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# Free Trade Agreement between Mexico and the European Union

*Alberto de la Peña\**

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## I. Why a Free Trade Agreement with the European Union?

The Free Trade Agreement with the European Union (FTAEU) was the result of two main factors: first, the modernization process of the Mexican economy that started in 1980; second, the consequences of the execution of the North American Free Trade Agreement (NAFTA). It is very important to be aware of these factors and their interrelation in order to understand Mexico's reasons and motives to execute a Free Trade Agreement with the European Union.

The modernization process of Mexico started in 1982 with the administration of President Miguel de la Madrid (1982–1988), when the country began a slow liberalization process of the Mexican economy through its membership in the General Agreement on Tariffs and Trade (GATT), debt renegotiations, and the internal market reforms.<sup>1</sup> Mexico's membership in GATT in 1986 was the result of the new Mexican policy towards economic modernization.

In 1988, when President Carlos Salinas took power, the liberalization process experienced a renewed impulse. During his administration (1988–1994), Mexico started negotiations to execute a Free Trade Agreement with the United States and Canada that concluded with the execution of NAFTA, which took effect on January 1, 1994.<sup>2</sup>

NAFTA was the result of many factors, but the most important one was the unavoidable process of integration with North America, especially between the United States and

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- 1. See R. Folsom & W. D. Folsom, *Understanding NAFTA and its International Business Implications*, 28 (West Group ed. 2000).
- 2. See *Diario Oficial de la Federación* [Federal Official Gazette-Mexico], Dec. 20, 1993 [hereinafter *Diario Oficial*].

Mexico, which coincided with the relatively new Mexican modernization policies. Some figures support this conclusion. For example, before the execution of NAFTA, from 1984 to 1993, exports from the United States to Mexico increased from \$12 billion to \$42 billion; during the first three years of NAFTA (1994–1997), exports from the United States to Mexico increased 69 percent to \$71 billion.<sup>3</sup> This indicates the increase in commerce between Mexico and the United States began with Mexico's modernization process even before NAFTA began. Retrospectively, NAFTA has clearly facilitated the acceleration of commerce between the North American countries.

From the Mexican perspective, NAFTA was incorporated within the Mexican liberalization process as an essential tool of development. The Mexican liberalization process produced changes in many areas, including the economic, social, and political areas. For example, between the years of 1982 and 1995, the Mexican legal system was dramatically modified, especially in the economic, trade, and financial area, and 164 of the 204 federal statutes (except for the Federal District legislation) in force in 1995 were new or substantially modified.<sup>4</sup>

After NAFTA, Salinas's administration and the following administration of President Ernesto Zedillo (1994–2000) continued the negotiation of other free trade agreements to take advantage not only of NAFTA, which provided access to one of the greatest markets in the world, but also of the strategic geographical position of Mexico. These administrations, in a first phase, envisioned Mexico as a commercial bridge between North and Central-South America; in a second phase, as a bridge between America and Europe; and finally, in a third phase, which is still in process, as a commercial link between America and Asia. Between the years of 1994 and 2000, Mexico executed six free trade agreements with nine different American countries, which included Bolivia, Chile, Costa Rica, Colombia, Venezuela, Nicaragua, Salvador, Guatemala, and Honduras. In addition, Mexico has executed the Free Trade Agreement with the European Union (FTAEU) and the Free Trade Agreement with the European Association of Free Commerce (ALLEC) with European countries.<sup>5</sup> Therefore, once Mexico executed NAFTA and other free trade agreements with other American countries, it was consistent with

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3. See Bernard L. Weinstein, *NAFTA After Four Years: Success, Problems, Challenges*, 3 *NAFTA: L. & BUS. REV. AM.* 109 (Summer 1998).

4. Sergio López-Ayllón, *Mexico's Expanding Matrix of Trade Agreements—A Unifying Force?* 2 *NAFTA: L. & BUS. REV. AM.* 241, 243 (Spring 1999).

