

2014

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Recommended Citation

Vanessa Humm, *American Trade News Highlights for Spring 2014: Promises Kept and Promises Broken - NAFTA at Twenty*, 20 LAW & BUS. REV. AM. 363 (2014)
<https://scholar.smu.edu/lbra/vol20/iss2/10>

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AMERICAN TRADE NEWS HIGHLIGHTS FOR SPRING 2014 PROMISES KEPT AND PROMISES BROKEN—NAFTA AT TWENTY

*Vanessa Humm**

THE North Atlantic Free Trade Agreement (NAFTA)¹ has been in force for twenty years, as of January 1 of this year. Twenty years ago, NAFTA “created the world’s largest free-trade zone.”² However, as with most things that have a multi-national impact, especially an economic one, NAFTA has always been surrounded by controversy and clouded by disagreement. The arguments made both for and against NAFTA remain much the same today as they did when the trade pact was being proposed and debated. This update will look back on the development of NAFTA, including the promises it kept and the promises it failed to keep, and discuss how NAFTA has forever impacted the way North America engages in trade.

I. HISTORY AND DEVELOPMENT OF NAFTA

President Clinton signed NAFTA on December 8, 1993.³ It became effective January 1994.⁴ President Clinton signed on behalf of the United States, President Carlos Salinas signed on behalf of Mexico, and Prime Minister Jean Chrétien signed on behalf of Canada.⁵ The three leaders represented the three countries party to the agreement.

NAFTA was motivated by a desire for economic growth. The member countries aimed to accomplish this goal through NAFTA by making it easier for goods and services to move between Canada, Mexico, and the

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1. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993).
2. *Dec. 8, 1993: NAFTA Signed Into Law*, HISTORY, <http://www.history.com/this-day-in-history/nafta-signed-into-law> (last visited Apr. 14, 2014).
3. *Id.*
4. Mohammed Aly Sergie, *NAFTA’s Economic Impact*, COUNCIL ON FOREIGN RELATIONS (Feb. 14, 2014), <http://www.cfr.org/trade/naftas-economic-impact/p15790>.
5. *Id.*

United States.⁶ President Reagan promoted the general concept behind NAFTA during his campaign for the U.S. presidency in 1979 when he discussed an agreement for North America.⁷

Further, Canada and the United States had already taken steps to ease movement of trade between the two countries with the Canada-U.S. Free Trade Agreement.⁸ The Canada-U.S. Free Trade Agreement's objectives, among others, included "eliminat[ing] barriers to trade in goods and services between the territories of the Parties;"⁹ "facilitat[ing] conditions of fair competition within the free-trade area;"¹⁰ and "lay[ing] the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of this Agreement."¹¹ These objectives were furthered by NAFTA.

A few years after the Canada-U.S. Free Trade Agreement was signed, Canada and the United States extended their goals for free trade between them to include Mexico, and subsequently all three countries signed NAFTA, which came into force January 1, 1994.¹² NAFTA "eliminated virtually all tariffs and trade restrictions between the three nations."¹³ It took until January 1, 2008, until all of NAFTA's policies were implemented.¹⁴

While it was President Clinton who signed NAFTA, and it was "one of Clinton's first major victories as the first Democratic president in 12 years,"¹⁵ the push for a North America with free trade was initially a Republican initiative.¹⁶ It was a true bi-partisan product, having been "conceived by Ronald Reagan, negotiated by George Bush I, and pushed through the US Congress by Bill Clinton in alliance with Congressional Republicans and corporate lobbyists."¹⁷

But NAFTA's bipartisan birth did not insulate it from criticism; all areas of the political spectrum criticized the agreement. Environmental and agricultural groups were split in their support and criticism for the agreement.¹⁸ Further, while most business groups supported NAFTA, it received opposition from "labor, civil rights, human rights, certain busi-

6. Andrea Ford, *A Brief History of NAFTA*, TIME (Dec. 30, 2008), <http://content.time.com/time/nation/article/0,8599,1868997,00.html>.

7. *Id.*

8. Canada-United States Free Trade Agreement, U.S.-Can., Oct. 4, 1987, *available at* <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/cusfta-e.pdf>; *see also* Ford, *supra* note 6. (showing the agreement existed since 1989).

9. Canada-U.S. Free Trade Agreement, art. 102(a).

10. *Id.* art. 102(b).

