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The Outlier Sectors: Areas of Non-Free Trade in the North American Free Trade Agreement

Eric Miller

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THE OUTLIER SECTORS: AREAS OF NON-FREE TRADE IN THE NORTH AMERICAN FREE TRADE AGREEMENT

Eric Miller[*]

Since its entry into force, the NAFTA has been enormously influential as a model for trade liberalization. While trade in goods among Canada, the United States and Mexico has been liberalized to a significant degree, this most famous of agreements nonetheless contains areas of recalcitrant protectionism. The first part of this paper identifies these "outlier sectors" and classifies them by primary source advocating protectionism, i.e., producer interests or governments themselves. The second part of the paper analyzes the characteristics of each source. The NAFTA experience indicates that sectors that are successfully able to lobby for protection tend to be highly concentrated geographically in politically sensitive regions, are politically well-organized, have traditionally enjoyed protection, and are likely to face stiff competition from trade liberalization. In cases where protectionism is driven principally by governments, the vague concept of "national interest" tends to be the unifying element, whether for budgetary, social or national integrity reasons. The adoption of special mechanisms for sensitive sectors seems to be the unfortunate price for the greater good of trade liberalization. When future negotiators are applying the NAFTA model, it would seem essential that they understand where the original fell short of free trade.

I. THE GAP

Free trade agreements always contain a gap between the stated intention of securing the unfettered movement of goods across borders and the negotiated results. At base, this gap arises because free trade is a utopian economic concept articulated by the philosophers Adam Smith and David Ricardo while free trade agreements are messy political arrangements negotiated by governments that must respond to a range of domestic and international interests. This divide between theory and reality is abundantly evident in the North American Free Trade Agreement (NAFTA).

Contemporary trade agreements are complex creations that offer the skillful negotiator multiple mechanisms for achieving sectoral protection. The most straightforward of these is tariffs. The paradigm of the majority of contemporary trade agreements has included the elimination of all tariffs among the signatories. Generally, these are phased-out within a maximum time period (such as ten years). Nevertheless, there are usually a number of products that do not fit the mold. The most common approach to these sensitive sectors is for countries to seek temporary protection in the form of an extended phase-out period (such as fifteen years). However, in certain cases, tariffs are not phased out and remain in effect throughout the life of the agreement. In recent decades, as tariffs worldwide have fallen, countries have sought alternative ways of

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ensuring protection for sensitive sectors. Popular ways of doing this include lodging an explicit reservation or derogation, authoring a favorable rule of origin, and adopting a vague provision that is open to conflictive interpretation later on. Still other ways of achieving protectionist ends are ex-post methods such as the launching of endless anti-dumping cases directed at a specific product and the misuse of a specific technical standard.

The origin of demands for protection at the negotiating table generally comes from two basic sources. The first is from the baying of influential domestic producer and sectoral interests. The tension that underpins this dynamic is as old as trade policy itself. The second source of illiberal provisions is from governments themselves in pursuit of selected policy ends. Discerning the reasoning behind a particular measure after the fact can be difficult for someone who was not in the room. Nevertheless, this paper takes up the challenge and seeks to carry out a comprehensive analysis of the sectors in the NAFTA that fall outside the bounds of the normal processes of trade liberalization. In doing so, it will categorize the instances of protection as primarily "Producer-driven" or primarily "Government-driven".

In terms of scope, this paper will specifically examine the sectors that are subject to tariff phase-out periods and/or special mechanisms lasting beyond ten years – the baseline liberalization period. Some of these provisions will disappear over fifteen years and some will not be phased-out at all. All sectors analyzed enjoy less than free trade as a result of provisions contained in the NAFTA text. In other words, sectors such as softwood lumber that have enjoyed ex-post protection will not be examined. This paper will focus exclusively on trade in goods. Therefore, reservations in the Services area, for example, will not be discussed. As a final note, certain rules of origin in the NAFTA are undoubtedly protectionist. However, there is no universally accepted way of categorizing which rules are more protectionist and which are less so.[1]

By focusing on these "outlying" sectors, one could get the impression that the process of translating the intentions of the NAFTA into the text of the Agreement was largely a failure. However, one has to keep in mind that the overwhelming majority of North American trade will move freely when the ten-year tariff phase-out is completed. Considering that some additional outlier products will be liberalized when the NAFTA turns fifteen, the aggregate picture is even more positive. Indeed, since the entry into force of the NAFTA, intra-North American trade has almost tripled (IDB [2000] pp. 115-116). While the evidence in its totality suggests that the Agreement has been an overwhelming success, a comprehensive analysis of the NAFTA experience demands that one also take into account the areas in the text where the degree of negotiated liberalization was less than optimal. The macro story about NAFTA has been told frequently. However, few, if any papers to date have sought to place the outlier sectors under a microscope in a comprehensive manner. This paper is designed specifically to help fill this void. Because such an approach implies a large amount of primary source research and quantitative analysis, there are information gaps in places. Nevertheless, the author has tried to keep these to a minimum. With respect to organization, the paper will devote the bulk of its pages to outlining the stories in particular sectors. It will then seek to draw some analytical conclusions and offer a few thoughts on the implications of all of this for the future.

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[1] Given the complexities, the basket of issues related to rules of origin and protection will receive exclusive treatment in a forthcoming INTAL-ITD-STA working paper by Antoni Estevadeordal and Eric Miller. *Preferential Trade Flows and Rules of Origin: The North American Experience*.

II. PRODUCER-DRIVEN PROTECTION

The Many Faces of Agriculture

The most obvious examples of illiberal sectoral treatment in the NAFTA can be found in Chapter Seven on Agriculture. In fact, the issues in this area were so contentious that the market access provisions in the so-called "Agricultural Chapter" are really three bilateral agreements. The United States and Mexico as well as Canada and Mexico negotiated separate bilateral agreements and relevant sections of the 1989 Canada-United States Free Trade Agreement (CUFTA) were referenced into the NAFTA to address agricultural trade between these two countries. Because there is no uniform chapter, different products are subject to different treatments among different parties.

Before proceeding to an analysis of individual sectors, it is important to note that the multilateral rules governing trade in agriculture goods changed substantially after the entry into force of the NAFTA. During the Uruguay Round, GATT countries agreed to convert all of their non-tariff measures into tariffs of an "equivalent level" of protection. Thus, the motivating factor behind the "tariffication" process was a desire for greater transparency in agricultural trade, not to facilitate liberalization. In practical terms, it meant administering protection by means of tariff rate quotas (TRQ) rather than other instruments on a global level. For intra-North American trade, tariffication meant that the NAFTA countries would eliminate in-quota tariffs (often immediately) and over time expand the total in-quota quantities and (in most cases) phase-out the over-quota tariffs.

Dairy, Poultry and Egg Products

In the NAFTA context, dairy, poultry, and eggs are linked. Canada maintains "supply management" systems for these products and has successfully incorporated its right to do so into international trade rules. Domestically, the systems function by allocating production quotas among the Canadian provinces based on anticipated domestic demand plus some production for export. With the Uruguay Round, the quantitative restrictions (QRs) and licensing rules that governed imports of dairy, poultry and egg products were converted into TRQs. These imports are now restricted by way of allocating only a small duty-free "in-quota" amount and maintaining a prohibitively high over-quota tariff.

Canada-US trade in dairy products is governed by Article 710 of the CUFTA, which is incorporated into the NAFTA in Annex 702.1. It states that *"(u)nless otherwise provided for ... the Parties retain their rights and obligations with respect to agricultural food, beverage and certain related goods under the ... (GATT) and agreements negotiated under the GATT."* When the CUFTA was negotiated, Canada understood this to mean that it was allowed to retain its supply management system for dairy products and related system of QRs and licenses. Only the tariffs had to be phased out, as mandated for all products. The net result was that Canada would only permit imports in cases of domestic shortage and for market testing. The United States administered its own protection regime for dairy products under the auspices of Section 22 of the 1932 Agricultural Adjustment Act (AAA).[2] The AAA

[2] For a description of Section 22 of the AAA and its tariffication process see Raj Bhala [1996].

permitted the United States to impose an import fee of up to 50% *ad valorem* or an import quota on any imported commodity interfering with one of these domestic programs. The international legal basis for this US protection regime was a March 1955 GATT waiver.

Canada-US trade in poultry and egg products was governed by Article 706 of the CUFTA which, like the dairy regime, is incorporated into the NAFTA in Annex 702.1. The CUFTA Article goes beyond merely referencing the GATT regime for these products. Canada established specific minimum access levels for US producers of chicken (no less than 7.5% of the previous year's domestic production in Canada), turkey (no less than 3.5%), shell eggs (1.647%), frozen, liquid and further processed eggs (0.714%) and powdered eggs (0.627%). These imports would be deducted from rather than be in addition to Canada's global quotas for these products. The CUFTA and hence, the NAFTA, left the Canadian supply management systems and related restrictions intact. As with the dairy sector, the United States maintained quantitative restrictions for poultry and egg products by way of Section 22 of the AAA.

A key difference between the poultry and dairy importation rules relates to the treatment of finished products. Canada permits the importation of chicken if it is either re-exported or is used to build a "non-chicken product" (such as a "TV dinner"). A non-chicken product is defined by Canada Customs as containing less than 13% chicken. The importation of dairy products for similar purposes is not permitted. Nevertheless, certain parties have been able to "tariff engineer" combinations of ingredients to make qualifying products.[3] In theory, one can also import eggs for transformation into "non-egg products". However, in practice, Sanitary and Phytosanitary (SPS) concerns have thwarted such activities.

