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Free Trade Agreement between Mexico and the European Union

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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: (1) the modernization process of the Mexican economy that started in 1980, and (2) the consequences of executing the North American Free Trade Agreement (NAFTA). It is very important to be aware of these two factors, and their interrelation in order to understand Mexico's reasons and motives behind executing FTAEU.

The modernization process of Mexico started in 1982 with the administration of President Miguel de la Madrid (1982–1988). During this time, Mexico began to slowly liberalize its economy through its membership in the General Agreement on Tariffs and Trade (GATT), debt renegotiations, and the internal market reforms.[1] Indeed, Mexico's membership in GATT in 1986, was the direct result of a 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 negotiating with the United States and Canada to execute a free trade agreement. These negotiations concluded with the execution of NAFTA, which took effect on January 1, 1994.[2]

NAFTA was the result of many factors. Most importantly, however, it was due to the inevitable process of integration with North America, especially between the

1. *See* H. R. Folsom & Davis W. 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 D.O.].

United States and Mexico, that coincided with the relatively new Mexican modernization policies. Some figures support this conclusion. For example, prior to the execution of NAFTA, from 1984–1993, exports from the United States to Mexico increased from twelve billion to forty-two billion dollars.[3] Furthermore, during the first three years of NAFTA, from 1994–1997, exports from the United States to Mexico increased 69 percent to seventy-one billion dollars.[4] These figures indicate that the increase in commerce between Mexico and the United States did not begin with NAFTA. The increase began instead, prior to NAFTA, during Mexico's modernization process. NAFTA, though, has clearly facilitated the acceleration of commerce between the North American countries.

From the Mexican perspective, NAFTA is an essential development tool within the Mexican liberalization process. Such liberalization process produced changes in many areas, including economic, social, and political. From 1982–1995, for example, the Mexican legal system was dramatically modified, especially in the economic, trade, and financial areas—164 of the 204 federal statues (except for the Federal District legislation) in force in 1995, were new or substantially modified.[5]

After NAFTA, Salinas's administration and the following administration of President Ernesto Zedillo (1994–2000), continued to negotiate other free trade agreements. This not only advanced NAFTA, which provided access to one of the greatest markets in the world, but also the strategic geographical position of Mexico. These administrations envisioned three phases for Mexico. First, Mexico would become a commercial bridge between North and Central-South America. Second, Mexico would serve as a bridge between the Americas and Europe. Third, Mexico would become a commercial link between the Americas and Asia.

From 1994–2000, Mexico executed six free trade agreements with nine Central-South American countries, including Bolivia, Chile, Costa Rica, Colombia, Venezuela, Nicaragua, El Salvador, Guatemala, and the Honduras. In addition, Mexico executed FTAEU and the Free Trade Agreement, with the European Association of Free Commerce (ALLEC) with European countries.[6] Therefore, once Mexico executed NAFTA and other free trade agreements with other Central-South American countries, it was consistent with the Mexican commercial policies to expand its free trade agreements to European countries.

3. *See* Bernard L. Weinstein, *NAFTA After Four Years: Success, Problems, Challenges*, 4 NAFTA: L. & Bus. Rev. Am. 109 (Summer 1998).
4. *See id.*
5. Sergio López-Ayllón, *Mexico's Expanding Matrix of Trade Agreements—A Unifying Force?* 2 NAFTA: L. & Bus. Rev. Am. 241, 243 (Spring 1999).
6. Free Trade Agreements executed by Mexico with American countries: (1) Free Trade Agreement with G3 (Venezuela and Colombia), executed on June 13, 1994, in force as of Jan. 1, 1995; (2) Free Trade Agreement with Bolivia, executed on Sept. 10, 1994, in force as of Jan. 1, 1995; (3) Free Trade Agreement with Costa Rica, executed on Apr. 5, 1994, in force as of Jan. 1, 1995; (4) Free Trade Agreement with Nicaragua, executed on Dec. 18, 1997, in force as of July 1, 1998; (5) Free Trade Agreement with Chile, executed on Apr. 17, 1998, in force as of July 28, 1999; and (6) Free Trade Agreement with Salvador, Guatemala, and Honduras, executed on May 10, 2000, in force as of Jan. 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 EU: Island, Norwegian, and Switzerland. ALLEC was executed on Nov. 27, 2000, and is still in process of internal approval. *See id.* at 253.