5. Free Trade Agreements executed by Mexico with American countries: (i) Free Trade Agreement with G3 (Venezuela and Colombia), executed on June 13, 1994, in force as of January 1, 1995; (ii) Free Trade Agreement with Bolivia, executed on September 10, 1994, in force as of January 1, 1995; (iii) Free Trade Agreement with Costa Rica, executed on April 5, 1994, in force as of January 1, 1995; (iv) Free Trade Agreement with Nicaragua, executed on December 18, 1997, in force as of July 1, 1998; (v) Free Trade Agreement with Chile, executed on April 17, 1998, in force as of July 28, 1999; and (vi) Free Trade Agreement with Salvador, Guatemala, and Honduras, executed on May 10, 2000, in force as of January 1, 2001. Mexico also executed a Free Trade Agreement with the European Association of Free Commerce (ALLEC), which is formed by the European countries not members of the European Union: Island, Norwegian, and Switzerland. The agreement was executed on November 27, 2000 and is still in process of internal approval. See *id.* at 253; see also Secretaria de Economía (Secretariat of Economy in Mexico), available at <http://www.economia.gob.mx.date> [hereinafter Secretariat of Econ.].

the Mexican commercial policies to expand its free trade agreements to the European countries.

Trade between Mexico and the countries composing the European Union had been decreasing in the last ten years. The total contribution of the European Union in the Mexican market decreased from 10.8 percent in 1990 to only 6.4 percent in 1998.<sup>6</sup> In terms of investment, direct foreign investment from the European Union in Mexico decreased from U.S.\$1,932,350,000 in 1994 to U.S.\$1,657,322,700 in 2000, while the investment from the United States and Canada increased from U.S.\$5,608,965,000 in 1994 to U.S.\$6,776,493,700 in 1999.<sup>7</sup>

One of the reasons for the decrease in trade and investment between the European Union and Mexico was the execution of different free trade agreements with other countries, not only by Mexico, but also by the European Union. Mexican products were more likely to be exported to countries that had executed free trade agreements with Mexico, including, among others, the United States. On the other hand, European Union products were more easily exported to other countries that had better tariffs than the ones established with Mexico for the same products. For example, the average tariff applicable to European Union products imported into Mexico before the execution of the Free Trade Agreement between Mexico and the European Union (FTAEU) was 12 percent, while the average tariff applicable to U.S. products imported into Mexico was 2 percent.<sup>8</sup>

Another reason for the decrease in trade and investment between Mexico and the European Union was the deep centralization effect that NAFTA had on Mexican imports and exports. Mexican commerce heavily focused on NAFTA countries, and to some extent, on other American countries that had executed free trade agreements with Mexico. Therefore, the diversification in the commercial Mexican policy had to be more aggressive in looking for other blocs with substantial markets.

At this point, the execution of the FTAEU was an excellent option for Mexico to access the huge European market. The size of the European market was a key element in the decision to execute the FTAEU.

The European Union is composed of fifteen states with a total population of 370 million inhabitants. It has been considered as a first commercial power in the world, concentrating one-fifth of the total commerce of the world,<sup>9</sup> and constituting, in some way, another natural market for Mexico to diversify its commercial capabilities, as well as to promote investment and trade. Such a diversification policy held by Mexico went beyond the European Union, trying to include all the European countries, not only the ones belonging to the European Union.<sup>10</sup>

Mexico and the European Union formally started negotiations on July 14, 1998, and were concluded on November 24, 1999. The FTAEU composed three documents: (i) Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the European Union that entered into force as of July 1, 2000;<sup>11</sup> (ii) Agreement of Economic Association, Political

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6. See Secretariat of Econ., *supra* note 5.

7. See Secretariat of Econ., *General Direction of Foreign Investment, Investment from North America in Mexico*, available at <http://www.economia.gob.mx>.