As noted above, in the Uruguay Round Agreement on Agriculture, the United States and Canada agreed to "tariffy" all border restrictions on agricultural products, including dairy, poultry, and eggs. Thus, all restrictions under the venerable Section 22 of the AAA and the range of Canadian non-tariff measures were converted to TRQs. Nevertheless, when carrying out this process, neither Party defined how tariffication would relate to the bilateral regime previously agreed to for trade in these products. The illiberal intent of the dairy, poultry, and egg regimes at both the bilateral and multilateral levels was evident. However, with tariffication, the United States began to assert that these "new" Canadian over-quota tariffs fell within the purview of NAFTA Article 302, which mandated the elimination of all tariffs between the two countries by January 1, 1998. To substantiate its claim, the United States filed a NAFTA "Chapter 20" case against Canada in January 1996. The case hinged on whether the NAFTA or the WTO rules took precedence. The United States pointed to Article 302 (1) stating that "no Party may increase any existing customs duty, or adopt any customs duty" and Article 302(2) mandating the progressive elimination of customs duties. Canada countered by citing CUFTA Article 710 (quoted above), which established

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[3] A prominent example of this practice is the Butteroil/Sugar Blends case. In 1995, Canadian food processors began to import a mixture that was roughly 49% butteroil and 51% sugar. Separately, each component faced substantial import restrictions, but collectively they were able to enter the Canadian market duty-free due to where the mixture was classified. Canadian producers, alleging that this concoction represented a deliberate attempt to undermine the integrity of Canada’s dairy and sugar regimes, launched a complaint to the Canadian International Trade Tribunal (CITT). In its Decision of March 26, 1999 (Reference No. AP-98-055), the CITT found that the Butteroil/Sugar mixture was in fact properly classified. This decision was upheld in appeals to higher courts. Therefore, duty-free imports have continued.

both the country's right and obligation to tariffy. Furthermore, it asserted that the Uruguay Round Agreement on Agriculture represented an agreement between Canada and the US, effective January 1, 1995, one year after the NAFTA. In its Final Report dated December 2, 1996, the five-person panel sided with Canada and the tariffs on these products remained in effect.[4]

In October 1997, the United States (and later, New Zealand) initiated WTO consultations with Canada on whether the exported surplus of dairy products produced under the supply management system violated the Subsidies Agreement and aspects of the Agriculture Agreement. In its ruling, made public in May 1999, the Panel found largely in favor of the US/New Zealand position. However, Canada petitioned the Appellate Body to review the decision. In its October 1999 report, the Appellate Body overturned all but one of the Panel's findings against Canada. The net effect of the decision was to force Canada to make minor (rather than substantive) changes to its dairy export regime.[5] The supply management system, with its high levels of protection, lives on. No WTO cases have been brought against Canada's regimes on poultry and eggs.

Canada and Mexico agreed to exclude dairy, poultry, and egg products. Hence, Mexico accepted the legitimacy of Canada's Supply Management Systems and related trade measures in these areas. The specific products covered by this exclusion are set forth in Appendix 703.2.B.7.

The United States and Mexico both had restrictive regimes in the dairy sector prior to the NAFTA and the Uruguay Round Agreement on Agriculture. The US relied on measures under Section 22 of the AAA, while Mexico had import licensing restrictions and modest tariffs. With tariffication, the United States granted Mexico duty-free entry for 422 metric tons of milk powder, 5,500 metric tons of cheese, and a basket of other dairy products. The initial over-quotas ranged from 78% to 83% for milk powder, 69.5% for cheese, and a tariff equal to the 1989-1991 average protection for the rest. The TRQs would expand by 3% per year and the over-quotas would be phased out over 10 years. Mexico, on the other hand, granted the US duty-free access for 40,000 metric tons of milk powder with an initial over-quota of 139%. The TRQ would grow by 3% per year and the over-quota would be phased-out over 15 years. Tariffs on other dairy products were phased out over 10 years. No notable disputes have arisen between the two countries over these products.

In the poultry and egg sectors, the United States eliminated its tariffs upon the entry into force of the NAFTA. However, SPS concerns have impeded effective free trade. Mexico tariffied these products and will phase-out the over-quota tariffs over 10 years for imports from the US.

Peanuts

Peanuts have long been a politically important sector in the United States. This has translated into subsidies for domestic producers and protection from external competition. As noted above, the CUFTA incorporated the existing rights and obligations of the Parties under the GATT by way of Article 710. At the time of negotiation, the United States maintained QRs on Canadian processed peanuts under Section 22 of the AAA. (Canada does not grow raw peanuts.) Canadian peanut butter was not subject to this measure because of its degree of processing and was thus dealt with

[4] See *http://www.nafta-sec-alena.org/english/decisions/nafta/index.htm#unafta20* for the complete text.

[5] See *http://www.wto.org/english/tratop_e/dispu_e/distab_e.htm* for the decisions.

through tariffs. With tariffication, the United States converted these measures into TRQs. The NAFTA contained no provision mandating the phasing-out of these restrictions. Therefore, they will remain in effect in perpetuity. The tariffs on Canadian peanut butter were finally eliminated in 1998. However, Canadian exporters have continued to face barriers to entry into the US market. The United States informally divides its peanut crop into two classes of product. Category 1 peanuts are produced for and consumed exclusively in the domestic market while Category 2 peanuts are produced exclusively for export. Canada sources many of the raw peanuts it uses for peanut butter production from the United States. Nevertheless, when Canadian firms have sought to export this final product into the US, Customs has blocked it, alleging SPS problems with the US-grown peanuts. Technical consultations are ongoing. For its part, Canada maintains no restrictions on the importation of peanuts and peanut products.

Prior to the NAFTA, the United States maintained quantitative restrictions on imports of Mexican peanuts. However, the Parties agreed to convert these into TRQs with the entry into force of the agreement. In 1994, Mexico would receive an aggregate in-quota quantity of 3,377,000 kilos. This would increase annually to a level of 4,959,000 kilos in 2007. From the outset, the in-quota tariff rates would be free. The over-quota is to be phased out in 15 stages, with complete elimination on January 1, 2008. Tariffs on Mexican peanut butter were phased out over 10 years. There have been no major trade disputes between the two Parties over these products.

Sugar

As Canada's "supply management system" established the dynamics in dairy, poultry, and eggs, the United States restrictions established the dynamic for trade in sugar and syrup goods. In the case of the United States and Mexico, the sugar trade is defined by a number of basic documents: Paragraphs 13-22 of Annex 703.2 of the NAFTA text; two versions of a US "side letter", and a Mexican "side letter". The provisions set forth in the NAFTA text are rather ambiguous in a number of respects. The most important of these ambiguities are: (1) the relationship between whether a country is a "net surplus producer" and its access to the quotas allocated in paragraph 15 of Annex 703.2; (2) the definition for calculating a "net surplus"; and (3) the exact date when trade in such sugar products is to become free.

Paragraph 15 of the NAFTA Annex establishes the ceilings for the levels of Mexican sugar and syrup goods entering duty-free into the United States: 25,000 metric tons (MT) for each of the first six marketing years; 150,000 MT for the seventh marketing year; 110% of the previous year’s ceiling for each of the eighth-fourteenth marketing years. No Article explicitly establishes the parameters for trade in these products after marketing year fourteen.

The US "side letter", (effectively an understanding dating from 1993 between then-USTR Mickey Kantor and Mexican Trade Minister Jaime Serra Puche), granted Mexico the right to export up to 250,000 MT duty-free in the seventh marketing year (i.e., October 2000-October 2001). This level would be maintained until 2009 when Mexico would gain unlimited access.

Both the United States and Mexico have long protected their sugar industries. However, the 1990's brought substantial changes to the Mexican industry as with much of the Mexican economy. Privatization and investments in technology led to an unexpectedly rapid acceleration in output. Mexico needed markets for this surplus and found few. Moreover, world sugar prices

declined throughout the decade. The obvious market for this Mexican sugar was the United States. In August 1998, Mexico announced that it did not recognize the side letter as governing the US-Mexico sugar trade. Negotiations would therefore be required to establish the precise terms of trade in this sector.

As part this process, Mexico issued a "side letter" of its own. Paragraph 16 of the NAFTA Annex states that "(b)eginning in the seventh marketing year" (i.e., October 2000), "paragraph 15" (i.e., the provision establishing the duty-free ceilings) "shall not apply where … the Parties have determined the exporting Party" (i.e. Mexico) "to be a net surplus producer". Mexico stated in its side letter that it understood this to mean that if it met the threshold for being designated as a net surplus producer that the tariff-rate quota regime in paragraph 15 did not apply. Therefore, it would be able to export unlimited quantities of sugar and syrup goods to the United States duty-free. If it did not meet the threshold, its sugar access to the US would be capped at 150,000 MT in year seven and each year increase 110% of the previous year's level. For its part, the United States stuck to the 250,000 MT ceiling established in the original side letter and reiterated this position in a second side letter issued after Mexico's 1998 renunciation.

In addition to differences on the existence of a ceiling, controversy has also arisen about the US methodology for calculating the "net surplus". The US formula takes the total Mexican sugar production and subtracts the consumption in Mexico of both sugar and high-fructose corn syrup (HFCS) (a sweetener commonly used in soft drinks). Under this methodology, Mexico could ship up to 116,000 MT to the United States in the 2001 marketing year. The non-inclusion of HFCS would significantly increase Mexico's allowable quota. The United States and Mexico have fought over HFCS in a variety of contexts over the years. In January 1998, the Secretariat of Commerce and Industrial Development (SECOFI) concluded a dumping investigation against imports of HFCS from the United States by imposing substantial duties. In response, the United States challenged the ruling under both Chapter 19 of the NAFTA and at the WTO. While the NAFTA case is ongoing, a WTO ruling in February 2000 found that Mexico had the right to initiate a dumping investigation into HFCS imports but that the investigation that had been undertaken was not in compliance with the WTO Anti-Dumping Agreement. Both parties declined to appeal and the report was adopted.

