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Canada: Economic Development under NAFTA, Dominant Economic Player under FTAA

*Matthew Goldstein**

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I. Introduction

Canada has undergone a dramatic economic change over the past two decades. From reluctance to expand trade and dependence upon the United States for a majority of trade to free trade with the United States and Mexico, Canada has made a move to become a dominant economic player in the Western Hemisphere and the world. Canada used tariff-free trade to increase trade with its current trading partners, to find new trading partners, and to open up a multitude of opportunities around the world. Trade agreements such as NAFTA opened those doors. The next step in this evolution is increased free trade expansion. Several options exist for Canada in its pursuit. The most talked about and controversial trade agreement is the Free Trade Area of the Americas, a free trade zone that would stretch from the northern reaches of Canada and Alaska to the southern tip of Argentina. Other possibilities for free trade expansion include an expansion of NAFTA, coupling between NAFTA and its South American counterparts,

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and bilateral and multilateral trade agreements. This article will examine this evolution of the Canadian economy through its trade with Western Hemisphere neighbors and, more importantly, where trade pacts may take the Canadian economy in the future. Part 2 of this article examines Canada's past economic pursuits. Part 3 examines the current status of Canada's economy. Part 4 looks at Canada's free trade options for the future.

II. Canada's Economic Past: Events Leading up to NAFTA

Prior to the creation of any free trade agreements, Canadian policy on trade was to protect itself from becoming too dependent on the United States.¹ The United States was—and still is—Canada's main trading partner.² American products, however, were viewed as superior, making competition in the U.S. market all the more difficult for Canadian products.³ Canadian industry could not compete with American industry, in both quality and production levels, and the overall fear was that, if allowed to freely trade with and invest in Canadian industry, the United States would gain too much control and exact excessive power over Canada's economy.⁴ In effect, Canada feared losing its own identity, both economically and culturally.⁵ Canada's foreign policy is based upon the "three pillars of national prosperity, national security, and the projection abroad of our values and culture."⁶ Canada has a strong sense of national identity and Canadians feared that too much control by the United States would result in the destruction of that identity.⁷

These fears led the Canadian government during the 1960s and 1970s to experiment with numerous trade and industry policies, including high import tariffs, subsidies for industrial modernization and new product development, regulation of foreign-controlled enterprises, and limitations on foreign ownership in key sectors such as oil and gas.⁸

1. See Peter Morici, *Assessing the Canada-US Free Trade Agreement*, 26 AM. REV. CAN. STUD. 491 (1996). From the 1940s through 1960, the Canadian economy had been powered by the rapid development of mineral resources and other natural resource exports to the United States. *Id.* After 1960, the combined contribution of mineral, petroleum, farm, forest, and fishery products to Canadian exports to the United States declined significantly, and the attention of policy-makers increasingly turned to Canada's manufacturing. *Id.*
2. *Id.*
3. *Id.* The United States also relied upon contingent protection in the form of supplemental duties imposed upon Canadian products on a case-by-case basis when U.S. products were believed to be injured by their Canadian counterparts. *Id.*
4. *Id.*
5. See generally Osvaldo Nunez, *Quebec's Perspective on Social Aspects and the Broadening of Free Trade in the Americas*, 11 CONN. J. INT'L L. 279 (1996). Polls taken in Canada in the 1980s suggested that a referendum on Canadian involvement in a free trade agreement with the United States would have been defeated. *Id.* at 280.
6. David Kilgour, Speech to the Diplomatic Press Attache Network (Oct. 15, 1997), in CANADIAN SPEECHES, Dec. 1997, at 19-23. Kilgour is the Canadian Secretary of State for Latin America and Africa.
7. See generally *id.* Kilgour's speech described how the United States is Canada's best international friend and how the two countries share many values. But when Canada has something different to say, the country must speak up. *Id.*
8. See Morici, *supra* note 1.

The tariffs and other measures were designed to protect Canadian products from outside competition, primarily from U.S. products, and improve the competitiveness of Canadian manufacturing.⁹ Foreign nations would be forced to pay so much extra to sell their products in Canada, they would essentially be dissuaded from exporting to Canada at all.¹⁰ This would in turn give Canadian products a distinct advantage. Unfortunately, these measures did little to help. While protecting the interests of Canadian businesses within Canada, the tariffs did little to improve exportation, and without any infusion of capital and technology from foreign sources, production levels remained at levels inferior to Canada's competitors. As of 1980, 64 percent of Canadian exports went to the United States, and Canadian manufacturing productivity was estimated at 77 percent of United States levels.¹¹

In response to this failure, the Canadian government reversed its field and recognized that tariffs would not sufficiently protect Canadian industry from U.S. competition.¹² A better approach would be to negotiate a free trade agreement with the United States to eliminate tariffs and other non-tariff barriers.¹³ Canadian economists concluded that such action was in Canada's best interests.¹⁴ The Royal Commission on the Economic Union and Development Prospects for Canada stated:

Canada's economic growth is critically dependent on secure access to foreign markets. Our most important market is the United States, which now takes up to three-quarters of our exports. More, better, and more secure access to the United States market represents a basic requirement, while denial of that access is an ever-present hazard.¹⁵

Proponents of free trade believed it would encourage new investment in Canadian industry and allow Canadian industry to penetrate American markets and achieve efficiencies and economies of scale with the United States.¹⁶ Eliminating trade barriers would not only increase trading but also allow an infusion of foreign investment to spur growth in Canadian industry.¹⁷

Despite the Canadian government's belief that free trade was the proper direction in which to turn, public opinion did not concur. A poll taken in 1986 suggested that Canadians did not support the Conservative government proposing free trade.¹⁸ The public

9. *Id.*

10. *Id.*

11. *Id.*; see also STATISTICS CANADA, CANADIAN ECONOMIC OBSERVER: HISTORICAL STATISTICAL SUPPLEMENT (Ottawa, 1995) 52.

12. See Morici, *supra* note 1.

13. *Id.*

14. See Nunez, *supra* note 5, at 280.

15. Summary of Conclusions and Recommendations 10 (1985) (quoted in Nunez, *supra* note 5, at 280).

16. See Morici, *supra* note 1.

17. *Id.*

18. See Nunez, *supra* note 5, at 280 (discussing how Quebec was the only Canadian province to support a free trade agreement with the United States, and Quebec's overwhelming support of free trade was the key factor in making free trade a reality).

still clung to the idea of strong protection through tariffs and other protective barriers. Without these barriers, some Canadians believed the United States would overwhelm Canada's industries.¹⁹ "It was with considerable discomfort that Canada resigned itself to negotiating a free trade agreement with its powerful American neighbor."²⁰

The Canadian government forged ahead with its plans to expand trade. In order to both achieve its goals and soothe the fears of opponents, the Canadian government set out to achieve the following four goals in a free trade agreement:

- (1) Enhance access to the U.S. market by eliminating tariffs and most remaining U.S. non-tariff barriers;
- (2) Secure this access by limiting the application of U.S. contingent protection to Canadian exports;
- (3) Create a strong agreement to protect this access with an effective dispute settlement mechanism; and
- (4) Maintain Canadian discretion in sensitive cultural industries and other aspects of domestic and international policy.²¹

The end result was the Canada-U.S. Free Trade Agreement (FTA).²² The FTA established preferential trade status between Canada and the United States, eliminating tariffs on goods and promoting foreign investment opportunities for both countries.²³ Canada was able to remove trade barriers while still protecting its economy and culture from excessive American influence.

The reduction in trade barriers led to an increase in Canadian market shares in the United States. For example, from 1988 to 1994, U.S. imports from Canada grew much more rapidly than imports from other countries, 58.4 percent to 47.9 percent, respectively.²⁴ This was in stark contrast to the previous decade, where the import growth comparatively was 113.9 percent to 112.1 percent.²⁵ Studies show that Canadian exports grew most rapidly in areas where tariffs and other barriers were cut the most.²⁶ Non-resource product exports such as office and telecommunications equipment, precision instruments, and other equipment and tools increased by 48.9 percent from 1988 to 1992.²⁷ In the same time frame, resource-based product exports such as paper and chemicals increased 24.8 percent.²⁸ One sector that has seen major advances is energy. Once

19. See Morici, *supra* note 1. Canadian nationalists argued that elimination of protection through tariffs would force Canada to rely more on natural-resource products. And the economic integration achieved through a free trade agreement would lead to the United States overwhelming Canadian industry culturally and politically. *Id.*

20. Nunez, *supra* note 5, at 280.

21. PETER MORICI, A NEW SPECIAL RELATIONSHIP: FREE TRADE AND UNITED STATES CANADA ECONOMIC RELATIONS IN THE 1990s 64-65 (1991).