8. See *id.*

9. See *id.*

10. See Lopez-Ayllón, *supra* note 4; Secretariat of Econ., *supra* note 5.

11. See Diario Oficial, June 26, 2000.

Understanding and Cooperation between Mexico and the European Union, that entered into force as of October 1, 2000;<sup>12</sup> and (iii) Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union that entered into force on March 1, 2001.<sup>13</sup>

## II. Overview of the Content of the FTAEU

The FTAEU, as mentioned before, is composed of three main documents. The first document is the Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the European Union, that basically regulates the trade of goods having eight chapters: (i) General Provisions; (ii) Free Trade of Goods; (iii) Government Purchases; (iv) Antitrust; (v) Intellectual Property; (vi) Dispute Settlement; and (vii) Specific Obligations of the Joint Committee regarding Commerce and Issues Related with Commerce.<sup>14</sup>

The second document is the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union. This Agreement establishes broader terms related to the commercial and political relationship between the European Union and Mexico. Included are the following chapters: (i) Nature and Applicability; (ii) Political Dialogue; (iii) Commerce; (iv) Capital Transfer and Payments; (v) Public Acquisitions, Antitrust, Intellectual Property, and other Dispositions Related to Commerce; (vi) Cooperation; (vii) Institutional Framework; and (viii) Final Regulations. This Agreement provides broader agreements in different areas, including trade of goods, trade in services, and cooperation in different sectors (transportation, energy, mining, agriculture, tourism, among others). This Agreement also creates the Joint Council and its Joint Committee as non-permanent organisms to supervise the application of the FTAEU.<sup>15</sup>

Finally, the third document is the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union that entered into force on March 1, 2001. This Decision, which basically regulates the trade in services and issues related to them, is composed of the following chapters: (i) General Provisions; (ii) Trade in Services; (iii) Investment and Related Payments; (iv) Intellectual Property; (v) Dispute Resolutions; (vi) Specific Obligations of the Joint Committee Regarding Commerce and Issues Related with Commerce; and (vii) Final Dispositions.<sup>16</sup>

### A. TRADE OF GOODS

The objective of the FTAEU is to create a free trade area throughout a transitional period lasting a maximum of ten years beginning on July 1, 2000.<sup>17</sup>

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12. See Diario Oficial, Sept. 30, 2000.

13. See Diario Oficial, Feb. 28, 2001.

14. See Diario Oficial, June 26, 2000.

15. See Diario Oficial, Sept. 30, 2000.

16. See Diario Oficial, Feb. 28, 2001.

17. See Article 2 of the Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the European Union, Diario Oficial, June 26, 2000.

The FTAEU, like NAFTA, contemplates a gradual reduction of the tariffs or customs duties until their complete elimination. Such reduction, as will be shown, is not symmetrical. Therefore, there are different commitments, in terms of time and extension, to reduce and/or eliminate customs duties.

The FTAEU covers all goods originating in the territory of the parties. The FTAEU classifies the goods in the following three different categories: (i) industrial products that include all type of goods, with the exception of agricultural and fisheries goods; (ii) fisheries goods; and (iii) agricultural goods.

Agricultural and fisheries goods are subject to specific regulations. In general terms, a gradual reduction of the customs duties for these goods exists until 2010. The agricultural and fisheries areas were among the most complex in the negotiations of the agreement due to the Agricultural Common Policy implemented by the European Union, which subsidizes European Union exportations, representing a threat to the Mexican agricultural sector.<sup>18</sup> Because the liberalization of the agricultural and fisheries goods was more limited than that of other kinds of goods, the parties agreed to take further measures to liberalize those sectors within the three years following the effective date of the agreement.<sup>19</sup>

Industrial products, which as we mentioned exclude agricultural and fisheries goods, are also subject to a gradual reduction of customs duties. Customs duties may be classified as (i) custom duties on exports and (ii) custom duties on imports. All customs duties on exports for products originating either in the European Union or Mexico were totally eliminated as of July 1, 2000.<sup>20</sup> The customs duties on imports originating either in the European Union or Mexico are going to be gradually eliminated as follows:

- (a) Customs duties on imports of products originating in Mexico (applicable to Mexican products) are regulated in Annex I of the FTAEU, establishing three main categories for the elimination: (i) Category A that includes customs duties that were completely eliminated on July 1, 2000; (ii) Category B that includes customs duties that shall be eliminated in four equal stages: the first one, taking place on July 1, 2000, and the other three on January 1 of each successive year, so that these customs duties are completely eliminated by January 1, 2003; and (iii) other categories that include different customs duties to be eliminated no later than 2010.<sup>21</sup>
- (b) Customs duties on imports of products originating in the European Union (applicable to European Union products) are regulated in Annex II of the FTAEU, establishing five categories for the elimination: (i) Category A that contemplates the customs duties eliminated on July 1, 2000; (ii) Category B that includes customs duties that shall be eliminated in four equal stages: the first one, taking place in July 1, 2000, and the other three on January 1 of

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18. See Unofficial Version of the Free Trade Agreement with the European Union, Secretariat of Econ., Nov. 29, 1999, available at <http://www.economia.gob.mx>

19. See Article 10 of the Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the European Union, Diario Oficial, June 26, 2000.

20. See *id.* art. 3.

21. See *id.* art. 5.

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each successive year, so that these customs duties are completely eliminated by January 1, 2003; (iii) Category B+ that includes customs duties that shall be gradually eliminated until January 1, 2005; (iv) Category C that includes customs duties to be gradually eliminated until 2007; and (v) other categories that include different customs duties to be eliminated no later than 2010.<sup>22</sup>

Therefore, the customs duties applicable to European Union or Mexican products depend upon the classification of each industrial product subject to importation. Annex I (Customs Duties on Imports Originating in Mexico) will be applicable to Mexican products exported to the European Union, while Annex II (Custom Duties on Imports Originating in the European Union) will be applicable to European Union products exported to Mexico. The liberalization schedules applicable to Mexican products (Annex I) are different than the liberalization schedules applicable to European Union products (Annex II). The great majority of the customs duties applicable to European Union products will be eliminated by Mexico by 2007, while the majority of the customs duties applicable to Mexican products will be eliminated by the European Union by 2003. Therefore, the liberalization schedules for the European Union products were stricter than the ones applicable to Mexican products. This situation represents a temporary market advantage for Mexican products.

In order to receive the benefits of the FTAEU, all products must originate either in the European Union or Mexico. An originating product is one that complies with the requirements of Annex III of the FTAEU, which means that: (i) the product must be considered to originate in the territory of either Mexico or the European Union (complying with the Rules of Origin); (ii) the acquisition of the originating status must be fulfilled without interruption either in Mexico or the European Union (Territorial Rule); and (iii) the products must be transported directly between Mexico and the European Union (Direct Transportation Rule).<sup>23</sup>

Thus, products enjoy the benefits of the FTAEU only when such products comply with all three rules (Rules of Origin, Territorial Rule, and the Direct Transportation Rule).

The Rules of Origin attribute the originating concept to two types of products: (i) the products that are wholly obtained either in Mexico or in the European Union and (ii) the products that are obtained either in Mexico or in the European Union that incorporate materials that have not been wholly obtained there, provided that such materials have undergone sufficient working or processing (transformation) either in Mexico or in the European Union as established in Appendix 2 of the FTAEU.<sup>24</sup> Appendix 2 contains a detailed description of each of the foreign materials and the transformation that such materials must undergo in order to be considered an originating product of Mexico or the European Union.

The Territorial Rule establishes that the originating status mentioned above in Appendix 2 must be constantly applied in the territory of the parties.<sup>25</sup> This rule ensures

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22. See *id.* art. 6.

23. See *id.* art. 3.

24. See Article 2 of Annex III of the Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

25. See *id.* art. 12.

that the transformation of foreign materials, to convert them into originating products, is done in the territory of the parties. Thus it is a rule to promote investment in the parties of the treaty. For example, if a Canadian company wants to elaborate a "Mexican product to the effects of the FTAEU," containing some Canadian materials, such product must be elaborated in Mexico, not in Canada. Mexico will, in this case, receive the benefit of the Canadian foreign investment in Mexico to produce such products.

Finally, the Direct Transportation Rule states that the products must be directly transported between Mexico and the European Union. It does not mean that the products cannot transit through other countries on their way to the final destination. However, if this happens, the transit of the products through those countries must be temporary.<sup>26</sup> This rule tends to avoid alteration of the products, or in other words, it attempts to avoid products including any additional foreign materials not originating in the signatory countries of the FTAEU while such products are being transported out of those signatory countries.