October 1, 2000 came and went and the seventh "marketing year" began without agreement on how much sugar and syrup Mexico was allowed to export to the US. Mexico has continued to insist that the NAFTA text (as interpreted in its side letter) rather than the US side letters govern trade in this sector. While it claims it has the right to unlimited access, Mexico, nonetheless, has put forward levels ranging from 500,000-575,000 MT as a negotiating position. Meanwhile, a strike in the Mexican sugar industry has led to falling production levels in the 2001 marketing year, giving rise to calls from US producers to reduce the allowable quota of 116,000 MT offered by the US. Because the annual quotas are determined in part by the level of production achieved in the previous year, this unexpected drop represents a further challenge for the Mexican industry.

Given the fractious history of the US-Mexico sugar trade in recent years, it remains an open question whether effective free trade in sugar and syrup products will ever be achieved.

The Canada-United States sugar trade is also governed by an informal arrangement. The official rules as established in the CUFTA mandate that the US maintain no restriction or fee on products containing less than 10% sugar by dry weight. In addition, the US Tariff Schedule designates all lines in Chapter 17 (Sugar and Sugar Confectionery) as Staging Category C items (tariff elimination over 10 years). While these formal protections were phased out on January 1, 1998 as mandated, trade in sugar and sugar-containing products between the two countries was scarcely affected. The reason is that the US sugar regime, which is based on quotas rather than tariffs, was not effectively disciplined by the CUFTA or the NAFTA.

Canada does not grow cane sugar but it is a big producer of beet sugar. In addition, it imports substantial quantities of raw cane from outside North America and processes it. Canada also produces significant quantities of sugar-containing products.

Article 303 of the NAFTA mandates the phasing-out of the right to grant duty drawback. One notable exception, set forth in Annex 303.6, is that the United States may continue to grant drawback to refined sugar. Nevertheless, according to the text of NAFTA, the United States was to lose the right to give drawback on sugar-containing products, thereby destroying a central mechanism of its "Sugar Re-Export Program". Seeking to avoid this eventuality, the US sought to negotiate an informal arrangement with Canada. In an August 1997 letter, the two Parties agreed that Canada would get guaranteed duty-free access to the US market for 10,300 MT of refined sugar and 59,250 MT sugar-containing products annually. Canada would also be free to compete for the remaining portion of the global quota, totaling some 7,500 MT of refined sugar. The US global quota is allocated on a historic basis. Accordingly, Canada has had very little room for increasing its exports of sugar and sugar-containing products to the US. In exchange for these guaranteed access levels, the United States would be able to continue to give drawback on sugar-containing products bound for Canada.

Canada-Mexico trade in sugar and syrup products is much more straightforward. Mexico will continue to apply its most favoured nation (MFN) rate on sugar and Canada may apply duties up to the Mexican level. In other words, NAFTA's tariff phase-out provisions do not apply to these products. The products covered by this special provision are the same as those covered by the US-Mexico sugar and syrup products regime.

Orange Juice

In the case of orange juice (HS 20.09), the United States Schedule to Mexico sets out TRQs. These, of course, are not based on the tariffication process. The notes to the schedule fixed the in-quota quantities at 40 million "single strength equivalent" (SSE) gallons of Frozen Concentrated Orange Juice and 4 million SSE gallons of single strength orange juice while the in-quota tariff rate was set at half the MFN rate. The base over-quota tariff rate was the 1993 MFN rate. During the first five years of the transition period this is to decline 15%. During the second five years, the tariff level remains constant. During the last five years it is to fall to zero, reaching that level on January 1, 2008. When the over-quota rate falls below the in-quota rate, the over-quota rate will apply to all imports and the quota regime will be eliminated. Throughout the transition period, a "snap-back" provision will remain on the books to protect US producers against sudden surges of imports from Mexico and low domestic prices. If this mechanism is used, the current MFN tariff rate will automatically be reinstated. The Mexican Schedule to the US also employs a

TRQ system for orange juice. The mechanism functions in almost exactly the same manner as that of the US and culminates in full liberalization on January 1, 2008. There have been no major trade disputes between the two countries in this sector.

Canada and the United States and Canada and Mexico have no special provisions vis-à-vis each other on orange juice.

Special Mechanisms for Selected Fruits and Vegetables

The idea of full free trade in fruits and vegetables engendered a high degree of disquiet among Canada, the United States, and Mexico. As a result, the Parties put in place mechanisms in both the CUFTA and the NAFTA to mitigate the effects of liberalization.

Article 702 of the CUFTA permits the two countries under defined circumstances to impose temporary or "snapback" duties on certain classes of fresh fruits and vegetables. These classes are set forth in Table One below. The right to apply these measures expires on January 1, 2009. Canada and the US agreed that "snapback duties" may be applied only once in a 12-month period and must not exceed the lesser of the MFN rate in effect on January 1, 1989 or the current MFN. When this mechanism is used, the measures may be applied on either a national or a regional basis. This regime was referenced into the NAFTA in Annex 702.1.

TABLE ONE

CLASSES OF FRESH FRUITS AND VEGETABLES ON WHICH CANADA AND THE UNITED STATES MAY APPLY "SNAPBACK" DUTIES

HS Tariff Heading	Description
07.01	Potatoes, fresh or chilled
07.02	Tomatoes, fresh or chilled
07.03	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled
07.04	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled
07.05	Lettuce and chicory, fresh or chilled
07.06	Carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled
07.07	Cucumbers and gherkins, fresh or chilled
07.08	Leguminous vegetables, shelled or unshelled, fresh or chilled
07.09	Other vegetables (excluding truffles), fresh or chilled
08.06.10	Grapes, fresh
08.08.20	Pears and quinces, fresh
08.09	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh
08.10	Other fruit (excluding cranberries and blueberries), fresh

In the NAFTA, the countries agreed to adopt a seasonal safeguard mechanism for a selected number of agricultural products, many of which were fruits and vegetables. A complete list for each country is set forth in Annex 703.3. These measures were implemented in the form of TRQs. When adopting these measures, the Parties were required to do so in accordance with their NAFTA Schedule and the over-quota may not exceed the lower of the MFN rate in effect on July

1, 1991 or the current rate. This "Special Safeguard Regime" and the TRQs that underpin it all expire on January 1, 2003.

Textiles and Apparel: Non-Originating Liberalization[6]

The treatment of textile and apparel goods is one of the most complicated regimes in the NAFTA. Such goods are defined as those listed in Appendix 1.1 of Annex 300-B (roughly encompassing HS Chapters 50-63 and a few products from other Chapters). Unlike the treatment of other products outlined in this paper, the NAFTA textile and apparel regime actually uses quotas to compensate for market access restrictions. However, it comes nowhere close to free trade.

In the NAFTA, the parties agreed to "fiber forward" rule of origin for textiles and a "yarn-forward" rule of origin for apparel products. In other words, for apparel goods to be considered originating, both the yarn and the fabric must originate in the NAFTA area. In the CUFTA, by contrast, the parties applied a "fabric forward" rule of origin for apparel, which meant that only the fabric on up had to be originating.[7] The "double transformation" rule in the NAFTA was very restrictive and would have rendered many Canadian products, which use as inputs, substantial quantities of fabric from outside of North America, as "non-originating". This, of course, would have badly hurt the Canadian apparel industry. In order to get around this problem, the parties effectively set up a TRQ regime, re-baptized as "Tariff Preference Levels" (TPL), in Schedules 6.B.1-6.B.3 of Annex 300.B of the NAFTA.[8] Normally, non-originating goods do not receive the benefits of tariff elimination. However, in order to get Canada to agree with the restrictive rules, specific quantities of textile and apparel products made of non-originating inputs had to be given access to the NAFTA market. These quantities are the TPL. They are divided by nature of fiber and level of processing. While TPL levels are established for imports into all three parties, for political economy reasons, levels into the US from Canada have received the bulk of attention. Table Two below sets forth these base levels. For "Cotton and Man-made Fiber Apparel", the level will increase by 2% annually for the first five years for products made of fabric woven or knit in one of the NAFTA parties. The annual growth factor for "Fiber Fabrics" and "Fiber Yarn" will also be 2% per year for the first five years. For "Cotton and Man-made Fiber Apparel" woven or knit in a non-Party and for "Wool Apparel", the annual growth factor shall be 1% for the first five years.

[6] This section deals with origin as a restrictive instrument (in contrast to the defined parameters of the study) only to the extent that they gave rise to a special trade instrument for textiles and apparel (i.e., TPL).

[7] The terms "fiber forward", "yarn forward", and "fabric forward" are shorthand descriptions for very complex provisions. In order to fully examine the NAFTA rules on textiles and apparel it is necessary to read Annex 300-B, Annex 401 (Rules of Origin), the General Rules of Interpretation, and the Harmonized System descriptions.

[8] The term "tariff preference level" is used because the term "tariff rate quota" is used elsewhere in the agreement to refer exclusively to originating goods.