22. Jan. 1, 1989, U.S.-Can., 27 I.L.M. 293 [hereinafter FTA].

23. See Morici, *supra* note 1.

24. See GREG MASTEL & ANDREW SZAMOSSZEGI, THE U.S.-CANADA FTA: A GOOD DEAL, A GOOD MODEL 8 (Economic Strategy Institute 1995); see also Morici, *supra* note 1.

25. See Morici, *supra* note 1.

26. *Id.*

27. *Id.* (quoting DANIEL SCHWANEN, A GROWING SUCCESS: CANADA'S PERFORMANCE UNDER FREE TRADE, Commentary No. 52, 7 (Toronto, C.D. Howe Institute, 1993)).

28. *Id.*

bogged down by regulations and policies that prevented cooperation and trade, Canada is now the United States' second largest oil supplier.²⁹

The FTA helped to prepare Canada to compete in sectors with significant growth opportunities for advanced industrial countries by pushing Canada toward specialized manufacturing and service activities.³⁰ Industries that exhibited strong advances include insurance, financial services, consulting, advertising, and communications.³¹ Advances in these industries provided Canada with the opportunity to increase trade and investment globally.

Overall, trade between Canada and the United States has doubled in the past ten years.³² One billion dollars in trade crosses the Canada-United States border every day, and some economists believe the two countries have barely scratched the surface on potential trade and investment between them.³³ However, the FTA did much more than create free trade between Canada and the United States. In addition to tariff-free trade, the FTA included rules governing the regulation of investment, services, government procurement, and product standards.³⁴ In effect, the FTA created the most sweeping free trade arrangement since the creation of the European Community in the 1950s.³⁵

Perhaps an overlooked effect of the FTA is the positive effect the FTA had on the Canadian people. The success of free trade within the Canadian economy served to wipe away much of the fears that existed prior to the FTA's creation.³⁶ Seeing such success

29. Peter F. Romero, *The U.S.-Canada Relationship and the Western Hemisphere, Remarks at the Meeting of the Canadian-American Business Council* (Oct. 7, 1998), in DEP'T ST. DISP., Nov. 1998, at 22. Another area that has been affected by the FTA is the auto industry. The two-way trade that crosses the Ambassador Bridge between Michigan and Ontario equals all U.S. exports to Japan, most of which is auto related. Autos and auto parts account for about one-third of bilateral trade. *Id.*

30. See Morici, *supra* note 1.

31. *Id.*

32. See Romero, *supra* note 29. While trade numbers improved, improvement in Canadian productivity versus the United States has not been as substantial. From 1988 to 1995, output-per-hour manufacturing in Canada increased 14 percent compared with 19 percent in the United States. Overall, Canadian manufacturing productivity fell to roughly 68 percent of U.S. levels. While free trade was supposed to correct this problem, it is believed that inflation prevented any improvement. The Bank of Canada maintained a highly restrictive monetary policy to reduce inflation, which prevented Canadian GDP and investment growth from moving at the same levels as in the United States. From 1988 to 1993, GDP and investment grew 5.7 and 4.1 percent, respectively, in Canada compared with 6.5 and 4.9 percent in the United States. With inflation now under control in Canada, production levels should match that of the United States. See Morici, *supra* note 1.

33. See Romero, *supra* note 29. As of 1998, exports to the United States accounted for one-fourth of Canada's gross domestic product. *Id.*

34. See Morici, *supra* note 1. One example of programs growing out of the FTA is the U.S.-Canada Shared Border Accord, designed to make the customs and immigration processes more efficient. This would in turn facilitate and speed up trade between the two countries. See MORICI, *supra* note 21.

35. See Morici, *supra* note 1.

36. See *Canadian Culture Moving to Center Stage in Global Marketplace, Reports TIME Canada in Special Issue*, CANADA NEWSWIRE, Aug. 3, 1999, at <http://www.newswire.ca/releases/august1999/03/c0206.html>.

in the economy, such as the extensive growth in exports, instilled in Canadians a belief that tariff-free trade can work without robbing them of their identity and convinced them that more of the same would be beneficial.³⁷ A recent survey conducted by TIME Canada revealed that 51 percent of Canadians believe their culture should be more open to outside influences versus only 36 percent who believe the opposite.³⁸ One of the stated objectives of the FTA was to "lay the foundations for further bilateral and multilateral cooperation."³⁹ Given the success of the FTA, Canada was ready, willing, and able to move on to greater trade agreements.

III. Present: NAFTA and Other Trading Opportunities: Canada Begins to Move Further South

A. NAFTA

Building upon the success of the FTA, the next step for Canada was to expand the free trade idea to include more countries besides the United States. The North American Free Trade Agreement (NAFTA),⁴⁰ an agreement between Canada, the United States, and Mexico was the result. The most important aspect from Canada's point of view was the inclusion of Mexico in a tariff-free trade agreement. While the FTA was successful in creating increases in exports and identifying sectors of industry in which Canada could excel, Canada remained dependent upon the United States for a majority of its trade. The addition of Mexico as a free trade partner meant an opportunity to develop trade with another nation and perhaps reduce Canada's reliance on the United States. In furtherance of these ideas, the stated goals of NAFTA were to eliminate tariff and non-tariff trade barriers, increase economic growth and jobs in Mexico, Canada and the United States, provide preferential treatment for each other's products, and increase a joint ability to compete against both a unified European Community and an increasingly dynamic Asia.⁴¹

NAFTA created the first continent-wide free trade area, uniting nearly 370 million people and a combined production of more than six trillion dollars.⁴² On its base level,

37. *Id.*

38. *Id.*

39. FTA, *supra* note 22, at 293.

40. Dec. 17, 1992, 32 I.L.M. 296 [hereinafter NAFTA].

41. *Id.* art. 102 & pmbl. Like the FTA, NAFTA covered much more than the elimination of trade barriers; NAFTA also included agreements on labor standards, transportation, investment, and communications to name a few. See Betty Southard Murphy, Book Review, *NAFTA: What Comes Next?*, 16 J. INT'L L. BUS. 318, 319 (1995) [hereinafter *Book Review*].

42. See Hearings Before the Employment, Housing and Aviation Subcommittee of the Committee on Government Operations, 93, 146-47 (1993) [hereinafter *Hearings*]; see also Betty Southard Murphy, Symposium: *NAFTA at Age One: A Blueprint for Hemispheric Integration?: II. The Labor Side Agreement: NAFTA's North American Agreement on Labor Cooperation: The Present and the Future*, 10 CONN. J. INT'L L. 403 (1995) [hereinafter *Labor Cooperation*]; see also *Book Review*, *supra* note 41; see also Barbara Rudolph, *The North American Free Trade Agreement: A \$6 Trillion Market Gamble for 363 Million Consumers*, TIME, Aug. 10, 1992, at 43.

NAFTA called for the rollback of up to twenty thousand tariffs over fifteen years.⁴³ Prior to NAFTA, tariff levels on imports averaged approximately 4 percent in the United States, 5 percent in Canada, and 11 percent in Mexico.⁴⁴ In some cases, tariffs were much higher. For example, cocoa imports into Mexico had a 20 percent duty placed on them; tequila entering Canada had a 183 percent duty.⁴⁵ After NAFTA's inception, these tariffs would eventually disappear.