The FTAEU contains other relevant provisions expected in any treaty of this kind such as non-tariff barriers, national treatment for tax and regulatory purposes, antidumping, safeguard clause, requirements clause, customs cooperation, and standard measures, among others. The national treatment and the safeguard clauses are especially important in the FTAEU because of the potential impact they may have in the future.

The national treatment clause for tax and regulatory purposes provides that "the imported products of the territory of any party of the treaty shall have accorded treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."<sup>27</sup> This clause avoids any possible protection to domestic products against the imported products. This national treatment clause has become an essential part of any free trade agreement consistent with GATT.<sup>28</sup>

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26. *See id.* art. 13.

27. Article 26 of the Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the European Union, Diario Oficial, June 26, 2000.

28. Article III of GATT establishes that:

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production;
2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1."

National Treatment on International Taxation and Regulation, May 1952, GATT B.I.S.D. (Vol. I), at 18, 19 (1952); *see also* North American Free Trade Agreement, Dec. 17, 1992, art. 301, 32 I.L.M. 605 (1993).

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The safeguard clause contemplates a mechanism to regulate the excessive importation of products that threaten or actually cause serious injury to the domestic industry. The safeguard clause is basically applicable when a product of one of the parties is being imported into the territory of the other party in such increased quantities and under such conditions as to cause, or threaten to cause: (i) serious injury to a similar domestic industry or directly competitive products in the territory of the importing party or (ii) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region of the importing party. In such case, the importing party may take appropriate measures under the conditions and in accordance with the procedures laid down in the treaty. Therefore, in such extreme situations, the affecting party, Mexico or the European Union, may take safeguard measures, which may consist of the suspension of reductions of any applicable rate of custom duties in the affected area. The safeguard clause must comply with the following conditions to be valid: (i) it shall be temporary (from one to three years) and (ii) the party that applies the clause shall compensate the other party with a substantially equivalent liberalization in another sector.<sup>29</sup> The safeguard clause is a safe harbor for the countries to make exceptions to the schedule of liberalization of custom duties, however, it is not absolute, or permanent.

#### B. TRADE IN SERVICES

The Decision of the Joint Council regulating services entered into force on March 1, 2001.<sup>30</sup> The objective of the Decision is to reach the necessary agreements with respect to: (i) the progressive and reciprocal liberalization of trade in services; (ii) the progressive liberalization of investment and related payments; (iii) ensuring an adequate and effective protection of intellectual property rights in accordance with the highest international standards; and (iv) establishing a dispute settlement mechanism.<sup>31</sup> The objectives of the Decision are consistent with the interest of the developed countries, which usually export services; thus the decision is intended not only to liberalize the trade in services but also to protect related issues, such as intellectual property rights.

According to the Decision, services are not going to be immediately liberalized. The Decision states that the parties shall not adopt any further discriminatory measures that may affect the services; therefore, the domestic regulation of services must be at least maintained. The Decision establishes as a general rule for services that the parties shall adopt a future decision providing the terms and schedule of the liberalization process, but no later than three years following the Decision's entry into force. Furthermore,

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29. See Article 15 of the Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

30. See *Diario Oficial*, Feb. 28, 2001.

31. See Article 1 of the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

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the liberalization process shall take place in no more than ten years from the date the Decision enters into force.<sup>32</sup>

The Decision includes all types of services with the exception of: (i) audiovisual services; (ii) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than: (a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, (b) the selling and marketing of air transportation services, and (c) computer reservation system services; and (iii) maritime sabotage.<sup>33</sup>

The Decision also contains specific regulations for maritime transportation<sup>34</sup> and financial services.<sup>35</sup> It is important to mention that financial services are practically liberalized at the moment the Decision enters into force. This liberalization was consistent with the one previously adopted by Mexico, when on January 19, 1999, the Mexican Congress approved modifications to the Foreign Investment Law in order to fully liberalize banking services.