TABLE TWO

LEVEL OF UNITED STATES IMPORTS OF NON-ORIGINATING TEXTILE AND APPAREL PRODUCTS FROM CANADA RECEIVING PREFERENTIAL TARIFF TREATMENT (1995)

Type of Good	Level
Apparel and Made-Up Goods	
a) Cotton or Man-made Fiber Apparel	80,000,000 SME[9]
b) Wool Apparel	5,066,948 SME
Cotton or Man-made Fiber Fabrics and Made-up Goods	65,000,000 SME
Cotton or Man-made Fiber Spun Yarn	10,700,000 kg

Section 8.b. of Appendix 6 of Annex 300-B establishes that Canada and the United States shall review whether to continue applying the annual growth rate beyond the first five years (January 1, 2000). Starting in 1998, the Canadian government held hearings in different parts of the country on how to address the issue of further TPL growth. The result of this process was a decision not to pursue consultations with the United States in this area. Much of the reason stems from a major dispute over the importation of wool suits from Canada in which the two countries have been embroiled since the mid-1990's. During the CUFTA years, Canada had used the majority of its wool quota on relatively low value products. However, with the adoption of the NAFTA regime, one Canadian producer of men's suits – a relatively high value product - aggressively pursued and secured a large share of the wool TPL. Canada has also grown in the aggregate as an apparel producer. Several bills have been introduced in the US Congress during this period to try to staunch the inflow of these products. The Canadian government seemed to fear that opening the TPL levels to further negotiation could actually lead to overwhelming pressure to further restrict access to certain sub-sectors and/or producers. As a result, the 1999 TPL levels will remain in effect in perpetuity.

During the NAFTA negotiations, the key compromise offered by the United States to Mexico on textiles and apparel was to phase-out the Bilateral Restraint Agreement between the two countries in the context of the Multifiber Arrangement in exchange for Mexico's support of the restrictive rules of origin. This was deemed acceptable to both Parties.[10] While some restraints do remain, the tariff phase-out process has proceeded without incident to date and Mexico has become a major exporter of textile and apparel products to the US. TPL issues have not thus far been an irritant.

Sectors with a "C+" Phase-out: The Long March

As noted above, most products in NAFTA are subject to a tariff phase-out period of ten years or less. Nevertheless, a handful of products are designated as Staging Category C+, which means they are subject to a 15-year tariff phase-out. The United States Schedule to Mexico had the largest number of tariff items with this designation, followed by Mexico's Schedule to the United States. The Canadian Schedule to Mexico contained no C+ designations. As a note of clarification, like so many of the provisions in NAFTA, the United States and Canada referenced their original CUFTA Schedules into the NAFTA. The maximum phase-out was ten years and the process was completed on January 1, 1998.

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[9] SME is "Square Meter Equivalent" – a measure for textile and apparel products.

[10] For a detailed look at the process of negotiating NAFTA's textile and apparel provisions see Maryse Robert [2000] pp.96-151.

TABLE THREE
PRODUCTS IN THE UNITED STATES SCHEDULE TO MEXICO WITH A C+ DESIGNATION

(15-Year Phase-Out)

HS Code	Description
0707.00.40 0707.00.50 A	Cucumbers, fresh or chilled entered March 1-April 30 or May 1-31 or October 1-November 30 of any year
0712.90.40	Garlic
0807.10.20 B	Cantaloupes, entered between May 16-July 31 or September 16-November 30 of any year
0807.10.70 B	Other melons, entered between June 1-November 30 of any year
1604.14.10 1604.14.20 1604.14.30 1604.14.40	Tunas and skipjack
6401.10.00 6401.91.00 6401.99.30 6401.99.60 6401.99.90	Types of waterproof footwear with outer soles and uppers of rubber or plastics
6402.30.70 6402.30.80 6402.91.80 6402.91.90 6402.99.20 6402.99.30 6402.99.80 6402.99.90	Other types of footwear with outer soles and uppers of rubber or plastics
6403.91.60B	Welt footwear
6404.11.50 6404.11.60 6404.11.70 6404.11.80 6404.19.20 6404.19.35 6404.19.50 6404.19.70	Types of footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials
6907.10.00 6907.90.00	Types of unglazed ceramic, paving, tiles, and cubes
6908.10.10 6908.10.50	Types of glazed ceramic, paving, tiles, and cubes
6908.90.00 7013.10.50 7013.21.10 7013.21.20 7013.21.30 7013.29.05 7013.29.10 7013.29.20 7013.29.30 7013.29.50 7013.31.10 7013.31.20 7013.31.30 7013.32 7013.39 7013.91.10 7013.91.20 7013.91.30 7013.99.10 7013.99.20 7013.99.30 7013.99.40 B 7013.99.50 B 7013.99.60 B 7013.99.70 B 7013.99.80 B 7013.99.90 B	Types of glassware used for table, kitchen, toilet, office, etc.
9101.11	Wrist watches, pocket watches and others, battery powdered, with mechanical display
9102.11	Wrist watches, pocket watches and others, battery powdered, with mechanical display other than those in 9101
9603.10.60 B	Brooms, brushes valued over 96¢ each

For Mexico, the list of tariff items subject to the C+ Staging Category was considerably shorter.

TABLE FOUR
PRODUCTS IN THE MEXICAN SCHEDULE WITH A C+ DESIGNATION
(15-Year Phase-Out)

HS Code	Description	Applicable to
1604.14	Types of Tuna	Canada, United States
2009.19	Types of Orange Juice	United States

Each one of these products has a story of its own. They form part of the largely unwritten history of political influence and tradeoffs at the bargaining table that characterize any free trade agreement. Nevertheless, given time and space limitations, the telling of some of these stories will have to wait for a future paper.

III. GOVERNMENT-DRIVEN PROTECTION

Agriculture

Maize (Corn)

Maize is not just another commodity in Mexico. It is a staple of the national diet, a huge employer, and even has a spiritual place in the national consciousness due to its central role in many pre-Colombian religions.[11] When the NAFTA was negotiated, the Mexican maize sector was (and still is) structurally uncompetitive. Yields per acre were far lower than those in the United States due to a variety of factors ranging from poor land quality to a lack of economies of scale in production to insufficient irrigation systems.[12] The Mexican government was well aware of the impediments to ever bringing the maize sector up to an international standard of competitiveness. It also knew that some 18 million people, many of whom were poor and lived in rural areas – and 2.7 million producers – directly or indirectly depended on the production of maize (Dussel Peters [2000] p.57). These individuals could create grave political and social problems around the country if they felt that their livelihood was in jeopardy. Therefore, the Mexican Government felt that the only way to maintain public peace and the political viability of its trade agenda would be to establish nuanced provisions in the maize sector. Nevertheless, for the majority of maize production, they opted for an extended phase-out period rather than a permanent exemption.

Why Mexico did not aggressively pursue a permanent exemption is an open question. However, it is well known that a key motivation behind Mexico's decision to negotiate the NAFTA was to "lock-in" the role of market-based competition in the economy. Many in the Salinas Administration had worked to clean up the debris left by the 1982 debt crisis and felt that the key cause of this catastrophe had been too much government meddling. If, in this post-debt crisis world, all types of sectors were to be forced from the shelter of protection into the cold wind of competition, establishing permanent exceptions was seen to be problematic. Ultimately, the Mexican Government seemed to fear that if it yielded to the demands for protection from any one sector, however important, that it would be overrun by unstoppable demands from all quarters, thereby sabotaging the whole market reform process.

As alluded to above, Mexico adopted different phase-outs in the NAFTA for different types of maize, depending on its use. Seed corn (HS 1005.10), used for agriculture, was already free when the NAFTA entered into force. Corncobs (HS 1005.90.01) and popping corn (HS 1005.90.02) were designated as "C" products that saw their tariffs eliminated over 10 years. All other types of maize (HS 1005.90.99) were subject to a special regime. In the NAFTA, Mexico agreed to replace its import licensing regime for these products with a TRQ that would be phased out over a 15-year period. The United States was granted a duty free quota of 2,500,000 metric tons while Canada received a quota of 1,000 metric tons. The over-quota tariffs for imports from both countries were set at 215%. From 1994-1999, this tariff declined by a total

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[11] For an interesting overview of the cultural significance of maize in Mexico, see "Maize", an adaptation of an article that originally appeared in the 1997 *The Encyclopedia of Mexico* at: *http://maize.agron.iastate.edu/maizearticle.html*.

[12] For a good overview of the maize sector in Mexico see Centro de Estadística Agropecuaria [2000].

of 24% and will be phased-out in equal increments between 2000 and 2008. The in-quota quantities will also expand by 3% each year of the transition period. Full liberalization will be reached on January 1, 2008. To date, there have been no major trade disputes between Mexico and either of its NAFTA partners in this sector.

Trade in maize between Canada and the United States was subject to a standard 10-year phase-out.

Dry Beans

The dynamic in the bean sector was much like that of the maize sector, only on a smaller scale. It was also a staple food and a large employer of poor rural people. Most importantly, though, the bean sector was uncompetitive vis-à-vis producers in the United States. While the social dislocation caused by the collapse of the bean sector would be relatively less grave than that caused by a collapse of the maize sector, the potential consequences were severe enough to cause the Mexican government to seek a nuanced approach. Dry beans grown for seed (HS 0713.33.01) were already free of duties when the NAFTA entered into force. With respect to dry beans for consumption and other purposes (HS 0713.33.02), Mexico agreed to replace its import licensing regime with a TRQ that will be phased out over a 15-year period. The United States was granted a duty-free quota of 50,000 metric tons while Canada received a quota of 1,500 metric tons. The over-quota tariffs for imports from both countries were set at $480 per ton, but not less than 139% *ad valorem*. From 1994-1999, this tariff declined by a total of 24%. Between 2000 and 2008 it will be phased out in equal increments. The in-quota quantities will also expand by 3% each year of the transition period. Full liberalization will be reached on January 1, 2008. To date, there have been no major trade disputes between Mexico and either of its NAFTA partners in this sector.