11. *Id.* art. 102(e).

12. Ford, *supra* note 6.

13. HISTORY, *supra* note 2.

14. Ford, *supra* note 6; Sergie, *supra* note 4.

15. HISTORY, *supra* note 2.

16. *Id.*

17. Jeff Faux, *NAFTA, Twenty Years After: A Disaster*, HUFFINGTON POST (Jan. 1, 2014, 12:00 PM, updated Jan. 23, 2014, 8:17 AM), http://www.huffingtonpost.com/jeff-faux/nafta-twenty-years-after_b_4528140.html.

18. H.R. Doc. No. 103-19 (1993).

ness, and other groups.”¹⁹

For example, Texas billionaire Ross Perot was very vocal in his criticism of NAFTA. He called the idea of the agreement “ridiculous.”²⁰ Further, he warned that if the agreement were to pass, American workers would lose their jobs, in turn reducing the American tax base and actually harming the American economy.²¹ He argued that the only goal of NAFTA was for businesses to make money, and that it would result in a lower standard of living for American workers.²² Mr. Perot was not alone in his criticism of NAFTA. Other critics at the time the agreement was being debated “warned that the United States would experience sharp job losses as companies moved production to Mexico for lower costs.”²³

Supporters of NAFTA repeatedly referred to the economic advantages the agreement would bring to all three countries, with U.S. supporters referring to the “enormous advantages to the U.S. economy.”²⁴ NAFTA proponents also claimed the agreement would improve efficiency.²⁵ Further, under the law at the time, Mexico faced very low or even zero tariffs and trade barriers from the United States for many goods, while Mexico had continued to impose high tariffs and barriers.²⁶ Because NAFTA would remove these tariffs, some immediately, and almost all of them over an extended period of time, the U.S. economy would benefit.²⁷ Additionally, U.S. exporters would find great advantage in exporting to Mexico because NAFTA would lower the tariffs on goods from the United States and Canada, but not goods from other countries the United States competes with, like European and Asian competitors.²⁸

NAFTA would also open Mexico’s markets to U.S. services, allowing U.S. services to grow operations in Mexico.²⁹ It was predicted this would benefit entities like U.S. banks, securities firms, and insurance companies by giving them the opportunity to invest in Mexico for the first time in a long time.³⁰ With all of these arguments supporting NAFTA, however, its proponents were sure to always state that the benefits gained by U.S. companies by being able to do business more cheaply with and in Mexico would “in no way jeopardize jobs in the United States.”³¹ U.S. investment in Mexico would come back to the United States where U.S. invest-

19. *Id.*

20. Ross Perot, *North American Free Trade Agreement*, C-SPAN (June 10, 1993), available at <http://www.c-span.org/video/?42726-1/north-american-free-trade-agreement>.

21. *Id.*

22. *Id.*

23. Sergie, *supra* note 4.

24. H.R. Doc. No. 103-19 (1993).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

ment in other foreign countries would not have that result.³² For example, U.S. firms operating in Mexico would likely import materials and equipment from the United States, whereas if U.S. firms were operating in Asia, the necessary materials and equipment would more likely be imported from a country more geographically accessible from Asia.³³

A final argument made was the threat of opening Mexico up to free trade agreements from one of the countries with which the United States competes.³⁴ “Such a development would give [Mexico] a foothold in North America and the Western Hemisphere.”³⁵ Ultimately, the supporters of NAFTA won the battle and the agreement came into force twenty years ago this January. But the criticism and the support continues.

II. PROMISES KEPT AND PROMISES BROKEN

Twenty years after it was originally passed, many of the same arguments and controversies still swirl around NAFTA. The agreement “remains a source of tension.”³⁶ Arguments about whether NAFTA was good or bad still exist.³⁷ NAFTA has certainly helped increase consumer choice in its twenty years of life.³⁸ Most would agree that it has had a positive impact on trade.³⁹ Trade between the three NAFTA countries has “soared” since they agreed to the trade pact.⁴⁰ Economists credit NAFTA with “fueling unprecedented trade and creating millions of jobs in the United States.”⁴¹ Trade between the United States and Mexico in particular increased because of NAFTA.⁴² Trade between the United States and Canada did not see quite the “great leap in trade” that Mexico saw, but that is mainly because the two countries were already well integrated before NAFTA.⁴³

Removing import tariffs in agriculture was a major focus of the agree-

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Julian Aguilar, *Twenty Years Later, NAFTA Remains a Source of Tension*, N.Y. TIMES, Dec. 7, 2012, at A25A, available at http://www.nytimes.com/2012/12/07/us/twenty-years-later-nafta-remains-a-source-of-tension.html?_r=2&.