A good example of the effect of the reduction in tariffs can be seen in the grain industry. Because Mexico produces little grain of its own, it relies heavily on grain imports.⁴⁶ Canada and the United States are the world leaders in grain exports.⁴⁷ Under NAFTA, both countries received preferential treatment in exporting to Mexico.⁴⁸ The tariff on wheat from Canada and the United States was set at 15 percent to be gradually reduced to zero.⁴⁹ The tariff on wheat from other suppliers was set at 67 percent.⁵⁰ Canada and the United States were given a huge advantage over the rest of the world's grain suppliers. The additional expense of the high tariff effectively shut out the competition,⁵¹ leaving only Canada to compete with the United States.⁵²

The overall effect of tariff-free trade on Canada, much like when the FTA was created, was enormous. From 1992 to 1997, Canadian exports grew three and a half times faster than the gross domestic product (GDP).⁵³ The percentage of GDP from exports grew from 27 percent ten years ago to 44 percent.⁵⁴ These numbers mean that Canadian exports not only increased in comparison to imports, but also took on a greater importance in the Canadian economy.⁵⁵ Canada was no longer relying on itself

43. See Rudolph, *supra* note 42.

44. *Id.*

45. *Id.*

46. See Kenneth Murray & James Gartner, *Opening Doors in a Burgeoning Regional Grain Market*, AGEXPORTER, Jan. 1, 1999, at 27, at <http://www.fas.usda.gov/info/agexporter/1999/opening.html>. Grain exports from the United States and Canada to Mexico are expected to continue growing. Mexico's demand for grain is far greater than its production capacity, and Mexican policymakers are moving away from self-sufficiency and toward "embracing greater market orientation." *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. In addition to the increased export of grain to Mexico, Canada has also made inroads on exports to the United States. In 1997, Canada exported \$1.7 billion in wheat, malting barley, oats, and processed products like pet food, cereal, and bread. The United States only exported \$1.1 billion in grain products, mostly corn and processed items, to Canada the same year. This has been cause for alarm among U.S. farmers; however, U.S. processors especially welcome Canadian oats. U.S. oat-production levels have declined, now meeting just two-thirds of domestic consumption needs. *Id.*

53. See Department of Foreign Affairs—An Evolving NAFTA—by the Honourable Sergio Marchi, Minister of International Trade, CANADIAN CORP. NEWswire, Apr. 19, 1999 [hereinafter *Foreign Affairs*].

54. See Andrew Purvis, *New Force in the Hemisphere*, TIME, June 28, 1999, at 28.

55. See generally *Foreign Affairs*, *supra* note 53. Marchi states that NAFTA has made Canada more innovative and competitive and that most Canadians have come to embrace free trade. *Id.*

for consumption of its products. The United States and now Mexico provided greater outlets for Canadian products. From 1993 to 1997, Canada's trade with the United States increased 50 percent and over 80 percent with Mexico.⁵⁶

In addition to the increased trade, Canadian direct investment is up 75 percent in the past decade⁵⁷ and nearly 70 percent of the \$187.6 billion in foreign direct investment in Canada comes from the United States and Mexico.⁵⁸ What did this mean for Canada? For one, over one and a half million jobs were created.⁵⁹ Moreover, technology and capital made their way into Canada to improve production and manufacturing techniques.⁶⁰

Similar to the FTA, NAFTA differed from other trade agreements that preceded it. NAFTA was intended to encompass a variety of economic relations besides trade, such as investment, communications, and environmental and labor matters.⁶¹ In essence, NAFTA created a unified economic force that would allow each of the countries to compete better globally.⁶² This effect was much more important to Canada and Mexico than to the United States, given that the United States was already a superpower. An alliance with the United States on an economic level gave Canada and Mexico an opportunity to access the expanding markets of Central and South America.⁶³

B. FREE TRADE AGREEMENT WITH CHILE

Building upon NAFTA's success, especially with regard to the success of free trade with Mexico, Canada shifted its focus toward Latin America in looking for new trade partners. In its first-ever bilateral trade agreement with a South American country, Canada signed a free trade agreement with Chile in 1996.⁶⁴ Similar to the FTA and NAFTA, this agreement eliminated tariffs on trade between the two countries.⁶⁵ Nearly

56. See Romero, *supra* note 29.

57. See Purvis, *supra* note 54.

58. See *Foreign Affairs*, *supra* note 53.

59. *Id.*

60. See generally *id.*

61. See SIDNEY WEINTRAUB, *NAFTA: WHAT COMES NEXT?* 2 (1994). The United States felt the labor agreement reached in NAFTA was not strong enough and conditioned its passage of NAFTA upon labor side agreements becoming a part of NAFTA. See *Labor Cooperation*, *supra* note 42, at 404.

62. See *Book Review*, *supra* note 41, at 318-19.

63. See *Labor Cooperation*, *supra* note 42, at 404.

64. See John Geddes, *Chile Free Trade Pact Finalized: Deal Eliminates Tariffs on 80% of Canadian Exports*, FIN. POST, Nov. 15, 1996, at 4. Chile has been one of the more aggressive Latin American countries in pursuing trade agreements. In addition to Canada, Chile has made deals with Mexico and several other Latin American and Caribbean countries, including the MERCOSUR trade bloc of Argentina, Brazil, Paraguay, and Uruguay. When Chile made the free trade agreement with Canada, its largest trading partners were the United States, Japan, Great Britain, Korea, and Brazil. See Peter Morton, *Lukewarm on Latin America: The Latin American Countries Are Willing to Talk about a Broad, Hemispheric Free Trade Pact, but if Canada's Existing Agreement with Chile Is Any Barometer, Many of Our Companies Aren't All That Interested*, FIN. POST, Apr. 18, 1999, at 18. As Purvis stated, "Chile has become a poster child for free trade." Purvis, *supra* note 54.

65. See Geddes, *supra* note 64.

80 percent of Canadian exports to Chile became tariff-free.⁶⁶ Trade between the two countries amounts to roughly \$600 million per year, and Canada is now Chile's second largest foreign investor at seven billion dollars.⁶⁷

The most important aspect of this trade agreement was that it did not involve the United States. As opposed to previous agreements, Canada formed an advantage over the United States.⁶⁸ While American products enter Chile with a 10 percent duty attached to them, similar Canadian products enter duty-free.⁶⁹ Clearly, Canadian products can be exported to Chile much easier and at a lower price than their American counterparts.

An example of how this difference plays out can be seen from consumer-oriented food sales in Chile.⁷⁰ This is an area in which the United States excels with high quality products, especially in the areas of fast food and processed foods for supermarkets.⁷¹ Canada's processed foods and beverages enter Chile tariff-free, making them much more desirable from a cost standpoint, if not from a quality standpoint, than United States products.⁷² For items such as frozen potatoes, U.S. market share in Chile has declined.⁷³ With over ninety Canadian companies operating in Chile, that trend is likely to continue.⁷⁴

C. TEAM CANADA: TRADE MISSION TO LATIN AMERICA

Recognizing that Latin America provided fertile ground for Canada to expand trade and decrease dependency upon trade with the United States, the Canadian government surged ahead with more ideas. The most prominent of those ideas was Team Canada.⁷⁵ In

66. *Id.* Most manufactured goods were duty-free and duties on agriculture were reduced 45 percent, both from the deal's inception. The remaining tariffs were to be reduced over a five-year period. *Id.*

67. *Id.* In comparison, trade between the United States and Chile amounted to more than seven billion dollars. See Morton, *supra* note 64.

68. The United States maintains a large presence in Latin America, but suspicion of U.S. motive exists in the region. By contrast, Canadian products are well accepted and the image of Canada is strong. *Id.*

69. See Richard Blabey, *Demand's Up for Consumer Foods in Chile*, AGEXPORTER, Apr. 1, 1999, at 13, at <http://www.fas.usda.gov/info/agexporter/1999/demands.html>.

70. *Id.*

71. *Id.* Consumption of prepared foods in Chile doubled in 1996. Convenience foods like frozen dinners and pizzas averaged \$500,000 per month in sales in 1997 for each of the five local leading food companies and was expected to grow to two million dollars per month in 1999. In addition, 70 percent of Chileans eat one to two meals out every day. *Id.*

72. See generally *id.*

73. *Id.*

74. See Morton, *supra* note 64. One example of the Canadian advantage can be seen in the telecommunications industry. Northern Telecom beat out its U.S. rivals like AT&T for a \$200 million contract. The key factor was the 11 percent tariff that no longer applies to Canadian companies, thereby allowing them to undercut the competition. *Id.*

75. See, e.g., *Planning Ahead with Team Canada: International Trade Minister Sergio Marchi Discusses the Success in Latin America and Where the Mission May Go Next*, PLANT, Apr. 20, 1998, at 25 [hereinafter *Planning Ahead*]; Neville Nankivell, *Team Canada Trade Approach Proves Its Worth in Opening Markets for Us: Early Reports Suggest Latin America Mission Will Largely Meet Its Aim of Strengthening Ties with the Region*, FIN. POST, Jan. 17, 1998, at 23.

