result in a kind of regional protectionism that goes against the GATT's multilateralist policy.[232] Experts stress that the three countries should pursue the option of minilateralism, or trading blocs, in a manner consistent with the survival of the multilateral system.[233]

Many trade experts believe the integration of Mexico's developing economy with the highly sophisticated economies of Canada and the United States is inevitable.[234] In essence, a continent-wide free trade agreement would enable North America to compete against rival trading blocs in Europe, Asia, and throughout the world.[235]

VI. CONCLUSION

A U.S.-Mexico FTA is a natural step in a larger progression leading to the establishment of a NAFTA.[236] Ambassador Carla Hills, has stated that having stronger trade relationships enable governments to work more closely together on a wide range of political, economic, and social problems.[237]

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230. *Mexican Businesses Upset by Canadian Part in FTA Talks*, Bus. Latin Am., Oct. 8, 1990.

231. *Mexico-U.S. Accords*, *supra* note 5.

232. *Id. See Mexico Says More Caribbean Trade Possible*, Reuter Bus. Rep., July 31, 1990. President Salinas has assured the island members of the Caribbean Community that a U.S.-Mexico FTA will bring new opportunities for Caribbean nations. *Id.*

233. *Free Trade Pact*, *supra* note 183, at 1002. *See Trade Subcomm.*, *supra* note 105. Since trade blocs communicate exclusion, and the U.S. is a fervent multilateralist, it is important to continue to put emphasis on multilateral liberalization. *Id.*

234. Wickens, *supra* note 1, at 20.

235. *See* Laver, *Daring to Deal*, MACLEAN'S, June 25, 1990, at 64.

236. *AFL-CIO*, *supra* note 108, at 1002.

237. *Trade Subcomm.*, *supra* note 105.

President Salinas has also acknowledged his desire to strengthen Mexico in the global marketplace, explaining that an intense globalization of the world markets and the revolution of thoughts and technology has become alive to all, more than ever.[238] This history, Salinas admits, has risks for the nations but also opens new opportunities for countries, like Mexico, that have confidence in their culture and history, to participate in the world and strengthen their independence.[239]

Previous agreements, such as the Framework Agreement and TIFTs, illustrate the Mexican and American desire to economically strengthen their countries together. With the U.S.-Canada FTA as an archetype, the two countries should begin to grapple with more difficult issues such as dismantling tariffs and nontariff barriers (NTBs), opening investment and services, and standardizing antidumping and CVD laws. Although, some oppose such a bilateral agreement, the numerous advantages for both countries (including a greater market for goods, increased access to cheap as well as high-tech labor, and heightened productivity and competitiveness in the world market) outweigh the FTA's possible disadvantages.

A farsighted candidate for the U.S. presidency, in viewing the U.S. Constitution as a model for the entire world, once said, "Come Canada, come Mexico, come all the world, and let us be brothers together under the glorious Constitution."[240] Years later, the idea of a common market embracing Canada, Mexico and the United States no longer appears far-fetched with the recent U.S.-Canada FTA and talk of a U.S.-Mexico FTA. Eventually, perhaps, such a common market will lead to the universal world of free trade which the United Nations Charter envisions.[241]

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238. Salinas, *supra* note 82, at 524.
239. *Id.*
240. Timmins, *supra* note 83, at 31.
241. *Id.*