Finally, the Decision also contemplates the Most Favored Nation Treatment Clause<sup>36</sup> and National Treatment Clause.<sup>37</sup> These clauses were also adopted in consistency with Articles II and XVII of the General Agreement on Trade in Services (GATS).

### III. Features of the FTAEU—Understanding the Differences

For several reasons that are discussed below, the FTAEU is the most important free trade agreement that Mexico has executed after NAFTA. First, the European Union represents a huge market and also a great source of foreign investment for Mexico. It is

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32. See Article 7 of the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

33. Article 2 of the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

34. See Article 10 of the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

35. See Articles 11 and 12 of the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

36. The Most Favored Nation Treatment Clause establishes that, subject to few exceptions, treatment accorded to services suppliers of the other party shall be no less favorable than that accorded to like services suppliers of any third country. See Article 5 of the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

37. The National Treatment Clause states that each party shall grant to the services and service suppliers of the other party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and suppliers. See Article 6 of the Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, *Diario Oficial*, June 26, 2000.

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clear that the execution of the FTAEU will benefit products manufactured in Mexico to be exported to Europe, but it will also be a source of foreign investment for Mexico because many European companies will establish subsidiaries in Mexico to export products to North, Central, and South American countries with which Mexico has executed free trade agreements. Second, the FTAEU assures diversification for Mexican exports, amplifying the potential of Mexican products and services, which had been heavily absorbed by the North American market. Third, the agreement recognizes the differences in development between the two parties, having asymmetrical liberalization of custom duties; therefore, the execution of the agreement provides a relative and temporary advantage for some Mexican products. As I mentioned before, the customs duties applied by the European Union to Mexican products will be almost fully eliminated in 2003, while the schedule of elimination of Mexican customs duties to European Union products will be almost fully eliminated in 2007.

#### IV. What Does the FTAEU Mean for Mexico?

The FTAEU expressly implies new opportunities for NAFTA countries, as well as other countries with which Mexico has executed free trade agreements. Specifically in the short term, the FTAEU opens the door for United States and Canadian companies to export to the European Union products manufactured in Mexico without paying custom duties, or paying very low custom duties, depending upon each product. In such cases, the products will have to comply with the rules of origin to be considered Mexican products. That requirement assures that United States and Canadian companies will have to invest in Mexico to manufacture such products, which will result in massive employment opportunities for Mexico with all the derivative benefits associated with the investment in the country. On the other hand, European Union companies will have the same incentive to produce in Mexico in order to access the United States, Canada, and other countries with which Mexico has free trade agreements. The FTAEU will significantly increase the investment coming from the European Union countries in Mexico in comparison with the investment coming from the United States and Canada. The reason is a simple one: there is already more foreign investment in Mexico from the United States and Canada than from the European Union. From 1994 to 2000, United States and Canadian investment in Mexico represented 64.7 percent of the total direct foreign investment in the country, while during the same time the European Union investment in Mexico represented only 21.3 percent of the total direct foreign investment. The FTAEU will be an instrument to promote European Union investment in Mexico.

Mexico, which has acceptable economic, political, and social stability in Latin America, is becoming a country of investment, not only domestic but also international. The free trade agreements Mexico has executed and those that it is planning to execute<sup>38</sup>

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38. In an article written by Jason Gutierrez in the *International Trade Reporter*, he mentioned that: "Singapore and Mexico expect to conclude a free-trade agreement before year's end, the two countries say...Singapore and Mexico have conducted four rounds of talks since last July and have signed a declaration of intent...Mexico would also aid Singapore traders to enter both the North American markets as well as to those in Latin America." Jason Gutierrez,

will attract foreign investment that will benefit not only Mexico, but also companies located in any country that is or will be a commercial partner of Mexico. The aggressive approach of the Mexican foreign commercial policy will continue to increase foreign investment and trade.

## V. Future of the FTAEU and NAFTA. What is Next?

The execution of the FTAEU will liberalize commerce between Mexico and the European countries. The FTAEU will also promote foreign investment in Mexico from its commercial partners who will be willing to invest in Mexico in order to take advantage of the FTAEU and NAFTA. The future and success of the FTAEU will, to some extent, depend on the future and development of NAFTA and the integration of the Americas. But what is the future of NAFTA?