an effort to strengthen ties with Latin America, Canadian Prime Minister Jean Chretien and Trade Minister Sergio Marchi led a group of Canadian business people in January 1998, on a four-country tour to help facilitate contracts, joint ventures, and partnerships with Latin American counterparts.⁷⁶ The venture was a huge success. Team Canada visited Mexico, Brazil, Argentina, and Chile, netting \$1.8 billion in contracts for Canadian companies.⁷⁷ Ninety-one deals were signed in Mexico alone, valued at \$230 million.⁷⁸

In addition to setting up deals, the mission was a way for Canadian business people to get to know their Latin American counterparts. Marchi said that the business people "came away from the mission feeling there is something very special between Canada and Latin America."⁷⁹ That something special may be a common need to lessen dependence upon the United States as a trading partner; trade between Canada and Latin American countries may be seen as an opportunity to achieve that goal.⁸⁰

IV. Future: Canada Looks to Move Forward with Increased Free Trade

In the past decade, Canada has made great strides in their efforts to expand trade. Trade with Latin America has doubled to ten billion dollars, and Canadian direct investment in the region has quadrupled in the past five years to eighteen billion dollars.⁸¹ Canadian companies are ever increasing their reach into the region. Seventy-five Canadian companies are operating in Peru, with 200 others represented through local agents.⁸² Bell Canada International recently won the rights to provide local telephone service in Brazil.⁸³ Canada has been described as "brimming with self-confidence, assertively internationalist, free from the discontents of the recent past, and with a powerful streak of moralism."⁸⁴

So, what comes next? It would seem that Canada has done nearly everything that is possible to improve its economic situation. The change from 1980 to the present has been remarkable. However, many believe more change is necessary.⁸⁵ In a discussion for

76. See *Planning Ahead*, *supra* note 75. Other objectives of the mission were to bring the Canadian government closer to the governments of the four countries visited and to discuss potential future free trade agreements. *Id.*

77. *Id.*

78. See Nankivell, *supra* note 75. To follow up on the deals and ensure they come to fruition, the Canadian government planned to put six trade commissioners in the region. See *Planning Ahead*, *supra* note 75.

79. *Planning Ahead*, *supra* note 75. The Latin Americans expressed interest in Canada as a whole, inquiring about Canadian social and governmental programs and how Canada relates to the United States. *Id.*

80. See generally *id.*

81. See Purvis, *supra* note 54.

82. *Id.*

83. *Id.*

84. Richard Gwyn, Address at the Canadian Institute of International Affairs Foreign Policy Conference (1998), *quoted in* Gerald Wright, *Independent Partners: Canada, the USA and the World*, *BEHIND THE HEADLINES*, Mar. 1999, at 10.

85. In a poll conducted by TIME Magazine, 55 percent of Canadians polled believe industries in Canada need to be more open to the world economy versus 31 percent who felt industry

a TIME Canada special report, a group of economists concluded that "Canada must take significant and immediate steps to become more competitive internationally, or risk a declining standard of living as other nations better prepared to embrace the change move ahead in the global economy of the future."⁸⁶ The United States is still Canada's dominant trade partner, and Canada continues to search for new trade partners.

Based upon the past successes in Latin America, Canada is focusing its search for free trade expansion there.⁸⁷ The financial crisis in Asia and Europe's focus on its own economic union are additional factors. But concerns with trade expansion into Latin America do exist. As a whole, the Latin American nations' economic and political development lags behind that of Canada and the United States.⁸⁸

Corruption, torture, rampant crime, and discrimination toward indigenous groups continue to plague the region.⁸⁹ Human rights considerations in regard to labor practices are also a problem.⁹⁰ Labor standards in Latin America are far below that in Canada, with people working for pennies without a union to protect them.⁹¹ The Canadian government has been pressed by activist groups to address these concerns prior to making any future trade agreements in Latin America.⁹²

Despite these concerns, Canadian business people and trade officials see Latin America as a huge potential market for Canadian industries, such as mining, forestry, fisheries, agri-food and technology.⁹³ Current exports to Latin America are on a constant upward swing.⁹⁴ Canadian presence in Latin America is already rather extensive and is still growing.⁹⁵

should be more protected. See *Deadline 2005: Prominent Canadian Economists Raise Serious Concerns about Canada's Global Competitiveness*, CANADA NEWSWIRE, June 21, 1999.

86. *Id.* The economists suggested that critical factors in Canada's future are strong leadership and opening more of the economy to private ownership, especially in sectors like health and education where there is little international competition. *Id.*
 87. See Jennifer Ditchburn, *Chretien to Talk Trade, Human Rights in Mexico*, CANADIAN PRESS NEWSWIRE, Apr. 7, 1999; see also Purvis, *supra* note 54; Nankivell, *supra* note 75.
 88. See Ditchburn, *supra* note 87.
 89. *Id.*
 90. *Id.*
 91. Unions in Canada and the United States have complained since the inception of NAFTA of the poor labor standards in Mexico, fearing that companies would take advantage and move their operations. NAFTA failed to specifically address the issue of labor standards. *Id.*
 92. *Id.*
 93. Wilson Ruiz, *Dancing to a Latin Beat: Canada Has High Free-Trade Hopes*, MACLEAN'S, Apr. 20, 1998, at 22 (quotes Gilles Theriault, Chairman, UNIC Marketing Group and Member, Team Canada mission in 1998). According to Claude Carriere, Canada's top FTAA negotiator, the most promising opportunities for Canada lie in modernizing newly privatized and often badly out-of-date telecommunications, energy and transportation infrastructure. See Purvis, *supra* note 54.
 94. For example, Kalish Canada, Inc., a manufacturer of packaging machinery, reported annual sales to Brazil quadrupled in 1997 to \$2.2 million and expected another 30 percent increase in 1998. See Ruiz, *supra* note 93.
 95. For instance, Quebec has maintained special ties with Latin America for a long time, by way of permanent Quebec delegations in Mexico City, Mexico; Bogota, Colombia; and Caracas, Venezuela. See Nunez, *supra* note 5, at 282.
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Canadian companies have been active in Brazil since the mid-nineteenth century, when Canadian and British-owned Brazilian Light and Traction Co. obtained a lease to provide electricity to Rio de Janeiro and Sao Paulo.⁹⁶ Alcan Aluminum, Brazil's largest foil and beverage-can producer had revenues of \$369 million in 1998 and employed 2,500 people.⁹⁷ Nortel Networks expects to spend billions of dollars in the next few years on a communications infrastructure in Latin America.⁹⁸

Beyond the numbers, Canada views Latin America as an opportunity to take advantage of failures by the United States. "The great benefit for Canada of getting involved in Latin America is that it gets us out of the U.S.'s backyard."⁹⁹ In addition, Canadians have no history of political interference in the internal affairs of other countries in the hemisphere, unlike the United States.¹⁰⁰ Latin Americans, in turn, are beginning to take interest in connecting with a medium-sized nation like Canada.¹⁰¹ A certain amount of cultural affinity exists between Canada and Latin America.¹⁰²

Latin America also has a long history of attempts to implement a large free trade region, dating as far back as the nineteenth century.¹⁰³ The most significant effort was the Latin American Free Trade Association (LAFTA), formed in 1960.¹⁰⁴ LAFTA was designed to eliminate all tariff and non-tariff barriers to trade between the Latin American member nations.¹⁰⁵ Unfortunately, LAFTA failed to achieve its goals and disbanded in 1980.¹⁰⁶ LAFTA, however, did give rise to the creation of smaller regional trade groups

96. See Purvis, *supra* note 54.

97. *Id.*

98. *Id.* (quotes Nortel regional president Daniel Hunt).

99. *Canada Ready to Take Centre Stage in Hemisphere*, TORONTO STAR, Apr. 22, 1998 [hereinafter *Canada Ready*].

100. Canada refused to join the U.S.-led economic embargo of Cuba and in 1998 reached a cooperation agreement with the Castro government, which is credited with aiding the release of twelve Cuban political prisoners who emigrated to Canada in 1998. See Ruiz, *supra* note 93. Latin America hopes that Canada will push for the inclusion of Cuba in a free trade agreement. *Id.*

101. *Id.* One Peruvian news reporter has asked, "Why isn't Canada more present in Latin America? How can we get Canadians to care about us?" *Id.*

102. The cultural affinity comes from a common sense of playing second fiddle to the United States, as an economic power in both the Western Hemisphere and the world. See, e.g., Purvis, *supra* note 54. In addition, "Quebec's French-speaking and 'Latin' character may have something to do with its people's openness toward continued expansion of free trade zone to include the rest of Latin America." Nunez, *supra* note 5, at 282.

