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THE LAST TEN YEARS OF MEXICAN AGRICULTURE

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This article will discuss what has been going on with the Mexican agriculture sector over the last ten years, and what has been going on ever since the so-called "renegotiation trauma" started to develop in Mexico in the last year and a half. At the dawn of 2003, there was a great amount of attention paid by the Mexican media to what was perceived as the new evil, the North American Free Trade Agreement (NAFTA).[1] The business front page of *La Reforma*, a leading newspaper in Mexico, had this headline: "Forty products coming into the country, tariff- free. The agricultural liberalization goes on as NAFTA starts its tenth year."[2] From there on, you started to see words in the media every day, like "danger," "threat," "damage," "injury," and, of course, "protection."

So what was the perceived threat? There were forty new products coming into Mexico tariff-free. Among those from the United States were wheat, potatoes, rice, coffee, and milk products (except powdered milk, which is one of the three products protected until 2008).[3] Other products coming in to Mexico were sugar cane, tobacco, poultry, and some wines made of fresh grapes.

However, Mexico was also to have tariff-free access to a number of products imported into the United States. These "C-schedule products" were to be exempt of tariffs by the tenth year of NAFTA.[4] The Mexican products that got these advantages were avocados, frozen strawberries, limes, all sorts of tomato presentations, frozen asparagus, broccoli, cauliflower, cantaloupes and the very successful bell peppers.[5]

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This speech appears substantially as delivered by Mr. Molina. Footnotes have been added to aid the reader in some areas.

1. The NAFTA is a trade agreement among Canada, Mexico and the United States, implemented on January 1, 1994, with a 15-year transition period. The major agricultural provisions of NAFTA include: 1) the elimination of nontariff barriers immediately upon implementation, generally through their conversion to tariff-rate quotas or ordinary quotas; 2) elimination of tariffs - many immediately, most within 10 years, and on some sensitive products gradually over 15 years; 3) special safeguard provision; and 4) country-of-origin rules to ensure that Mexico does not serve as a platform for exports from third countries to the U.S. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605, *available at* http://www.nppc.org/resources/glossary.html#n (last visited April 5, 2004).

2. The *Reforma* is printed in Mexico City. *See* Reforma.com, *available at* http://www.theworldpress.com/ru/newspap/mexiq/reforma.htm (last visited April 5, 2004).

3. The Voice of Agriculture Newsroom, *Mexico Seeks Trade Protection* (May 12, 2003), *available at* http://www.fb.com/news/fbn/03/05_12/html/mexico.html (last visited April 5, 2004).

4. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605, *available at* http://www-tech.mit.edu/Bulletins/nafta.html (last visited April 5, 2004).

5. *Id.*

At the time, the messy political situation in Mexico overshadowed the benefits of NAFTA. First, there was a newly appointed Foreign Affairs Secretary. The former Secretary of Economics, Luís Ernesto Derbez Bautista became the new Secretary of Foreign Affairs.[6] He accepted the position with the prerequisite that the Under-Secretariat for International Trade Negotiations, which is still under the Secretary of Economics, would eventually be transferred to the Foreign Affairs Ministry.[7] The Secretary of Economics is what used to be known as the Secretary of Trade and Industrial Development, and had the responsibility of developing trade policy in Mexico.[8] The Secretary of Economics is the Mexican counterpart to the United States Trade Representative (USTR).[9] Yet, this transfer of agency power is something that is not really possible. That transfer of power would require the approval of the Mexican Senate.[10] It means that there have to be changes in a number of laws, like the law of public administration. There would also need to be changes in the free trade agreements that Mexico currently has with other countries. Each free trade agreement (FTA) says who is responsible in Mexico for the administration of the FTA. In the case of NAFTA, it is still the Secretary of Economics.[11]

Another political situation overshadowing NAFTA occurred as the administration of President Fox neared its halfway mark. A number of nongovernmental organizations (NGO's), many of them associated with the rural community and the production of agricultural goods, started to become more and more dissatisfied. The growing influence of the left-wing party, the *Partido de la Revolución Democratica* or Democratic Revolutionary Party (PRD), over these NGO's helps explain this dissatisfaction.[12] The *Partido Revolucionario Institucional* or Institutional Revolutionary Party (PRI) was pretty much the main architect of NAFTA.[13] However, the PRD has always been opposed to the policies of the PRI.[14] As a result of PRI influence and NGO dissatisfaction, there were national hearings held to do something about the situation of the Mexican countryside.

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6. Embajada de México en Canadá, Press Release, *Luís Ernesto Derbez takes office as Secretary of Foreign Affairs* (Jan. 15, 2003), *available at* http://www.embamexcan.com/PRESS/Press%202003/English/ComunicadoEne 15.shtml (last visited April 5, 2004).