Canadian and US tariffs on Mexican dry beans were eliminated upon entry into force of the NAFTA. Canada and the United States had originally established a 10-year phase-out for tariffs on dry beans vis-à-vis each other. Nevertheless, these were eliminated early by way of a tariff acceleration agreement.

Unprocessed Fish: Down Home Politics

For hundreds of years, the fisheries sector formed the backbone of the economies of Atlantic Canada. During the century prior to the negotiation of the CUFTA, the region was characterized by declining economic performance. The processing of raw fish provided much-needed jobs to thousands of workers across the region. In part as a mechanism for encouraging regional economic development, the Canadian Federal Government began heavily subsidizing the production and processing fisheries products in the 1960's. In the Annex 301.3A(2) of the NAFTA, Canada reserved the right to control the exportation of unprocessed fish from the four Atlantic Provinces and Quebec. It did not, however, reserve the same right for fish from the West Coast, where the industry is relatively less important to the local economy. This fact alone underscores the paramount importance of regional political economy variables in driving this exclusion.

The treatment of fisheries issues in the international trading system is highly complicated and raises some potential problems for Canada. As noted above, when the NAFTA, including Annex 301.3A(2), was negotiated, the Uruguay Round was still in progress. In the pre-Uruguay Round

world, GATT Article 11 on the General Elimination of Quantitative Restrictions was a much-abused provision. Nevertheless, the Uruguay Round established special regimes for its two most egregious violators: tariffication for agricultural products and the phasing out of the Multi-Fiber Agreement for textiles and clothing. The result of this was to effectively rehabilitate Article 11 by making it politically possible to enforce. Because fish and fish products are not counted as agriculture under international trade law, all types of QRs in this area are subject to elimination under Article 11. While Canada has yet to face a legal challenge from either the United States or Mexico to its right to prohibit exports under Annex 301.3A(2), the NAFTA-WTO concordance problems are readily apparent. Ironically, the tragic yet saving grace for Canada in this area may have been the collapse in the early-1990’s of much of the Atlantic fishery as a result of over-fishing driven principally by the federal government’s perverse subsidy regime.

Logs

The forestry sector is important throughout the NAFTA area. By mutual consent, each party reserved the right, under Annex 301.3, to place controls on the exportation of logs of all species. The motivation for these restrictions seems to have been twofold. First, the Parties wanted to encourage a higher degree of processing on wood exports. Second, the Parties did not want to be seen as having undertaken an obligation to environmentally pillage their forests for export. As with the controls on the export of unprocessed fish, there are concordance problems with GATT Article 11. However, because this measure was taken by all Parties rather than one, the likelihood of a dispute settlement challenge is rather small.

Energy and Basic Petrochemicals: Between the Past and the Future

Energy has long been a point of contention among the nations of North America. Mexico and Canada have been endowed with great supplies and the United States represents a market of great demand. The nationalization of the Mexican oil industry is regarded as one of the seminal events in the country's history. Indeed, Article 27 of the Mexican Constitution expressly guarantees national control over all aspects of the petroleum sector. Naturally, its special place in the economy and culture of Mexico was reflected in the NAFTA. Likewise, in the 1970's, Canada sought to ensure greater national control of its oil industry. However, its policies were never nearly as far reaching as those of Mexico and were implemented over the fierce opposition of its largest oil-producing province. Some of the ways that Canada sought to impose such control (as well as to mitigate against the effects of the post-1973 price spike) were by the adopting of a two-tiered pricing scheme and by imposing special export taxes. The United States was less than pleased with these measures and sought to discipline their use when negotiating the bilateral FTA with Canada.

In international trade law, energy has never been subject to a parallel trade regime in the manner of agriculture or textiles and apparel. Nevertheless, some GATT provisions such as Article XX (g) (the "natural resources" exception) and Article XXI (the "national security" exception) do establish a particular framework for this sector. However, the implications of these provisions for the energy sector have never been fully tested.

Chapter Six of the NAFTA establishes the rules of the game for the energy sector. In terms of applicability, the Chapter covers uranium, heavy water, coal and coal derivatives, lignite, peat,

petroleum and petroleum derivatives, and electricity. While not formal in the manner of the Agriculture "Chapter", Chapter Six establishes separate regimes for Mexico-US/Canada trade and Canada-US trade. The central provisions pertaining to Mexico were set forth in Annex 602.3 and Annex 603.6. In Annex 602.3, the government of Mexico reserved its right to exclusive control over the exploration, exploitation, refining, processing, transport, storage, distribution, and foreign trade of petroleum, petroleum products, and derivatives within its national territory. No liberalization was mandated anywhere in the agreement. The Annex also specifically excluded the applicability of the provisions of the Investment and Services Chapters (Chapters 11 and 12) to these activities. The only vague stab at liberalization appeared in Paragraph 3 of the Annex in which each NAFTA Party was required to permit end-users, suppliers, and state enterprises, as required under domestic law, to negotiate supply contracts for natural gas and petrochemicals. While these contracts are subject to regulatory approval, it is not clear whether these processes must be administered in a manner consistent with NAFTA requirements. In other words, no explicit derogation is established. The implications of this are heretofore unclear. Annex 603.6, on the other hand, allows the government of Mexico to restrict the granting of export licenses for foreign trade in a range of products in HS Chapter 27 (Mineral Fuels, Mineral Oils and Products).

By the time Canada and the United States negotiated their bilateral free trade agreement, Canadian nationalist policies in the oil sector had largely been abandoned. Nevertheless, the main provisions of CUFTA Chapter Nine dealing with Energy reflected these past policies. For example, Article 902 prohibited the use of minimum import prices. Article 903 prohibited the adoption of discriminatory export taxes. Article 904 prohibited recourse to certain GATT exceptions, including Article XX(g). Article 907 imposed a very strict interpretation of "national security" in the energy sector, which overrode GATT Article XXI. During the NAFTA negotiations, Canada and the United States agreed to carry forward the provisions of the CUFTA almost in their entirety. Hence, the openness of the energy sectors in the two countries was re-confirmed.

Wine, Beer and Distilled Spirits: Old Habits Die Hard

Wine, Beer and Spirits were long protected sectors in Canada due in large part to their substantial revenue-generating role for the confederation's individual provinces. Prior to the CUFTA, this protection was administered through three main types of instruments: mark-ups, listing restrictions, and restrictions on points of sale. The United States had its own restrictions that Canadian exporters complained about, including discriminatory application of export taxes and specific distribution practices. While Canada was negotiating the CUFTA it was also seeking to settle a GATT challenge brought by the European Community to its system of provincial monopolies. Hence, some of the same issues were addressed in both fora.

Chapter Eight of the CUFTA dealt specifically with Wine and Spirits. Article 801 authorized a "standstill" for the protective measures of both Canada and the United States. In other words, the Parties could maintain any restrictive measure they had in place prior to October 4, 1987 (the day the CUFTA was signed), provided that they were not made more non-conforming (i.e., restrictive) and did not conflict with the other specific provisions of the Chapter. Article 802 required national treatment in listing practices, except in the case of certain British Columbia wines. Article 803 required that discriminatory mark-ups be eliminated. Article 804 required national treatment for most distribution practices. Article 807 incorporated all rights the Parties enjoy under the GATT provided they do not conflict with other provisions of the Chapter. Canada

gave the European Community many of the same concessions as part of a 1988 agreement to settle the aforementioned GATT case.

With respect to beer and malt containing beverages, Article 1204 established that the CUFTA's national treatment obligation does not apply. Article 1205 set out an unqualified reservation of GATT rights for these products.

The five years between the CUFTA and the NAFTA saw a number of GATT cases related to these products. As a result, the CUFTA provisions on beer and malt containing beverages were not incorporated into the NAFTA and trade in these products came to be subject to GATT rules of general application. On wine and spirits, Canada and the United States did opt to reference all relevant components of CUFTA Chapter Eight into the NAFTA. The net effect was the continued sanctioning of certain Canadian restrictions on the production of these beverages and the existence of provincial distribution monopolies. Nevertheless, in the years since the entry into force of the NAFTA, Canada has moved significantly toward freer trade in these and other types of alcoholic beverages.

Canada and Mexico's bilateral agreement on wine and distilled spirits was very similar to CUFTA Chapter Eight. Again, there are no special arrangements on beer and malt containing beverages. The United States and Mexico negotiated no special regime for any of these products.

Cultural Industries: Identity vs. Protectionism

It is often argued that Canada's biggest fear about free trade with the United States centered on loss of cultural identity. This anxiety has deep roots in the Canadian tradition. However, beginning in the 1960's, as the influence of US mass media spread throughout Canada and the level of economic integration between the two countries deepened, governments at both the federal and provincial levels launched a series of countermeasures. Canada subsidized its publishing industry, imposed Canadian content requirements on Canadian radio and television stations, barred the publication of "split-run" magazines and so on.

Cultural nationalism was a powerful enough political force to ensure that the exclusion of "cultural industries" was a non-negotiable Canadian demand in the CUFTA. Nevertheless, the agreed language on this "exception" set forth in Article 2005 constituted less than a complete triumph of Canadian negotiating objectives. While 2005.1, exempted cultural industries "from the provisions of this agreement", Canada was still required to eliminate its tariffs on such products as books, films, and recordings and reform its "print-in-Canada" requirements, among others. Of greater significance, though, was Article 2005.2, which permitted "a Party (to) take measures of equivalent commercial effect that would have been inconsistent with this agreement but for (Article 2005.1)". In other words, Canada could have its exemption but the United States was free to retaliate if it invoked it. Fortunately for Canada, most practices it used to protect cultural industries, including ownership restrictions and performance requirements, were CUFTA consistent as a result of the blanket grandfathering of all measures in the investment and services area.