NAFTA was a revolutionary free trade agreement marking a new era for multi-lateral free trade agreements in America, as well as for free trade agreements between North American and Latin American countries. NAFTA was also the first free trade agreement in America putting together countries with very different cultural, political, and economic backgrounds. Generally speaking, NAFTA has been successful in achieving a free trade zone among the otherwise "distant neighbors," but has never pretended to create an economic and political integration beyond that free trade area.

In general terms, the degree of economic integration has been measured, from lowest to highest, as (i) free trade zones, (ii) customs unions, (iii) common markets, (iv) economic unions, and (v) federalized states with total economic integration. In a free trade zone, the parties eliminate internal barriers to trade but retain separate tariffs structures vis-à-vis outsiders. A customs union is a free trade zone with common external tariffs on goods imported from outsiders. A common market is a customs union without restrictions on the internal movement of the factors of production. An economic union is a common market plus the harmonization of different macroeconomic policies of all the members. Finally, federalized states imply a total economic integration as a federal state with uniform social and political policies.<sup>39</sup>

Accordingly, NAFTA is a free trade zone in the first step of economic integration; whereas, MERCOSUR was formally created to be a common market, and the European Union is more an economic union according to the above concepts. Beyond any conceptualization, it is true that NAFTA has not pretended to have the integration that other blocs in the world are having, such as the European Union and to a lesser scale MERCOSUR.

NAFTA countries have shown more interest in extending the free trade zone in America through the Free Trade Area of the Americas (FTAA), instead of making a deeper integration of the current NAFTA area as a customs union or other further integration before extending it to America.

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*Singapore and Mexico Expect FTA Agreement By Year's End*, 18 Int'l Trade Rep. (BNA) 509 (Mar. 29, 2001).

39. David Lopez, *Dispute Resolution Under MERCOSUR from 1991 to 1996: Implications for the Formation of a Free Trade Area of the Americas*, 3 NAFTA: L. & BUS. REV. AM. 3, 7 (1997).

The FTAA has had three summits, the first in Miami in 1994, the second in Santiago in 1998, and the third one was held in April 2001 in Quebec.<sup>40</sup> The participant countries<sup>41</sup> have the ambitious target to make the FTAA a reality by 2005.<sup>42</sup> The feasibility in complying with such an objective in such a short term is difficult to assert. There are many obstacles to overcome in order to reach the objective: (i) feasibility of the United States executive branch to obtain the fast track to negotiate the integration, the lack of that fast track in the last administration of Bill Clinton prevented the negotiations with Chile as the next candidate to join NAFTA; (ii) labor and environmental issues are heavily important for North American countries and they may conflict with many Latin American countries' regulations, policies, and practices;<sup>43</sup> and (iii) integration of MERCOSUR as a common market into the FTAA.<sup>44</sup>

The United States has played an important role in the creation of the FTAA. The leadership of the United States has been, and is still, essential for the success of the FTAA. After NAFTA, the United States has supported the FTAA as the next step in its international free trade policy, though there are some opinions that have questioned such policy.<sup>45</sup>

If the above tendency continues, it is probable that after a few years we will see a FTAA covering all of the Americas. If that happens, the next step should be to create a customs union, perhaps a common market or an economic union in America. The current tendency of the FTAA apparently discourages any intention to currently convert

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40. See SICE, the Free Trade Area of the Americas Process, at [http://www.sice.oas.org/ftaa\\_e.asp](http://www.sice.oas.org/ftaa_e.asp).

41. The countries participating in the FTAA are Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, San Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela. See *id.*

42. See *id.*

43. See *North American Agreement on Environmental Cooperation*, Sept. 13, 1993, Hein's No. KAV 3722; *Id.* arts. 14, 15; *North American Agreement on Labor Cooperation*, Sept. 13, 1993, Hein's No. KAV 3733.