103. Latin American integration dates back to the attempts of Simon Bolivar beginning in 1815. See Lisa Anderson, Comment; *The Future of Hemispheric Free Trade: Towards a Unified Hemisphere?*, 20 Hous. J. INT'L L. 635, 640 (1998).

104. See Paul A. O'Hop, Jr., *Hemispheric Integration and the Elimination of Legal Obstacles Under a NAFTA-Based System*, 36 HARV. INT'L L.J. 127, 130 (1995). The seven charter members were Argentina, Brazil, Chile, Mexico, Paraguay, Peru, and Uruguay. Colombia and Ecuador joined in 1961, Venezuela in 1966, and Bolivia in 1967. *Id.*

105. *Id.*

106. *Id.* LAFTA implementation fell behind schedule after four years and never recovered, primarily due to the vastly differing economic policies and development levels among the member nations. See DONALD W. BAERRESEN ET AL., *LATIN AMERICAN TRADE PATTERNS* 35-36 (1965).

in the 1980s and 1990s.¹⁰⁷ The member nations are now actively pursuing expanded free trade, both individually and through the trade groups.¹⁰⁸

All the signs point to the creation of more free trade agreements between Canada and Latin America. The question is: how can this be accomplished?

A. FREE TRADE AREA OF THE AMERICAS

The biggest and most ambitious free trade idea was put in motion five years ago.¹⁰⁹ The Team Canada mission sought to accomplish a second goal: to get more movement for the concept of establishing a free trade area throughout the Americas.¹¹⁰ This idea first came to light at the 1994 Summit of the Americas in Miami, Florida.¹¹¹ Leaders of thirty-four Western Hemisphere nations, all except Cuba, met to discuss the future of free trade. By the time they adjourned, the idea of a Free Trade Area of the Americas (FTAA) was born.¹¹² The FTAA would be a free trade zone encompassing all of the Western Hemisphere from Canada to Argentina—the largest free trade zone ever envisioned.

A Declaration of Principles and Plan of Action was created to express the ideas discussed and negotiated at the Summit.¹¹³ The first paragraph of the Declaration of Principles provides the following:

Free trade and increased economic integration are key factors for raising standards of living, improving the working conditions of people in the Americas and better

The less developed members of LAFTA feared that the "Big Three" nations of Argentina, Brazil, and Mexico would hold an unfair advantage with the reduction of the trade barriers. See O'Hop, *supra* note 104, at 131.

107. The Latin American Integration Association (LAIA) replaced LAFTA. See Treaty of Montevideo Establishing the Latin American Integration Association, Aug. 12, 1980, 20 I.L.M. 672. Other Latin American trade associations include the Caribbean Community, Andean Pact, and MERCOSUR. See, e.g., O'Hop, *supra* note 104.
 108. LAIA provides for agreements of both regional and partial scope. This allows LAIA members to negotiate trade preferences with other nations without having to extend the benefits of the agreements to all the members of the organization. See O'Hop, *supra* note 104, at 131.
 109. Although agreed to in principle by the thirty-four Western Hemisphere nations' leaders in 1994, the idea of free trade throughout the Western Hemisphere was first strongly pursued by the Bush Administration's Enterprise for the America's Initiative in 1990, which called for the creation of a free trade zone from "the port of Anchorage to Tierra del Fuego." *Id.* at 127 (citing Remarks Announcing the Enterprise for the Americas Initiative, 1 PUB. PAPERS 873, 875 (June 27, 1990)); see also Anderson, *supra* note 103, at 640-41.
 110. See Nankivell, *supra* note 75.
 111. See generally Ruperto Patino Manffer, Symposium: NAFTA at Age One: A Blueprint for Hemispheric Integration?: The Future of Free Trade in the Americas, 10 CONN. J. INT'L L. 639 (1995); Brenda A. Jacobs, Facing the Next Challenge: FTAA, BOBBIN, Nov. 1998, at 28; Anderson, *supra* note 103.
 112. It was initially proposed that the FTAA be called "AFTA" by dropping the "North" from the North American Free Trade Agreement. This was rejected when Brazil pointed out that in Portuguese "afta" was slang for a certain variety of open mouth sores. David E. Sanger, *An Epidemic Averted: Foot-in-Mouth Disease*, N.Y. TIMES, Dec. 11, 1994, at 22.
 113. See Manffer, *supra* note 111.
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protecting the environment. We, therefore, resolve to begin immediately to construct the "Free Trade Area of the Americas" ("FTAA"), in which barriers to trade and investment will be progressively eliminated. We further resolve to conclude the negotiation of the "Free Trade Area of the Americas" no later than 2005, and agree that concrete progress toward the attainment of this objective will be made by the end of this century. We recognize the progress that already has been realized through the unilateral undertakings of each of our nations and the subregional trade arrangements in our Hemisphere. We will build on existing subregional and bilateral arrangements in order to broaden and deepen hemispheric economic integration and to bring the agreements together.¹¹⁴

The declaration also included a Plan of Action, which contained concrete agreements on steps to be taken to advance the process of trade liberalization and economic integration in America. In a section entitled "To Promote Prosperity Through Economic Integration and Free Trade,"¹¹⁵ the leaders of the thirty-four nations stated:

We will strive to maximize the market openness through high levels of discipline as we build upon existing agreements in the Hemisphere. We also will strive for balanced and comprehensive agreements, including among others: tariffs and non-tariff barriers affecting trade in goods and services; agriculture; subsidies; investment; intellectual property rights; government procurement; technical barriers to trade; safeguards; rules of origin; antidumping and countervailing duties; sanitary and phytosanitary standards and procedures; dispute resolution; and competition policy.¹¹⁶

The FTAA will be a program of collective and individual actions by the thirty-four countries, which seeks improvements in virtually every aspect of economic and social life.¹¹⁷ Free trade is at the core of the FTAA, but that is only a fraction for what it stands.¹¹⁸

The FTAA will create "the richest free trade zone in the history of the world" with a population of 800 million and fifteen trillion dollars worth of gross domestic product.¹¹⁹ In so doing, the plan is to remove the tariffs and non-tariff barriers to trade and promote economic integration. This will in turn promote prosperity, reduce poverty, and guarantee sustainable development for the entire Western Hemisphere.¹²⁰

114. Summit of the Americas, Declaration of Principles, Dec. 9–11, 1994, *reprinted in* Manffer, *supra* note 111, at 640.

115. *Id.*

116. *Id.* at 640–41.

117. See Robert Johnstone, *Free Trade in the Americas and a Great Deal More*, *BEHIND THE HEADLINES*, Dec. 1998, at 22.

118. Much like the FTA and NAFTA before it, as well as other regional agreements, the FTAA will include much more than trade rules and tariff reductions. Education, strengthening democracy, and economic integration of human rights and justice are issues to be included in the agreement. *Id.*

119. Purvis, *supra* note 54.

120. See Johnstone, *supra* note 117.

Five regional free trade arrangements are currently in existence in the Western Hemisphere: the Andean Pact,¹²¹ the Caribbean Common Market (CARICOM),¹²² the Central American Common Market (CACM),¹²³ the Southern Cone Common Market (MERCOSUR),¹²⁴ and NAFTA.¹²⁵ The ultimate goal of the FTAA is to build upon the achievements of these arrangements and the many other bilateral agreements that exist throughout the hemisphere.¹²⁶ Like NAFTA, these agreements were premised on the idea of free trade and economic integration between the member countries, which, in turn, would eventually lead to free trade throughout the hemisphere.¹²⁷

Canada is in an excellent position to make the FTAA a reality. In the negotiations for the FTAA, Canada has taken a lead position being named chairman for the first eighteen months of negotiations.¹²⁸ This position allows Canada to set the pace of and the directions in which the negotiations will proceed. Therefore, Canada will likely be able to use the ideas it has for free trade in shaping the eventual free trade agreement.¹²⁹

Despite the optimism of the nations' leaders, the FTAA is an extremely ambitious project that may take well beyond its deadline of 2005 to come to fruition, if at all. The task will be a formidable one for several reasons. First, convincing the leaders of thirty-four countries to agree to specifics on trade is a daunting task. The structure of the meetings and the nature of the planning of a FTAA remain vague.¹³⁰ Currently, small

121. Agreement originally between Chile, Colombia, Ecuador and Peru created in 1969, also known as the Agreement of Cartagena. See Agreement on Andean Subregional Integration, May 26, 1969, 8 I.L.M. 910. Venezuela joined in 1973. See Andean Commission-Venezuela: Final Act of the Negotiations on the Entry of Venezuela into the Cartagena Agreement, Feb. 13, 1973, 12 I.L.M. 344.