7. *See* MexOnline.com Guide to Mexico Government and Politics, *available at* http://www.mexonline.com/mexagncy.htm (last visited April 5, 2004).

8. *Id.*

9. The Office of the U.S. Trade Representative (USTR) is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and leading or directing negotiations with other countries on such matters. The USTR is a Cabinet member who serves as the President's principal trade advisor, negotiator, and spokesperson on trade and related investment matters. *See* USTR Website, *available at* http://www.ustr.gov/about-ustr/ustrrole.shtml (last visited April 5, 2004).

10. *See* MexOnline.com Guide to Mexico Government and Politics, *available at* http://www.mexonline.com/ mexagncy.htm (last visited April 5, 2004).

11. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605, *available at* http://www-tech.mit.edu/Bulletins/nafta.html (last visited April 5, 2004).

12. Douglas A Chalmers and Kerianne Piester, NGOs and the Changing Structure of Mexican Politics, Columbia University, *available at* http://www.columbia.edu/~chalmers/NGOsinMex.htm (1995).

13. The 2000 presidential election of Vicente Fox brought to an end 71 years of PRI rule and the PRI's effective monopoly of political power. *See* Daniel Yergin and Joseph Stanislaw, Excerpt from *Commanding Heights*, *available at* http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/ess_nafta.html (last visited April 5, 2004).

14. *Id.*

Another political question in Mexico was the role of the Mexican Congress concerning agricultural issues. Congress, especially the lower chamber, was going to have mid-term elections in July 2003. This is important because the agricultural sector is over represented like just about any country in the world. Although fewer people live in the countryside, many representatives have an interest in the agriculture industry. Mexico is certainly no different in this case. As the elections were nearing, the agriculture debate was heating up and everyone was talking about it and taking positions left and right. There was uncertainty as to which positions would predominate. At the same time, the executive administration never made its position clear.

Finally, there is not solidarity in the Mexican agricultural sector. For example, the producers are a group, the peasants are a group, and the fishers are group. Producers such as Green Giant, which has a large operation in Irapuato, Mexico, are doing quite well, and they have always been doing well. However, the peasants and the fishermen--those people who do not have Green Giant's political clout--are also affected by NAFTA.

With these challenges in mind, what is at stake in renegotiation? When NAFTA was being negotiated in 1988, the three main objectives were to secure market access, to prevent unilateral action against Mexico by the United States, and to have an unbiased dispute settlement mechanism to prevent unilateral actions. What Mexico wanted was to have something that looked like the dispute settlement mechanism the United States and Canada negotiated in 1988. It was considered quite a success to have pretty much the same mechanism incorporated into NAFTA.

The agriculture provisions that put NAFTA in jeopardy were primarily in Chapter Seven.[15] Because the disagreements over Chapter Seven of NAFTA were so hotly debated, the parties decided to have three different bilateral agreements on the commercial side: one between Mexico and Canada, one between Mexico and the United States, and one providing that the 1988 U.S.-Canada FTA would remain in place to regulate trade between the United States and Canada.[16] However, tri-lateral agreements among the countries were developed on trade rules and dispute settlement.[17] Rules of origin, sanitary and phyto-sanitary (SPS) measures, technical barriers to trade, anti-dumping, and other things that regulate trade but are not tariffs were negotiated on a trilateral basis.[18]

Another big issue was the tariff elimination schedule. It was agreed that on January 1, 1994, 57% of trade between the United States and Mexico would be

15. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605, *available at* http://www-tech.mit.edu/Bulletins/nafta.html (last visited April 5, 2004).

16. Office of NAFTA and Inter-American Affairs, NAFTA Statistics, *available at* http://www.mac.doc.gov/nafta/naftastats.html (last visited April 5, 2004).

17. *Id.*

18. Sanitary and Phytosanitary Measures: NAFTA imposes "disciplines" on the development, adoption, and enforcement of sanitary and phytosanitary (SPS) measures. These are measures taken to protect human, animal, or plant life or health from risks that may arise from animal or plant pests or diseases, or from food additives or contaminants. Disciplines contained in NAFTA are designed to prevent the use of SPS measures as disguised restrictions on trade, while still safeguarding each country's right to protect consumers from unsafe products, or to protect domestic crops and livestock from the introduction of imported pests and diseases. *See* FAS Online, NAFTA Factsheet, *available at* http://www.fas.usda.gov/info/factsheets/NAFTA.html (last visited April 5, 2004).

tariff-free.[19] That amounted to about U.S. $3.1 billion.[20] Then five years later, this amount would grow by around 20%, up to 63% of the total trade between the two countries, representing an additional U.S. $310 million.[21] By January 2003, 94% of agricultural trade between Mexico and the United States was tariff-free, with an estimated value of U.S. $1.7 billion. What is still protected--corn, beans, powdered milk, and a couple of other products--amounts to U.S. $330 million, which is about 6% of the total trade between the two countries.[22] The last line of this agreement, the one that will be liberalized by the 15th year, was one of the last points of agreement between the two countries.[23] This is because the talks on this issue were going nowhere while everything else was pretty much negotiated. NAFTA was negotiated under the idea that nothing is agreed until everything is agreed. It did not matter that everything else was settled; we were just waiting for the agriculture people to finalize the deal.