44. The problem of integrating a common market or customs union was evidenced with the membership of Chile with MERCOSUR. Chile did not become a full member of MERCOSUR, among other factors, because its external tariffs averaged 11 percent compared with the MERCOSUR-wide average of 14 percent. Jorge M. Guira, *MERCOSUR as an Instrument for Development*, 3 NAFTA: L. & BUS. REV. AM. 53, 54 (1997). In other words, as the Canadian Trade Minister Art Eggleton has suggested, "these two agreements (referring to NAFTA and MERCOSUR) have fundamentally different objectives and could not be merged without one or the other dispensing with its core objectives." David A. Gantz, *The United States and the Expansion of Western Hemisphere Free Trade: Participant or Observer?* 14 ARIZ. J. INT'L & COMP. L. 381, 404 (1997).

45. There are some opinions that support the idea that the United States should look to the west and pursue a free trade agreement with Japan, not with Latin America, basically arguing economic and political reasons. See James Michael Lawrence II, *Japan Trade Relations and Ideal Free Trade Partners: Why the United States Should Pursue Its Next Free Trade Agreement With Japan, Not Latin America*, 20 MD. J. INT'L L. & TRADE 61 (1996).

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NAFTA into a customs union or common market before such free trade area in America is created.<sup>46</sup>

It is important to mention that the political support of all the participant countries, especially the North American ones, will be of the essence in order to achieve the dream of having a FTAA in the near future and a custom union or common market of the Americas in the long term.

The FTAA may also, in the long term, interact with the FTAEU. In case the FTAA becomes a reality, the FTAEU may be the commercial link between America and Europe, converting Mexico into a bridge of investments and trade between both continents. Obviously, there are many factors that may change that scenario, including for example, the execution of free trade agreements between other American countries with Europe; however, we must consider that any free trade agreement has a gradual development in terms of liberalization of trade barriers. Therefore, the FTAEU will have a great advantage over such potential free trade agreements because the FTAEU started its liberalization process on July 1, 2000.

## VI. Final Remarks

The commercial liberalization process in the international arena is unavoidable. Globalization is a reality and America has to be part of the process. NAFTA was essential for the execution of other commercial agreements in America. Retrospectively, Mexico started its economic modernization process in 1982, and NAFTA was the culmination of the slow economic, social, and political transformation that Mexico had over twelve years. However, the process is not over. As a matter of fact, after NAFTA, the transformation process of Mexico entered into a fast track. The free market approach was more deeply followed by the executive branch promoting the execution of eight free trade agreements in America and Europe. It has contemplated the execution of others as well.<sup>47</sup>

The FTAEU has been for Mexico the most important free trade agreement executed after NAFTA, not only because the European Union is the second commercial partner of Mexico<sup>48</sup> but also because of its impact with NAFTA. The FTAEU creates many business

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46. The complexity of converting NAFTA into a customs union without incorporating more countries is not discussed in this article. However, there would be many problems to overcome: (i) the harmonization of the external tariffs among the United States, Canada, and Mexico may be a problem taking into consideration the different external tariff rates of those countries, including the differences created by the free trade agreements executed by them with other countries; (ii) the harmonization and liberalization of highly sensitive areas of public policy that would be essential for the integration, such as immigration, labor, and environmental issues; and (iii) the continuation of the isolation policy of the United States' future execution of free trade agreements and non-discriminatory commercial policies of the other partners, including Canada and Mexico, in the international arena.

47. See *supra* notes 5 and 10. Mexico has also contemplated having negotiations with Japan in regards with a possible bilateral free trade agreement. Gary G. Yerkey, *Mexico, Japan Agree to Launch Talks on Investment Accord, Consider Trade Pact*, 16 Int'l Trade Rep. (BNA) 1471 (Sept. 15, 1999).

48. See Secretariat of Econ., *supra* note 5.

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opportunities for European Union and American companies. Such opportunities will generate more foreign investment and trade for Mexico, converting it into a geographical and economic bridge, not only between North and Central-South America, but also with Europe.

As Mexico is the only country in America that has free trade agreements with the European Union, and the United States and Canada, the FTAEU will undoubtedly benefit Mexico and its commercial partners.

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