122. The Agreement was originally created in 1973, signed by Barbados, Guyana, Jamaica, and Trinidad and Tobago. See Treaty Establishing the Caribbean Community, July 4, 1973, 12 I.L.M. 1033. Antigua, Barbuda, Belize, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines joined in 1974. See GUISEPPE SCHIAVONE, INTERNATIONAL ORGANIZATIONS: A DICTIONARY AND DIRECTORY 41-42 (1983). The Bahamas joined in 1983. *Id.*

123. Created in 1960 by El Salvador, Guatemala, Honduras, and Nicaragua. Costa Rica joined in 1962. See General Treaty on Central American Economic Integration, Dec. 13, 1960, 455 U.N.T.S. 3.

124. Established in 1991 through the Treaty of Asuncion, signed by Argentina, Brazil, Paraguay, and Uruguay. See Treaty Establishing a Common Market between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay, Mar. 26, 1991, 30 I.L.M. 1044. The name MERCOSUR comes from the Spanish version of Common Market of the South, Mercado Comun del Sur. See generally Ana Maria de Aguinis, *The Future of Free Trade in the Americas: Can MERCOSUR Accede to NAFTA? A Legal Perspective*, 10 CONN. J. INT'L L. 597 (1995).

125. See Stephen Lande & Nellis Crigler, *Consensus in the Americas: Free Trade by 2005*, BUS. MEX., Special Edition 1995, at 70.

126. *Id.*

127. See generally O'Hop, *supra* note 104.

128. See Canada Ready, *supra* note 99.

129. *Id.*

130. See Peter H. Smith, *Whither Hemispheric Integration?*, 34 BUS. ECON. 38, July 1, 1999.

committees discuss and map out requirements for free trade within different economic sectors.¹³¹ How final resolutions will be passed remains to be seen.¹³²

Second, a great imbalance exists among the countries in terms of size, wealth, and level of development.¹³³ The countries range from advanced industrial to low-income.¹³⁴ Bridging the gap between the difference in needs, priorities, and capabilities will be an enormous task.¹³⁵ For the amount of economic integration required to make the FTAA a reality, the countries remain far apart economically.¹³⁶

Third, the hemisphere's most powerful and most important nation lacks the ability to negotiate freely with the other nations. The U.S. Congress has not given the President "fast-track" authority to negotiate and agree to a FTAA without the consent of Congress.¹³⁷ Without such authority, the United States will not be able to join the FTAA until Congress agrees to it, slowing down the process even further. The United States, the largest economic power in the hemisphere, is seen as the cornerstone of the agreement. Without the presence of the United States in the FTAA, the agreement is unlikely to come about.¹³⁸

These problems were apparent at the most recent round of FTAA negotiations in Toronto last November. At that meeting, representatives of the FTAA nations did sign an agreement to ease customs restrictions and agreed to oppose agricultural subsidies.¹³⁹ However, attempts at forward progress in negotiating the overall free trade zone failed.¹⁴⁰ The nations will now spend the next eighteen months working on a draft to present at the next meeting in Argentina.¹⁴¹ The meetings were hampered by the absence of

131. There are nine negotiating groups on separate issues: market access, agriculture, investment services, government procurement, intellectual property rights, subsidies, antidumping and countervailing duties, competition policy, and dispute settlement. *Id.* Three consultative groups exist as well: smaller economies, electronic commerce, and civil society. *Id.*

132. No rules on decision-making are currently in place. *Id.*

133. The economic output of the United States utterly dwarfs that of Latin America. The United States' GNP is approximately ten times that of Brazil, twenty-two times that of Mexico, twenty-five times that of Argentina, 100 times that of Venezuela and four times that of the region as a whole. *Id.* United States per capita income is 7.5 times that the level in Latin America. *Id.*

134. *Id.*

135. *Id.*

136. The level of economic disparity also poses the problem that the United States' domination and influence over the FTAA negotiations will force Latin America to follow the United States' lead. *Id.*

137. *Id.*

138. At the follow-up Summit of the Americas in Santiago, Chile in 1998, President Clinton assured the leaders of the thirty-three other nations that the United States remained committed to the FTAA. *Id.* However, U.S. delegates, without the fast-track authority, were unable to act with force at the Summit, drawing sharp criticism from Latin American leaders. *Id.*

139. See Ian Jack, *Americas Meeting Agrees to Oppose Agricultural Export Subsidies at WTO: FTAA Progress Limited*, NATIONAL POST, Nov. 5, 1999, at C5.

140. *Id.*

141. *Id.* Argentina was the main opponent to the agreement on the table. *Id.* One Canadian official was quoted as saying Argentina wanted to block the agreement so it could produce a similar draft at the meetings in their country and announce progress. *Id.*

trade officials from the United States and Mexico.¹⁴² The absence of these two officials, especially that of the United States, slowed negotiations considerably. In addition, the separation between the small and large economy countries continue to grow. The small countries prefer a slower process to developing the FTAA so their economies will not be overwhelmed, but the larger countries including Canada wish to proceed quicker.¹⁴³ Many of the South American countries want to increase their own trading partners individually before entering into a large-scale agreement like the FTAA.¹⁴⁴ They feel this will help them ease into the free trade market, making the significant changes that the FTAA will likely bring be less disruptive to their economies.¹⁴⁵

Another problem that arose at the most recent meetings was the protests by non-governmental organizations (NGOs) over their lack of involvement in the FTAA creation process. The FTAA nation representatives did agree to allow members of the NGOs to participate in the trade talks, but only to a limited extent.¹⁴⁶ NGOs were given only a ninety-minute session to present their wish lists, while business leaders from the representative countries were given the opportunity to present their ideas at great length.¹⁴⁷ One of the groups creating a disturbance at the meetings was the Hemispheric Social Alliance, a group that represents more than fifty labor, human rights, and community organizations.¹⁴⁸ The group presented demands of civil and social concern to the FTAA negotiators.¹⁴⁹ The concerns included workers' rights and potential human rights violations that may arise from the free trade zone.¹⁵⁰ More than 200 activists gathered at the FTAA negotiations to protest the potential violations and ask that the negotiators listen to the common people, who will be affected by the FTAA the most.¹⁵¹

Clearly, a strong opposition exists to the FTAA process. The fallout from the protests at both the FTAA meeting and the World Trade Organization meeting in Seattle may force leaders to rethink the process and develop a new way to bring a hemispheric free trade agreement into being.¹⁵²

142. See Ian Jack, *Opposing Agendas Trip up Americas Trade Talks: Small v. Large Economies: Top Officials from U.S., Mexico Absent from Meeting*, NATIONAL POST, Nov. 4, 1999, at C3. Hermanio Blanco, the Mexican trade minister, was injured in a ski accident, while U.S. trade representative Charlene Barshefsky remained in Washington, D.C., to work on trade negotiations with Caribbean and African nations. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. See Jack, *supra* note 139.

147. See Jack, *supra* note 142.

148. See *FTAA Negotiations Must Not Proceed Unless Process Is Democratized Say Labour, Human Rights and Civil Society Representatives*, CANADA NEWSWIRE, Nov. 3, 1999.

149. *Id.*

150. *Id.* Among the demands were basic labor standards like child labor laws and the right to freedom of association. *Id.*

151. See *Activists Gather in Toronto for Parallel Trade Forum as FTAA Negotiations Begin*, CANADA NEWSWIRE, Nov. 2, 1999.