What were the major points of the negotiation? The first point was the elimination by the United States of trade barriers on a large variety of agriculture products, such as cotton and sugar.[24] Then, the elimination by Mexico of restrictions on a number of field crops like dried beans, pork, potatoes, apples, and non-fat dry milk.[25] An important issue was the transformation of these non-tariff barriers, such as quotas and licenses, into Tariff Rate Quotas (TRQ's).

Another important issue was for both countries to be able to apply safeguards in case of a sudden import surge that threatened an industry.[26] These safeguards can be applied on an emergency basis for six months and, if the threat remains, extended for another six months. Whether these measures have been applied on a fair basis or instead have been abused will be a subject for later debate.

In NAFTA, SPS measures were far more developed than in other agreements. Chapter Seven, Section B, which deals with SPS measures, was a model for the code on sanitary and phyto-sanitary measures of the World Trade Organization (WTO), which was adopted before the end of the Marrakech round in 1995.[27]

Is the U.S.-Mexico trade balance under NAFTA fair to Mexico? Mexico had an improvement of 11.5% in its exports.[28] Imports were reduced by 3.5%, which translates into a U.S. $427 million trade balance for the first quarter of 2003. This was more than twice the figure for the same period in 2002.[29] The five areas most

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19. Office of NAFTA and Inter-American Affairs, NAFTA Statistics, *available at* http://www.mac.doc.gov/nafta/naftastats.html (last visited April 5, 2004).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. LANIC Website, NAFTA Resources, *available at* http://lanic.utexas.edu/la/Mexico/nafta/ (last visited April 5, 2004).

25. *Id.*

26. *Id.*

27. The Marrakech Agreement of 1994 established the World Trade Organization (WTO), *see* Marrakech Agreement, April 15, 1994, 33 ILM 28, *available at* http://www.austlii.edu.au/au/other/dfat/treaties/1995/8.html (last visited April 5, 2004).

28. Office of NAFTA and Inter-American Affairs, NAFTA Statistics, *available at* http://www.mac.doc.gov/nafta/naftastats.html (last visited April 5, 2004).

29. *Id.*

responsible for this increase in the trade balance were exports of fresh tomatoes, other fresh vegetables, vinegar, fruits, and livestock.[30]

The ten success stories of Mexican agricultural exports to the United States under NAFTA are cucumbers, limes, squash, asparagus, bell peppers, cantaloupe, tomatoes, broccoli, mango and watermelon. In some cases the export growth is really tremendous, as with limes, bell peppers and broccoli. The lifting of restrictions by the United States stimulated that growth.

These success stories do not mean that all producers have benefited in the same manner. For example, broccoli has proven by far to be one of the most profitable exports.[31] However, only a few producers in Mexico--about 1.2% of the producing population--produce broccoli.[32] The mango crop is also very regionalized. Thus, even though some Mexican products are becoming very successful in the United States and other countries, not everyone has derived benefits.

What is the status of direct foreign investment in the Mexican agricultural section? As of March 2003, there were 274 companies in Mexico that received foreign capital from 29 different countries.[33] Of these, 153 companies are in the agricultural sector, representing almost 56% of the total.[34] Of the 29 countries supplying direct foreign investment, five represent almost 82% of total investment. These countries are usually the United States, Spain, Germany, Canada, and Chile. The United States and Canada represent 71.6% of the total investment. The United States has invested in 189 companies, representing 69% of the total investment. There have been no new investments in 2003 because of all the political unrest over NAFTA.

Renegotiating NAFTA is not a good idea. Because of the architecture of NAFTA, a single issue or chapter cannot be separated out because nothing is agreed until all is agreed. Once an area is re-opened, all areas may be re-opened as well. Additionally, it would be very difficult for the United States to renegotiate NAFTA with Mexico when the United States has negotiations going on with five Central American countries, the Dominican Republic, Morocco, Australia, New Zealand, five countries in the southern part of Africa, the Free Trade Area of the Americas (FTAA), and the WTO. Additionally, Mexico would have to adjust all nine of the other FTA's it has with thirty other countries. Renegotiation of NAFTA would be a rather bad sign for all future negotiations.

30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*