37. Oliver Morton & Andrew Palmer, *NAFTA Turns 20: Factory North America*, THE ECONOMIST (Jan. 2, 2014), available at <http://www.economist.com/blogs/freexchange/2014/01/nafta-turns-20>.

38. *NAFTA 20 Years Later: Success or Failure?*, USA TODAY (Dec. 31, 2013, 1:41 AM), <http://www.usatoday.com/story/news/world/2013/12/31/nafta-20-years/4258905/>.

39. Morton & Palmer, *supra* note 37.

40. North American Free Trade Agreement (NAFTA), OFFICE OF THE U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta> (last visited Apr. 14, 2014) [hereinafter Office of the U.S. Trade Representative].

41. Aguilar, *supra* note 36.

42. Morton & Palmer, *supra* note 37.

43. *NAFTA at 20: Deeper, Better, NAFTA*, THE ECONOMIST, Jan 4, 2014 available at <http://www.economist.com/node/21592612/>.

ment, and things like textiles and automobiles also saw tariff reductions.⁴⁴ Upon enactment, NAFTA removed existing tariffs on “more than half of the exports from Mexico to the United States.”⁴⁵ Tariffs between Canada, Mexico, and the United States were gradually phased out thereafter.⁴⁶

NAFTA still holds the title of the “world’s biggest trade pact.”⁴⁷ It increased trade among Canada, the United States, and Mexico to \$1 trillion, representing “one-third of all global trade.”⁴⁸ In October 2013, U.S. trade with its NAFTA partners exceeded \$100 billion for the first month, according to the U.S. Department of Transportation.⁴⁹ The top two purchasers of U.S. exports in 2010 were the country’s NAFTA partners, with Canada at \$248.2 billion and Mexico at \$163.3 billion.⁵⁰

But the second decade of NAFTA’s existence did not have the excitement of the first decade.⁵¹ Events like the terrorist attacks against the United States on September 11, 2001, the rise of China as a global competitor, the Great Recession, and the like, meant the trade gains seen in the first decade were not as evident or impressive in the second decade.⁵² The momentum seen in the early years of NAFTA’s life has waned recently.⁵³

In addition to a generally kept promise of increasing trade, NAFTA has also helped increase consumer choice. For example, certain clothing that used to be only accessible by Mexico’s wealthy are now available to everyone in Mexico.⁵⁴ These goods that were previously luxuries and too expensive for most, like imported sneakers, are now owned by the majority of Mexicans.⁵⁵ In other words, it has been credited with making cheaper consumer products available in Mexico.⁵⁶ NAFTA has also helped modernize manufacturing in Canada, Mexico, and the United States.⁵⁷

But just as the case was when the agreement was being proposed over twenty years ago, harsh critics of NAFTA remain. They argue that the

44. Sergie, *supra* note 4.

45. Aguilar, *supra* note 36.

46. *Id.*

47. *NAFTA Summit a Wasted Opportunity for an Epic Energy Pact*, INVESTORS.COM (Apr. 14, 2014, 7:00 PM), <http://news.investors.com/ibd-editorials/022014-690680-nafta-summit-a-wasted-opportunity-for-an-epic-energy-agreement.htm>.

48. *Id.*

49. Rossella Brevetti, *U.S. Trade with NAFTA Partners Exceeds \$100 Billion in October 2013*, BNA INT’L TRADE DAILY, Jan. 7, 2014.

50. Office of the U.S. Trade Representative, *supra* note 40.

51. Morton & Palmer, *supra* note 37.

52. *Id.*

53. *NAFTA at 20: Deeper, Better, NAFTA*, *supra* note 43.

54. *NAFTA 20 Years Later: Success or Failure?*, *supra* note 38.

55. *Id.*

56. Howard LaFranchi, *‘Three Amigos’ Summit: Can U.S., Mexico, and Canada Modernize NAFTA?*, CHRISTIAN SCIENCE MONITOR (Feb. 19, 2014), <http://www.csmonitor.com/World/Americas/2014/0219/Three-amigos-summit-Can-US-Mexico-and-Canada-modernize-NAFTA-video>.