152. See Linda Diebel, *Seattle Fallout Drifts South*, TORONTO STAR, Dec. 26, 1999. The protests at the WTO meetings in Seattle and the ensuing action taken by the Washington National Guard may have great impact on trade with Latin America. Video of police dragging away protestors and using teargas were prominent throughout the Hemisphere. *Id.*

B. LATIN AMERICAN ACCESSION TO NAFTA

The United States favors an approach where the Latin American countries would be admitted to NAFTA. Sometimes termed a "building block" approach, Latin American countries would join NAFTA either individually or through their subregional trade groups.¹⁵³ The "building block" approach, first developed by the Clinton administration, entails four steps.¹⁵⁴ The first building block is already in place, with the United States already establishing basic agreements with several countries.¹⁵⁵ Second, the countries participating would develop harmonization plans for specific sectors of their economies, such as creating similar product standards and investment regulations.¹⁵⁶ The intent is to bring the candidate countries' economies more closely in alignment with the economies of the NAFTA members in order to ease the transition of the candidate countries into NAFTA. Third, Latin American nations would become candidates for accession to NAFTA upon meeting certain economic and non-economic criteria set by the United States, Canada, and Mexico.¹⁵⁷ Finally, each country that meets the criteria would then be admitted to NAFTA.¹⁵⁸

On the surface, this approach seems like a logical and easy approach to free trade expansion. NAFTA is already in place and embodies much of what a proposed FTAA would include.¹⁵⁹ In addition to trade, NAFTA covers investment, competition, and telecommunications, to name a few.¹⁶⁰ And the fact that the body of the agreement already exists would eliminate the time and expense involved in drafting an entirely new trade agreement. Accession to NAFTA was a popular enough idea at the Summit of the Americas in 1994, that the three NAFTA countries announced their intention to begin accession talks with Chile.¹⁶¹ However, no additional country has yet to be admitted to NAFTA.

Several reasons exist for this result. First, NAFTA lacks established criteria for admission of new members.¹⁶² The language of the trade agreement is vague. NAFTA simply

153. See, e.g., Anderson, *supra* note 103, at 643; O'Hop, *supra* note 104. Individual accession to NAFTA by Latin American nations is often termed "piecemeal accession." See Frank J. Garcia, *NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession*, 35 VA. J. INT'L L. 539, 550 (1995). "Bloc accession" is the term for accession to NAFTA by regional trade groups. *Id.* at 551.

154. See O'Hop, *supra* note 104, at 152. The "building block" approach was actually a combination of several key elements of alternative approaches to NAFTA accession. *Id.*

155. See Anderson, *supra* note 103, at 643; O'Hop, *supra* note 104, at 152. The United States has reached bilateral accords with a handful of Latin American nations as well as with multilateral organizations such as MERCOSUR. *Id.*

156. See Anderson, *supra* note 103; O'Hop, *supra* note 104, at 152.

157. See Anderson, *supra* note 103, at 643.

158. *Id.*

159. See Smith, *supra* note 130 (stating that NAFTA was envisioned as the stepping stone toward a hemispheric free trade agreement).

160. *Id.*

161. See NAFTA "Amigos" Invite Chile to Begin Accession Talks, 11 INT'L TRADE REP. (BNA), Dec. 14, 1994, at 1914.

162. See Smith, *supra* note 130; see also *Special Report: 1995 Trade Outlook*, 12 INT'L TRADE REP. (BNA), Jan. 18, 1995, at 129, 131-32.

states that new countries may join NAFTA subject to terms and conditions set by the member countries.¹⁶³ Before any new members can be admitted, the current NAFTA countries must develop appropriate procedures for accession.¹⁶⁴ In addition, they must also identify the economic and non-economic conditions that Latin American countries must meet prior to entering into accession talks.¹⁶⁵ All decisions on the establishment of criteria and admission of new members must be unanimous; effectively giving each of the three NAFTA members veto power over matters and countries they do not favor.¹⁶⁶

Second, it is unclear whether NAFTA is a strong enough agreement to allow accession.¹⁶⁷ Despite the fact that NAFTA was designed with the intention of being a building block to increased free trade in the hemisphere, the agreement itself still centers on the economies of the three member countries.¹⁶⁸ The economy and needs of any potential new member would certainly need to be addressed prior to accession.¹⁶⁹ Given that most of the Latin American countries have significantly weaker economies than the NAFTA members, greater protection might be necessary.¹⁷⁰ This may require significant changes to the text of NAFTA that might alter the original agreement.

Conversely, the treaty is highly specialized, full of special provisions that make it a difficult instrument for non-member countries to follow.¹⁷¹ Some Latin American countries have indicated a desire for simple and straightforward bilateral free trade agreements with the United States, providing their basic needs, foreign investment in their country, and guaranteed access to consumers in the United States.¹⁷² This poses a greater problem for Canada.

In the Western Hemisphere, the United States is the most powerful nation, particularly from an economic standpoint. This gives the United States an edge in negotiating for NAFTA accession. If the Latin American countries' main focus is to avail themselves of the consumers in the United States, then Canada and Mexico will only be marginal players in the accession process.

C. NORTH-SOUTH COUPLING

Latin American nations favor a plan based upon a continuation of the existing Latin American trade groups. The idea is to form powerful subregional trade blocs and use

163. See Smith, *supra* note 130.

164. See Garcia, *supra* note 153, at 544.

165. Richard G. Lipsey, *Getting There: The Path to a Western Hemisphere Free Trade Area and Its Structure*, in *THE PREMISE AND THE PROMISE: FREE TRADE IN THE AMERICAS* 104-05 (Sylvia Saborio et al. eds. 1992).

166. See Smith, *supra* note 130.

167. See FREDERICK M. ABBOTT, *LAW AND POLICY OF REGIONAL INTEGRATION: THE NAFTA AND WESTERN HEMISPHERIC INTEGRATION IN THE WORLD TRADE ORGANIZATION SYSTEM* 184-85 (1995).

168. See Smith, *supra* note 130.

169. *Id.*; see also ABBOTT, *supra* note 167; O'Hop, *supra* note 104.

170. See generally Smith, *supra* note 130.

171. *Id.*

172. *Id.* Chile, Costa Rica, and Argentina have indicated their desire for bilateral free trade agreements with the United States. *Id.*

them as "building blocks" for an inter-American accord.¹⁷³ In essence, the two dominant trade groups in the Western Hemisphere, NAFTA in the North and MERCOSUR in the South, would establish an accord creating free trade between the members of both groups.¹⁷⁴ In contrast to the idea backed by the United States, this idea of coupling avoids the messy process of accession to NAFTA by Latin American countries. Rather, the Latin American countries would create a South American Free Trade Area (SAFTA),¹⁷⁵ based upon the principles of MERCOSUR, to negotiate an agreement with NAFTA.¹⁷⁶

MERCOSUR's current members are Argentina, Brazil, Paraguay, and Uruguay. Chile and Bolivia are associate members.¹⁷⁷ Like NAFTA, MERCOSUR was designed with more than trade in mind. A clear political goal exists: the consolidation of democracy and the maintenance of peace throughout South America.¹⁷⁸ The member nations saw the agreement as an opportunity to bring the South American nations together as a unit economically and politically to compete against North America and the rest of the world.¹⁷⁹ SAFTA would exist as an extension of MERCOSUR, with the intent to include all the South American countries in one large trade group. The idea is to then create a free trade agreement between SAFTA and NAFTA, but the groups would remain separate, retaining their unique regional characteristics.¹⁸⁰

A major problem with the North-South coupling plan is that similar to NAFTA, with a dominant member in the United States, MERCOSUR and SAFTA have a dominant member in Brazil. Other South American nations fear Brazil will dictate the policies by which the agreements would operate.¹⁸¹ Without any formal link to North America or NAFTA, SAFTA would reflect regional domination by Brazil.¹⁸² It is also likely that within the course of negotiations with North America, Brazil would become the principal negotiator for SAFTA, much like the United States' role with NAFTA.¹⁸³ Brazil would then become the hub of South America.¹⁸⁴ Meanwhile, Canada again is left to accept the plans of other countries.

Another issue is that the coupling plan fails to account for Central American nations and the nations of the Caribbean.¹⁸⁵ In order to achieve a complete free trade area

173. *Id.*

174. *Id.*

175. In Spanish, Area de Libre Comercio Sudamericana (ALCSA). See generally Smith, *supra* note 130. The goal of SAFTA is to create a free trade zone for all trade within the continent. *Id.*

176. SAFTA's intentions are the following: capitalize on the experience of MERCOSUR, reach out to neighboring countries (and groups), and accumulate negotiating power for dealing with broader integration schemes in the Americas. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. One idea is to create a "docking" arrangement that would link the two trade groups together without requiring either one to adhere to all the terms of the other group. See generally Smith, *supra* note 130.