When the NAFTA was negotiated, cultural industries were again controversial with Canada fighting vigorously to maintain its existing "exception". While the United States had always

found Article 2005 distasteful, it was unable to move Canada away from its CUFTA cultural carveout. Ultimately, the parties settled on the language in NAFTA Annex 2106, which reads:

> *"... any measure adopted or maintained with respect to cultural industries[13] ...shall be governed in this Agreement exclusively in accordance with the provisions of the Canada-United States Free Trade Agreement. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States."*

This wording effectively incorporates into the NAFTA not only the cultural exception set forth in Article 2005.1 and the right of retaliation established in Article 2005.2, but the CUFTA Chapters on Services and Investment to the extent to which they pertain to cultural industries. The net result was to ignore the efforts toward increased transparency in the services and investment areas in the NAFTA through the lodging of reservations for non-conforming measures identified. In addition, the last line of Annex 2106 effectively forced Mexico to comply with a provision of a treaty to which it was never a party.

While, to date, Canada has not invoked Annex 2106 nor has it been subject to retaliation, the Canadian cultural exemption has come under increasing strain in the years since it was negotiated. In addition to the stresses wrought by technological change, (the internet, for example, is not covered), certain policies that underpin Canada's cultural protection regime have been successfully challenged by the United States before the WTO. In July 1997, the WTO ordered Canada to abolish its prohibitive tariff on the importation of split-run magazines and to repeal an 80% excise tax on advertising in such magazines. The tariff had been in place since 1965 while the excise tax was imposed after Time Warner Inc. began beaming via satellite a Canadian edition of Sports Illustrated into Canada for printing, thus leaping the tariff wall. The rationale behind the split run policy was to protect the limited advertising base for wholly produced Canadian publications. Without that safeguard, magazines with essentially US content financed by US advertising could offer much lower advertising rates than their Canadian competitors who have to finance their content with wholly Canadian advertising revenue.

The WTO decision placed the effectiveness of NAFTA's cultural carveout in grave doubt. After months of agonizing, the Canadian government tabled a new policy in July 1998 that removed the offending measures but left in place a substantial degree of support and protection for domestic magazines. The United States was unimpressed and pressed Canada to provide full market access. After months of further negotiations, events came to a head in the Spring of 1999 when the United States threatened to impose punitive tariffs on a range of key Canadian products if it did not accede to US demands. On May 26, 1999, the US and Canadian governments agreed that foreign publishers would immediately have the right to up to 12% of the advertisements aimed at the Canadian market and up to 18% thirty-six months after the enactment of Canadian legislation bringing the country into compliance with the WTO ruling (Department of Canadian Heritage [1999]).

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[13] "Cultural industries" include the publication, distribution, or sale of books, magazines, periodicals, newspapers, film, audio and video recordings, music, radio broadcasting, television broadcasting, cable, and satellite programming.

In the first challenge to the Canadian policies that the NAFTA cultural exemption was meant to protect, the provision was found to be ineffective. This may seem an unfair criticism, since the challenge was brought before the WTO and therefore had to be argued using WTO rules. Nevertheless, the case underscored the vulnerability of certain Canadian policies in this area due to the lack of concordance between rules at the multilateral and the regional levels. During the Uruguay Round, countries did not agree to a general carveout for cultural industries. While Canada did not make commitments on cultural industries or on advertising services in its GATS schedule, it lost the WTO case on magazines based on provisions related to trade in goods, specifically Articles III and XI of GATT 1994 (National Treatment and Elimination of Quantitative Restrictions). The Panel Report notes:

> *"Canada seems to argue that if a member has not undertaken market access commitments in a specific service sector, that non-commitment should preclude all the obligations or commitments undertaken in the goods sector to the extent that there is an overlap. ... We disagree "* (WTO [1997]).

The expansive principle expressed in this decision would seem to imply that other provisions underpinning Canada's cultural protection regime may be in doubt if challenged at the WTO. Moreover, Canada's efforts at the 1999 Seattle Ministerial to insert language into the final declaration supporting a general cultural carveout were fruitless. The 2001 Doha Ministerial Declaration also did not include such language. Therefore, the inclusion of a NAFTA-like provision on culture or even a clarifying provision in the final package of agreements arising from the new Round (or "Work Programme" as it is now euphemistically called) would seem unlikely. With all of these outstanding concordance issues, the real degree of effectiveness of the NAFTA cultural exemption remains unknown.

The United States and Mexico did not seek any special provisions on cultural industries vis-à-vis each other but have the right to use Annex 2106 under the same circumstances as Canada. This, however, is extremely unlikely to happen.

Water: To Be or Not to Be

A vigorous debate has erupted in recent years about whether the NAFTA inhibits or permits the exportation of Canadian water resources to the United States and Mexico. The Canadian government has argued that the agreement only covers "bottled water", but not "bulk water". Canada lodged no formal reservation in the NAFTA regarding water. Therefore, provisions in the Agreement effecting its exportation are wholly subject to interpretation. That said, in December 1993 Canada did insist on and received a formal exchange of letters on water. It stated that:

> *"Unless water, in any form, has entered into commerce and becomes a good or product, it is not covered by the provisions of any trade agreement, including the NAFTA. And nothing in the NAFTA would oblige any NAFTA Party to either exploit its water for commercial use, or to begin exporting water in any form. Water in its natural state ... is not a good or a product, is not traded, and therefore is not and never has been subject to the terms of any trade agreement."* (Shrybman [1999])

Nevertheless, this understanding on water is an informal agreement among the Parties, presumably without the same formal legal weight as the provisions in the NAFTA text. The true weight and scope of this arrangement has yet to be defined due to the fact that it has yet to be formally tested in a dispute settlement process.

Despite the December 1993 letter, key components of the water debate have turned on whether water in its natural state is really a "good" and if Canadian water has really entered into commercial use. The NAFTA definition of "goods of a Party", as set forth in Chapter 2, adopts the understanding used in the context of the GATT. The problem stems from the fact that the characteristics of a "good" were never precisely defined in GATT 1947 or in any of the subsequent agreements. The only guidance provided is in the "Notes and Supplementary Provisions" set forth in Annex 1 of GATT 1947. Paragraph 2 of Ad Article XVII, states that the term "goods is limited to products as understood in commercial practice". If water is a good, it would be classified under Heading 2201 of the Harmonized System.

Despite the Canadian government's repeated assertions that its water has not been transformed into a saleable commodity and therefore remains beyond the jurisdiction of the NAFTA, certain domestic critics, particularly environmental groups, have argued otherwise. They point out that many individuals and firms already have broad rights as riparian users or hold licenses issued by the federal and provincial governments. In addition to this commercialization, they point out that US Supreme Court has found that water in its natural state is an article of commerce under the US Constitution and that certain other international rulings, particularly by the European Court of Justice have interpreted water to be a "good". Hence, the lack of formal legal standing for the position expressed in the December 1993 letter comes into play.

If water really is a good like any other then Canadian efforts to stop bulk water exports either through national efforts or international instruments could be viewed as protectionist. That said, the export of Canadian water in bulk lies at the intersection of politics, public policy, and economics. Moreover, what really alarms critics of such exports is that Article 315.1(a) seems to assert that once exports start that Canada's right to curtail the volume of exports in the future is greatly limited. While this may be offset by GATT Article XX(g), which relates to the right to take measures to conserve exhaustible natural resources, the relative legal weight of each provision is unclear.

In recent years, Canadian policy on bulk water exports has moved in a number of directions. In 1998, the Government of Ontario granted a permit to a firm seeking to export 600 million liters of water from Lake Superior to Asia. This provoked a public outcry and led to the canceling of the permit. In February 1999, the federal government introduced legislation to ban all bulk water exports. Throughout 1999, the federal government and the provinces worked toward a national bulk water agreement. While a consensus was reached in late-November of that year, no agreement was ever formally signed. The water debate returned to center stage in March 2001 when Newfoundland Premier Roger Grims publicly contemplated rescinding the Province’s ban on bulk water extraction and beginning exports to the United States. This announcement alarmed the federal government. Given the applicability of the NAFTA to sub-national jurisdictions and the terms of the December 1993 letter, bulk water exports from one province would seem to transform all of Canada’s water supply (20% of the world’s freshwater total) into a "good". Ottawa adopted a "carrot and stick" strategy in response to this "contemplation" and the issue has since waned.

In terms of legal challenges related to bulk water exports, only one case has arisen. On November 27, 1998, a "Notice of Intent to Submit a Claim to Arbitration" under NAFTA's Investor-State arbitration provisions was filed by Sun Belt Water, Inc. against the government of Canada. Although a second "Notice of Demand for Arbitration" was filed on October 13, 1999, the company has yet to file a formal "Notice of Arbitration". Sun Belt is seeking $220 million in damages for the suspension of a pre-existing export license issued in the context of a Canada-US joint project. In 1996, the Government of British Columbia imposed a permanent ban on bulk water exports. Although the Canadian firm also lost its license as a result, Sun Belt claims that during and after the revocation that it was denied a "minimum standard of treatment" (i.e., lack of due process and "fair and equitable treatment") as required by Article 1105 of NAFTA. Sunbelt also claims violations of the National Treatment and MFN provisions in Chapter 11.[14] Once the formal "Notice" is filed the case would come before an arbitration panel. Nevertheless, the lack of movement by Sun Belt over the last couple of years in taking this step suggests that the case may be effectively dead. Moreover, in July 2001, the NAFTA Commission agreed to "clarify" Article 1105 in such a way that granting "fair and equitable treatment" is now understood to require a level of treatment no greater than that required by "customary international law".[15] In effect, this "clarification" tightens the rules as to what governments are required to do and makes it more difficult for aggrieved investors to successfully settle their policy differences through litigious means.