57. *Id.*

promise of economic benefits from NAFTA has not been kept.⁵⁸ They argue that it has actually caused a decrease in U.S. shipping and manufacturing jobs.⁵⁹ They argue that “NAFTA has also displaced Mexican agricultural workers into other sectors or forced them to immigrate illegally to the United States.”⁶⁰ NAFTA also failed to keep its promise to close the wage gap between Mexico and the United States.⁶¹ While the Mexican auto sector has increased its jobs by about 50 percent since the enactment of NAFTA, the average Mexican manufacturing wages were about 15 percent of those in the United States in 1997, and only increased to 18 percent by 2012.⁶²

Regardless of the criticism of NAFTA, the simple truth remains that it is impossible to prove what would have happened with trade policy without the agreement.⁶³ And the bottom line is that trade has improved between the three member nations since the agreement came into force; whether or not that is because of NAFTA can only be speculation at best. But trade in the region has increased from roughly \$290 billion before NAFTA in 1993 to more than \$1.1 trillion in 2012.⁶⁴ And goods and services trade between the United States and Mexico and Canada is greater than that between the United States and Japan, South Korea, Brazil, Russia, India, and China combined.⁶⁵

III. NAFTA GOING FORWARD

Despite NAFTA’s alleged failures and alleged successes, and regardless of the proponents and critics of the agreement, most agree that NAFTA needs to be reinvigorated.⁶⁶ One of the problems that requires solving is the movement of goods across the borders between the countries.⁶⁷ The borders are “bottlenecks that are a drag on NAFTA economies.”⁶⁸ Traffic jams at the borders, changing of drivers and crews at the border, and complications with these drivers and crews are all contributing to this drag on the NAFTA economies.⁶⁹ This process needs a serious overhaul in order for NAFTA to see its fullest efficiency potential.⁷⁰ But on the flipside is the argument that the time spent waiting at the borders is still

58. Public Citizen, *NAFTA’s 20-Year Legacy and the Fate of the Trans-Pacific Partnership*, TRADEWATCH.ORG, <http://www.citizen.org/documents/NAFTA-at-20.pdf> (last visited Apr. 14, 2014)

59. Aguilar, *supra* note 36.

60. *Id.*

61. *NAFTA 20 Years Later: Success or Failure?*, *supra* note 38.

62. *Id.*

63. Sergie, *supra* note 4.

64. *Id.*

65. *Id.*

66. Jeremy Hainsworth, *NAFTA Must ‘Get Its Act Together,’ Expert Tells Trade Conference*, BNA INT’L TRADE REPORTER, Jan. 29, 2014.

67. Morton & Palmer, *supra* note 37.

68. Hainsworth, *supra* note 66.

69. Morton & Palmer, *supra* note 37.

70. *NAFTA at 20: Deeper, Better, NAFTA*, *supra* note 43.

much shorter than waiting on goods to ship from China.⁷¹

Solving this problem, and also addressing the more globalized environment of today's world than that of twenty years ago will be done not by reopening NAFTA itself, but by negotiating the Trans-Pacific Partnership (TPP).⁷² This agreement involves all three NAFTA countries, along with ten countries in Asia and the Pacific region.⁷³ Whether or not the TPP will solve the problems critics of NAFTA point to, its aim at more free trade, and the participation by the NAFTA countries makes it clear that the dream of free trade along all of the Americas is here to stay.⁷⁴

71. *NAFTA at 20: Ready to Take Off Again?* THE ECONOMIST, Jan. 4, 2014, available at <http://www.economist.com/news/briefing/21592631-two-decades-ago-north-american-free-trade-agreement-got-flying-start-then-it>.

72. *On 20th Anniversary of NAFTA, Mexican, Canadian Leaders Press Obama*, FOX NEWS LATINO (Feb. 20, 2014), <http://latino.foxnews.com/latino/politics/2014/02/20/on-20th-anniversary-nafta-mexican-canadian-leaders-press-obama/>.

73. *Id.*; Lydia DePillis, *Everything You Need to Know about the Trans Pacific Partnership*, WASH. POST. (Dec. 11, 2013, 10:48 AM), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/12/11/everything-you-need-to-know-about-the-trans-pacific-partnership/>.

74. Morton & Palmer, *supra* note 37.