181. Brazil sees MERCOSUR and SAFTA as part of a national strategy to confirm Brazil's historic claim to be a continental hegemon and fulfill its long-standing sense of manifest destiny. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. See generally *id.*

throughout the Western Hemisphere, these countries must be accounted for. But it is unclear how these countries will get involved, if at all, in the coupling plan.¹⁸⁶

D. BILATERAL AND MULTILATERAL AGREEMENTS

Another option for Canada is not discussed much, but has shown to be advantageous in the past. Rather than attempting a grand scheme such as the FTAA, involving all the nations of the hemisphere in one agreement, Canada could pursue smaller bilateral and multilateral trade agreements like the one already in place with Chile. The free trade agreement with Chile and the Team Canada mission to Latin America has shown Canada that Latin America is receptive to trade.¹⁸⁷ Given that the lack of United States "fast-track" authority is slowing the FTAA negotiation process, Canada has an excellent opportunity to step out on its own.¹⁸⁸

The successes of the free trade agreement with Chile and the Team Canada mission are not the only indicators of Canada's potential for bilateral and multilateral trade expansion. The members of MERCOSUR have indicated an interest in pursuing a trade agreement directly with Canada.¹⁸⁹

The advantage for Canada in pursuing bilateral trade agreements is that it cuts the United States out of the loop, helping to lessen Canada's dependence upon the United States for trade.¹⁹⁰ The disadvantage is that in pursuing many trade agreements instead of one, the time spent and costs in negotiating these many agreements may be substantially greater.

V. What Is Canada's Best Option?

One thing is clear from the developments over the past few years: the potential for free trade throughout the Western Hemisphere exists. Canada has a great opportunity to be right in the middle of it. The grand idea of a FTAA remains a reality only in the distant future. How then, can Canada best expand its trade possibilities?

Canada's main philosophy all along has been to decrease reliance upon the United States as a trade partner.¹⁹¹ The best option may seem to be to include all the members of the Western Hemisphere in one large free trade pact. In an instant, Canada would be blessed with over thirty new trade partners. The opportunities for investment and trade would be boundless. The obstacles, however, standing in the way of an FTAA are numerous and cast doubt as to whether such an agreement can be put together in the near future, if ever. Little will happen in the United States until after the 2000 presidential

186. See generally Smith, *supra* note 130.

187. See, e.g., Purvis, *supra* note 54; *Planning Ahead*, *supra* note 75; Nankivell, *supra* note 75.

188. See Jacobs, *supra* note 111. The United States faces a great disadvantage due to its lack of fast-track authority, resulting in exclusion from the trade agreements reached between and among Latin American countries and Canada. *Id.*

189. See Nankivell, *supra* note 75. MERCOSUR and Canadian officials have engaged in talks to enhance trade relations. *Id.*

190. See generally Morici, *supra* note 1.

191. *Id.*

elections.¹⁹² FTAA negotiations were hurt further by the negative fallout from the protests in Seattle at the World Trade Organization meetings in December 1999.¹⁹³

Despite problems with the FTAA, Latin America remains the focus of Canada's trade expansion, regardless of how it is accomplished. Canada has taken every opportunity to improve relations in the region.¹⁹⁴ The Latin American nations in return believe Canada understands their needs in regard to trade.¹⁹⁵ However, Latin America presents problems for any trade partner.

Despite economic growth and price stability in the region, a recent report by the International Labour Organization said workers in Latin America and the Caribbean encountered increased unemployment and an erosion of social benefits.¹⁹⁶ Legal protection in the form of laws and unions simply does not exist.¹⁹⁷ These problems in turn have caused great turmoil. Protests and even civil war are commonplace, and dictators reign supreme.¹⁹⁸ For example, in Colombia, civil war has raged for over forty years between the government and guerrilla groups, resulting in over 30,000 political murders between 1986 and 1994.¹⁹⁹ Despite these problems, Latin America remains a "key battleground for world trade and the deals of the future."²⁰⁰

Economically, Canada enters the new millennium in excellent shape. Gross domestic product grew roughly 4 percent in 1999 and continued growth is expected.²⁰¹ The unemployment rate is at its lowest point in twenty-five years.²⁰² In order to continue this economic prosperity, the Canadian government needs to continue pro-competitive trade and economic policies, such as pushing for greater trade liberalization globally.²⁰³ There is a fear that by continuing toward globalization, deeply rooted Canadian values will be left behind. But Canadian values are recognized and appreciated the world over.²⁰⁴ Trade

192. See Michael Hart, *The FTAA? Who Cares?*, TIME, June 28, 1999, at 36. President Clinton was denied fast-track negotiating authority by Congress; however, the next U.S. President should gain such power by 2001 or 2002. *Id.*

193. See Diebel, *supra* note 152.

194. For example, Canada recently pledged two million dollars in aid for Haiti's elections in March and April of 2000 through CARICOM. See *Canada Pledges \$2 Million to Aid Elections Set for Haiti*, THE LONDON FREE PRESS, Jan. 9, 2000, at A10.

195. CARICOM leaders are "convinced that Canada understands that small states would require special and preferential treatment in international trade." *Id.* (quoting St. Kitts and Nevis Prime Minister Denzil Douglas).

196. See Diebel, *supra* note 152. Unemployment in the region stood at 9.5 percent compared with 6 percent in 1990. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. See Neville Nankivell, *Ottawa Must Foster Economy's New Hope*, NATIONAL POST, Jan. 8, 2000, at D5.

202. *Id.*

203. *Id.*

204. See Pierre S. Pettigrew, *Canada's Most Precious Export Commodities Are Its Values*, TORONTO STAR, Nov. 4, 1999. "Canadians do not accept the idea that the rich can live alongside the poor while remaining indifferent to their plight. They have a sense of the common good, of belonging to a global community." *Id.*

cannot be reduced to just an exchange of tangible products, rather "[t]rade is also a series of cultural, technical, scientific, moral and philosophical exchanges."²⁰⁵ "Everyone looks to Canada for inspiration in establishing standards that are realistic, truly implementable and conducive to advancing civilized values."²⁰⁶

In order to continue moving forward with their economy, Canada must expand their trade practices and must do so with regard to the values on which the country was built. Canada is in an enviable position because it can provide a valuable trading partner to developing countries without the overbearing attitude and control required by the United States. Canada's best option may be to separate itself from the United States and pursue trade agreements with individual countries and trading blocks on its own until the FTAA can become a reality.

VI. Conclusion

The latter half of the twentieth century has witnessed remarkable change in the Canadian economy, but the task has only just begun. Regardless of the method used, expansion of trade into Latin America, and potentially the rest of the world, is the next logical step in Canada's economic redevelopment. Finding new trade partners will decrease Canada's reliance on the United States for trade and increase Canada's trade value and power throughout the world. The FTAA, at first glance, seems to be the most logical and promising trade expansion idea for Canada. By opening the borders to the rest of the countries in the Western Hemisphere, Canada can continue to diversify its trade practices and develop into a dominant economic power. The grand scale of the FTAA, however, makes it more of a wish than a reality.

Convincing the leaders of thirty-four nations to agree on a trade pact is a daunting task. In addition, the cultural boundaries and economic disparity that exist between the nations are obstacles that will not be easily overcome. But this does not mean a hemisphere-wide free trade agreement cannot come into being. A slower, building block approach may serve as a better method. Several methods have been suggested. With NAFTA already in place, accession by Latin American nations would seem logical, but no plan for accession to NAFTA is in place and NAFTA's rule may not suit the needs of the Latin American countries. For the same reasons, a coupling plan between NAFTA and MERCOSUR is not likely to work. In addition to their impracticalities, both of these ideas subject Canada to playing second fiddle to the United States in the negotiation process. The best choice for Canada is to move ahead with a plan to negotiate its own free trade agreements with Latin America.

Canada has actively pursued expanded trade with its Latin American counterparts, resulting in success. Given that the United States has not been a party to these agreements and the goal of Canada's trade expansion is to reduce reliance on the United States as a trade partner, Canada's best option is to move forward with further self-negotiated bilateral and multilateral agreements. Building upon the successes of NAFTA and the free trade agreement with Chile, Canada can continue to pursue other trade agreements throughout the hemisphere. Likely new partners include MERCOSUR and CARICOM,

205. *Id.*

206. *Id.*

and the member nations individually. The ideal situation would be for Canada to develop a network of agreements throughout Latin America. For example, Canada could potentially reach accords with MERCOSUR, CARICOM, and a few Central and South American nations individually. Canada would then have a trade agreement with nearly all of Latin America. In so doing, Canada will establish wider trade relations, further lessening dependence on the United States, and establishing itself as an economic power. And as Canada builds an extensive network throughout the Americas, it can only help to foster cooperation and trust between North and South America, and facilitate the eventual creation of a Free Trade Area of the Americas.