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[14] See *http://www.dfait-maeci.gc.ca/tna-nac/Sunbelt.PDF* for the full text of the claim.

[15] See *http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/104441.htm* for the document.

IV. ANALYSIS

Every sector described in this paper has its own distinct story. However, the impulse or the motivation for seeking protection originates in one of two places: with the producers or with the governments. Those products and sectors that benefit from primarily Producer-driven protection, not surprisingly, have very different characteristics from those that benefit from primarily Government-driven protection. These characteristics, of course, manifest themselves in different ways in different countries depending on political, economic, and socio-cultural-historical realities. Canada, for example, has somewhat of a *dirigiste* tradition in certain areas of life and has a relatively weak federal government and relatively strong provinces. The United States, for example, is the world's largest economy and elects its public officials without public financing of its election campaigns. All of this means that the patterns of government-business relations are very different in each country. While such specifics matter greatly in terms of how *x* sector receives *y* type of protection, there are certain definable characteristics that cut across countries.

Producer-Driven Protection

What characteristics do the sectors benefiting from "Producer-driven" protection share?

1) The production of these goods is highly concentrated geographically.

For example, 80% of the total peanut production in United States is undertaken in four states, Georgia, Texas, Alabama, and North Carolina, while 88% of the total production of sugar cane takes place in only two states, Florida and Louisiana.[16] This same principle holds true in Canada, where 79% of all dairy production takes place in two provinces, Quebec and Ontario.[17] In the apparel sector, 67% of all Canadian manufacturers and 63% of Canadian production is concentrated in the province of Quebec.[18] The high levels of geographic concentration mean that the sectors tend to be relatively important to the state or provincial economy and therefore are of great interest to local politicians.

2) The regions in which the production is located are politically important.

It is no accident that the production of virtually all products in the NAFTA that benefit from protection is centered in politically important regions. Florida, for example, accounts for 76% of US orange production and a similar percentage of its orange juice production. In addition, it is the largest sugar cane producing state in the United States. Florida is also the fourth largest state in the country, with the fourth largest number of Electoral College votes. In the three presidential elections preceding the negotiation of the NAFTA, Florida voted overwhelmingly for the winning candidate. In addition, throughout the NAFTA negotiations,

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[16] US agricultural production statistics in the forthcoming sections are taken from the United States Department of Agriculture: *http://www.usda.gov/nass/pubs/ranking/crank97.htm.*

[17] Provincial Shares of Market Sharing Quota. Canadian Dairy Commission, July 2000, *http://www.cdc.ca/msq_table.html.*

[18] The Quebec Apparel Industry. Apparel Manufacturers Institute of Quebec. *http://www.apparelquebec.com.*

Rep. Sam Gibbons of Florida chaired the influential Trade Sub-Committee of the House of Representatives Ways and Means Committee (CQ's Political Staff [1991]).

In the Canadian Federation, Quebec is the single most cohesive and influential province. Quebec is far and away the largest producer of dairy products and apparel and the second largest producer of poultry and eggs (after Ontario). Politically, in the three federal elections preceding the negotiation of NAFTA, the winning Party won no fewer than 77% of the provinces 75 seats (including 84% in the election immediately preceding the NAFTA negotiations).[19] Therefore, winning Quebec is absolutely essential to any Party hoping to win power in Canada. Moreover, every Prime Minister of Canada since 1968 who has lasted more than 9 months in office has come from Quebec. Perhaps even more important than all of this though is the fact that since the 1960's Quebec has had a very large separatist movement. In 1980, the separatist provincial government initiated a referendum on whether the province should move to secede from Canada. While the pro-Canada camp won 60% to 40%, the prospect of break-up has made the federal government extra-sensitive to the interests of Quebec.[20] Ontario, the second largest dairy and apparel producer and the largest poultry and egg producer, gets its influence principally from size. Ontario has about 1/3 of Canada's population and the same number of seats in the federal Parliament. Its provincial governments have been traditionally less conflictive than Quebec's, but its size has made it too large to ignore.

3) The producers are very well organized politically.

Virtually every sector in the United States has an industry association and every firm of importance has a Washington lawyer or lobbyist. The position of the United States in the world economy, combined with the structural division of powers in Washington among many poles of influence and the process of financing election campaigns has made "government relations" a very expensive and complicated, yet critical undertaking. Firms/sectors assert their interests in a variety of ways. Perhaps the most important is through electoral campaign contributions to candidates and Party committees. It is often said that money is the "mother's milk" of US politics. It would be very difficult for one to establish in an ironclad manner that *x* contribution led to *y* trade policy outcome. However, in examining which US sectors received differential treatment in NAFTA and which had made significant campaign contributions, a strong correlation between giving and getting seems to exist in many cases.[21] The sugar industry (both cane and beet), for example contributed $4.2 million dollars (of soft, hard, and PAC (Political Action Committee) money) in the 1990 and 1992 election cycles and it obtained the regime discussed above. Their contributions represented 7.7% of the agribusiness total. In addition, Archer-Daniels-Midland Corporation, a major producer of high-fructose corn syrup and other sweeteners, was among the largest single agribusiness contributors, providing some $2 million during the four-year cycle in question.

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[19] There were 282 seats in the federal Parliament in the 1980 and 1984 elections and 295 in the 1988 election. Quebec's seat count remained fixed at 75 during this period.

[20] In 1995, a second referendum was held. Again the separatist camp lost, this time though by a much closer margin of 51% to 49%.

[21] All US campaign finance contribution data are from the Center for Responsive Politics database, *www.opensecrets.org.*

Another example of this correlation is tuna, the only seafood product to be subject to a 15-year phase out. Starkist, largest tuna producer in the world, contributed $121,450 (of soft, hard, and PAC money) in the 1990 and 1992 election cycles. In addition, H.J. Heinz, the parent company of Starkist contributed $41,600 in the 1992 election cycle. (The 1990 cycle information was not available). Moreover, ConAgra, which has a major tuna interest, contributed $658,754 during the 1990 and 1992 election cycles. Once again, while it is impossible to know who said what to whom and when, the "giving and getting" correlation seems to have been at work.

The political process in Canada is very different from that of the United States, hence, so is the structure of political influence. Real power is concentrated in the Prime Minister's Office, among Senior Cabinet Ministers, and among the upper reaches of the bureaucracy.[22] Parliament does not effectively function as a check on the executive branch and therefore is of secondary importance in the policy-making process. Nevertheless, governments in power are dependent on maintaining a majority of seats in the House of Commons in order to be able to rule with a free hand. Therefore, the key to political success for a sector is to represent a large number of members in a wide array of federal constituencies in a politically important province and to have the backing of one or a number of these top policy-makers. As noted above, culturally, Canada has an important *dirigiste* strain in its policy-making process. Therefore, any sectoral interest that wants to achieve its political goals must work closely with the relevant federal departments and agencies. The Dairy Farmers of Canada, for example, represents 21,500 dairy producers,[23] most of whom are in Quebec and Ontario. Over the years, the DFC has worked in a "hand-in-glove" manner with the Canadian Dairy Commission, the federal corporate entity charged with overseeing the national supply management system for milk products. While the degree of closeness between the egg producers associations and the Canadian Egg Marketing Agency is somewhat less than in the dairy sector, the bodies do cooperate closely. In the apparel sector, the basis of influence stems from the concentration of production and jobs in Quebec and in particular, in the political battleground of Montreal. The apparel industry employs almost 70,000 people in Quebec.[24] If Ottawa had signed the NAFTA without some ability for apparel manufacturers to use imported yarn, thousands of angry, potentially separatist voters may have filled the streets of Montreal.

4) The existing level of protection in the sector worldwide is quite high.

The products that received "producer-driven protection" in the NAFTA also enjoyed a high degree of global protection. For example, in 2001, the average world tariff on dairy products was 85%, while the global average for cane sugar was 62%. The rates for sugar beets and sweeteners are around 70%. The global average tariff on poultry products is about 78%, while the rate for eggs is around 65%.[25] A basic lesson to be derived is that all sectors that received

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[22] Trade policy is the exclusive domain of the Federal Government in Canada. Therefore, these references describe the allocation of power at this level. Nevertheless, the Federal Government has consulted extensively with the Provinces throughout all of its free trade negotiations because many provisions have implications for sub-national jurisdictions.

[23] Dairy Farmers of Canada, *http://www.dairyfarmers.org.*

[24] See The Quebec Apparel Industry.

[25] The use of these data is premised on the notion that "tariffication" did result in the elimination of all NTMs and the establishment of tariff levels equal to their true levels of protection. All agricultural tariff statistics cited are MFN bound rates based on final Uruguay Round implementation (Gibson, *et al* [2001] pp. 9-15).

protection in the NAFTA were fighting to defend the status quo rather than seeking an increase in protection. Once the global level of protection falls below a certain level, the ability to defend an illiberal regime diminishes.

5) The producers have a "real" reason to fear competition

The notion of what is a "real reason" is somewhat subjective. However, the basis of this fear would generally stem from the fact that the industry in the competing country is sufficiently large and has a comparative advantage based on labour costs and/or economies of scale. Some good sectoral examples of this phenomenon on the US side are tuna, sugar cane, and rubber footwear. US tuna producers feared Mexican competition based on cheaper labour costs. In 1991, Mexican caught roughly 130,000 MT of tuna while the US caught roughly 235,000 MT (FAO [1991]). The Mexican industry had sufficient capacity for the US producers to fear an influx of cheap tuna upon liberalization. The story is basically the same with sugar cane: in 1992 the US produced roughly 40 million MT while Mexico produced 27 million MT (FAO [1993]. As noted above, the Mexican industry was undergoing a restructuring designed to make it more competitive. With lower labour costs and the perception of weaker enforcement of environmental laws, the US industry feared an inflow of cheap Mexican sugar.

The rubber footwear industry provides an indicative example of this phenomenon at work in the manufacturing sector. In 1986, Mexico manufactured zero pairs of rubber footwear.[26] However, by 1992 Mexico's production had grown to almost 25,000 pairs annually. Moreover, US production in this sector had been very volatile over the preceding decade ranging from 96,000 pairs in 1983 to a low of 70,000 pairs in 1986 to a high of 113,000 pairs in 1991 before dropping again to 110,000 pairs in 1992. Given the labour-intensive nature of producing rubber footwear, US producers would certainly face a strong challenge from the burgeoning Mexican industry.

The basis of fear among the sectors that Canada protected was different. Canadian producers have tended to view their potential US competitors as large and very efficient and therefore possessing the ability to flood the small Canadian market with vast quantities of cheap product. Many Canadian dairy, poultry, and egg producers feel that due to structural factors related to size of market and production methods that they could never effectively compete with their US counterparts, even if they wanted to.

Mexico

All of the sectors where the impetus for protection came principally from the producers were in Canada and the United States. Therefore, the question arises as to why Mexico did not single out and pursue either temporary or permanent protection for certain sectors. Much of this seems to stem from Mexico's understanding of the causes and lessons of the debt crisis and a corresponding faith in the "invisible hand" of the market over the government in picking winners and losers. If the government yielded to demands for protection from any group of producers it

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[26] The statistics cited refer to ISIC # 3559-16, which when translated into the HS, include the 6401 products designated as C+ (UN [1994] p.553).

would be deluged with unstoppable demands from all quarters. As a result, beyond dry beans and corn, the only "C+ products" were responses to demands from its trading partners.

Government-Driven Protection

Unlike producer driven protection, in which the sectors share a range of cross-cutting similarities, the only factor that binds the sectors subject to government-driven protection is the vague concept of "national interest" arising from the particularities of the countries themselves. There are three basic motives for principally government-driven protection.

1) Governments fear significant negative social dislocation that could threaten their policy agenda

For a variety of structural reasons, the breadth and depth of producer organization in Mexico is much more sporadic than in Canada and the United States. In the maize and bean sectors, the millions of mostly small producers were not organized into a coherent lobby capable of shaping government policy. The economic and political system in Mexico at the time of the NAFTA negotiations did not encourage this type of mobilization. Therefore, it cannot be effectively argued that the impetus for the extended phase-out period for maize and beans came principally from the producers. Rather, the government recognized the importance of these sectors, particularly to the rural economy of Mexico, and moved to try to ease in the pressures of competition, thereby spreading the resulting social dislocation over time. The least competitive producers would be forced out of the marketplace first, while those in the middle of the pack could hold on for a while longer. The most competitive, on the other hand, would have a chance to upgrade their productive efficiency and consolidate their market position. This type of gradualist approach would reduce the likelihood of these groups coming together around a common issue that could threaten the government’s broader trade policy objectives.

In the case of the fisheries sector in Atlantic Canada, the situation was not one of a lack of producer organization, but a government-driven regional economic model that was designed to stem the flow of outward migration and encourage political support for whatever party was in power. Jobs in fish processing plants were a key part of this equation. The NAFTA was being negotiated at the time when much of the East Coast fishery was in the midst of collapsing due to massive over-fishing. With this process not yet fully completed, Canadian negotiators were operating on the old paradigm that called for heavy subsidies and protection of fish processing activities. The Federal and Provincial governments subsidization of the Newfoundland cod fishery is a perfect example of the Canada’s policy approach in this area. According to a study by economists at Memorial University, two years before the collapse, Newfoundland cod fisherman received roughly $3.00 in subsidies for every $1.00 they earned in the fishery (Jacobs [2000] p.383). Liberalizing the exportation of unprocessed fish would have undermined all this government investment. Therefore, Canada was unwilling to abide such a result.

2) Governments act for long-standing historical reasons, often heavily connected to the sector's role as a significant revenue generator.

Every country has its history and its mythology. In the NAFTA area, there is no other sector with quite the importance to a country as the energy sector in Mexico. While Mexico freely tore down its other barriers to trade and investment, the energy sector remained sacrosanct. The nationalization of the energy sector in 1938 was an event of such mythological historical importance that opening the sector was politically impossible. In addition, the policy-makers knew that oil and gas alone accounted for over 25% of total federal government revenues, an amount roughly equivalent to expenditures on education, health, public safety, and national defense.[27]

In the Canadian system, the overturning of the monopolies held by most provinces of the distribution of wine, distilled spirits, and beer proved to be very difficult for budgetary reasons. As a 2000 Saskatchewan Department of Finance Backgrounder succinctly noted: *"Since 1925, the Province has used transfers from the ... Saskatchewan Liquor Board for fiscal stabilization"* (Department of Finance [2000]). While the percentage of total revenues that the sales of such products represent has varied by province, the budgetary role of liquor proceeds had stayed pretty much the same for decades. During the CUFTA and the NAFTA negotiations, the Canadian government did not want to jeopardize the life of the goose laying golden eggs in the coffers of the provinces. Therefore, protection was the natural result.

3) Governments act to ensure "national integrity".

The basic impulse of any sovereign state is to survive. GATT 1947 and every other trade agreement since recognizes this most basic of premises. While Articles XX and XIX lay out the basic exceptions (public morals, human/plant/animal life, national security, etc.), every country has its peculiarities that must be reflected if it is to be able to sign a comprehensive trade agreement. Canada is the only one of three NAFTA members that has persistently feared for its national survival. Numerous Canadians have devoted endless hours to deliberations over "who we are as a nation and as a people". As noted above, in the 1960's, many Canadians began to feel that their country was steadily disappearing into the great American amorphous and set out actively to resist this fate. Hence came the birth of modern Canadian nationalism, which sought to build institutions and establish a culture distinct from (and often in opposition to) "the American way". Thus also began the role of Canadian culture as political instrument. When Canada decided to negotiate the CUFTA, fears of cultural survival came to the fore in many quarters, including within the federal government itself. As a result, the Canadian negotiators established cultural industries as "non-negotiable" from the outset. Canada took the same position in the NAFTA and in the Uruguay Round and remains deeply committed to this position to this day.

Water is viewed through this same lens of national integrity. As noted above, Canada has over 20% of the world's supply of fresh water while the United States and Mexico have declining reservoirs in many areas with fast population growth. Therefore, it has long been feared that the United States may force Canada to cede control of its reserves. Canada's failure to lodge an explicit reservation in the NAFTA is seen by many as a key error. This has left Canada scrambling to ensure that the treatment of trade in water issues by the Agreement is in its favour.

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[27] This refers to 1990 figures; those most likely to have been available to the NAFTA negotiators. (IMF [1993] p.383).

V. CONCLUSIONS AND IMPLICATIONS

If one were writing a Bible of trade to guide future negotiations, a key observation would be that "protection will always be with us". It may come in different forms and degrees; however, there is no use lamenting this outcome for the politics of trade negotiations makes protection inevitable to some degree. The single most important thing for policy-makers to remember is that a "free trade agreement" is like an ecosystem. There is a certain "sustainable level of protection", derived for whatever reason, that will not threaten the dynamic effects of the whole agreement. However, if the "agreement ecosystem" becomes too sullied with protectionist provisions, the dynamism will be striped away and the agreement will come to have very negative effects on economic welfare (Jacobs [2000]). Defining precisely what would constitute such a "sustainable level" is a complicated if not impossible task. As a rule of thumb, negotiators should begin from the premise of zero protection and work backwards as necessary. This is much more likely to yield a sustainable result than aiming for a pre-defined level of protection.

The experience of Mexico in the NAFTA suggests that countries transforming themselves from largely closed to open economies through a free trade agreement with key trading partners may have the best chance of minimizing protectionist impulses. This stems from both the initial enthusiasm associated with adopting a policy of free trade for the first time and the fact that all sectors will be forced to experience the shock of competition at roughly the same time. Therefore, arguing why one sector over all others deserves protection is more difficult. For policy-makers in countries with partially open, nuanced trade regimes, the key challenge is to try to wean numerous privileged sectors from the happiness of longtime protection. Because everyone is not being asked to make roughly the same sacrifice at roughly the same time, the position of the government in imposing these changes may be potentially less strong.

Despite the criticisms of its vulgar regime in *x* or *y* sector, the architects of the NAFTA did succeed in ensuring that the levels of protection were sustainable. In the aggregate, the NAFTA has generated a vast amount of trade, investment, and employment activity in its three signatory countries. The stories told in this paper have underscored the many aspects of the Agreement that could be improved upon. However, the NAFTA experience over the past eight years has also reminded us yet again that in the pursuit of economic integration arrangements, one must not let the best – the vain attempt to create a protection-free agreement – become the enemy of the good.

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