Trade between Mexico and countries of the European Union (EU), has decreased during the past decade. Indeed, the total contribution of the EU to the Mexican market decreased from 10.8 percent in 1990, to only 6.4 percent in 1998.[7] In terms of investment, direct foreign investment from the EU in Mexico decreased from U.S. $1,932,350,000 in 1994, to U.S. $1,657,322,700 in 2000. Meanwhile, investments 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.[8]

One reason for the decrease in trade and investment between the EU and Mexico, was the execution of different free trade agreements with other countries by both Mexico and the EU. Mexican products were just more likely to be exported to countries like the United States, with whom Mexico had a free trade agreement. Likewise, EU products were more likely to be exported to countries with more favorable tariffs, than those established with Mexico for the same products. For example, the average tariff applicable to EU products imported into Mexico before FTAEU was 12 percent, while the average tariff applicable to U.S. products imported into Mexico was 2 percent.[9]

Another reason for the decrease in trade and investment between Mexico and the EU 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 Central-South 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 EU is composed of fifteen states with a total population of 370 million inhabitants. It has been considered the first commercial power in the world, concentrating one-fifth of the total commerce of the world,[10] 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 EU, trying to include all the European countries, and not only the ones belonging to the EU.[11]

Mexico and the EU formally began negotiations on July 14, 1998, and concluded them on November 24, 1999. FTAEU is composed of three documents: (1) Decision 2/2000 of the Joint Council of the Interim Agreement of Commerce and Issues Related to the Commerce between Mexico and the EU, which entered into force July 1, 2000;[12] (2) Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the EU, which entered into force on October 1, 2000;[13] and

7. *See* Secretariat de Econ, *available at* http://www.economia.gob.mx.date (last visited July 10, 2002), *see also* Secretaria de Economia (Secretariat of Economy in Mexico), *available at* http://www.economia.gob.mx.date (last visited July 10, 2002) [hereinafter Secretariat of Econ.].
8. *See* Secretariat of Econ., General Direction of Foreign Investment, Investment from North America in Mexico, *available at* http://www.economia.gob.mx (last visited July 10, 2002).
9. *See id.*
10. *See id.*
11. *See* Lopez-Ayllón, *supra* note 5; *see also* Secretariat of Econ, *supra* note 7.
12. *See* D.O., June 26, 2000.
13. *See* D.O., Sept. 30, 2000.

(3) Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the EU, which entered into force on March 1, 2001.[14]

II. Overview of the Content of the FTAEU

FTAEU, as mentioned before, is composed of three main documents. First, 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 EU. This document basically regulates the trade of goods.[15] Second, is the Agreement of Economic Association, Political Understanding, and Cooperation between Mexico and the EU. This agreement establishes broader terms related to the commercial and political relationship between the EU and Mexico. This Agreement also provides broader agreements in different areas, including trade of goods, trade in services, and cooperation in different sectors (i.e., transportation, energy, mining, agriculture, tourism). This agreement, furthermore, creates the Joint Council, and its Joint Committee as nonpermanent organisms to supervise the application of the FTAEU.[16] 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 basically regulates the trade in services and issues related to them.[17]

A. Trade of Goods

FTAEU covers all goods originating in the territory of the parties. FTAEU classifies goods into the following three categories: (1) industrial products that include all type of goods, with the exception of agricultural and fisheries goods; (2) fisheries goods; and (3) agricultural goods. The objective of FTAEU is to create a free trade area throughout a transitional period, lasting a maximum of ten years, beginning on July 1, 2000.[18] 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.

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 EU, which subsidizes EU exportations, representing a threat to the Mexican agricultural sector.[19]

14. *See* D.O., Feb. 28, 2001.
15. *See* D.O., *supra* note 12.
16. *See* D.O., *supra* note 13.
17. *See* D.O., *supra* note 14.
18. *See* 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, art. 2, D.O., June 26, 2000 [hereinafter Decision 2/2000].
19. *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 (last visited July 10, 2002).

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.[20]

Industrial products, which exclude agricultural and fisheries goods, are also subject to a gradual reduction of customs duties. Customs duties may be classified as: (1) custom duties on exports, and (2) custom duties on imports. All customs duties on exports for products originating either in the EU or Mexico were totally eliminated as of July 1, 2000.[21] The customs duties on imports originating either in the EU 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.[22]

(b) Customs duties on imports of products originating in the EU (applicable to EU 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 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.[23]

The customs duties, therefore, applicable to EU 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 EU, while Annex II (Custom Duties on Imports Originating in the EU) will be applicable to EU products exported to Mexico. The liberalization schedules applicable to Mexican products (Annex I) are different than the liberalization schedules applicable to EU products (Annex II). The great majority of customs duties applicable to EU products will be eliminated by 2007, while the majority of customs duties applicable to Mexican products will be eliminated by 2003. Therefore, the liberalization schedules for the EU products are stricter than the ones applicable to Mexican products. This situation represents a temporary market advantage for Mexican products.

20. *See* Decision 2/2000, art. 10, D.O., June 26, 2000.
21. *See* Decision 2/2000, art. 3, D.O., June 26, 2000.
22. *See* Decision 2/2000, art. 5, D.O., June 26, 2000.
23. *See* Decision 2/2000, art. 6, D.O., June 26, 2000.

In order to receive the benefits of FTAEU, all products must originate either in the EU or Mexico. An originating product is one that complies with the requirements of Annex III of the FTAEU. Therefore, (1) the product must be considered to originate in the territory of either Mexico or the EU (complying with the Rules of Origin); (2) the acquisition of the originating status must be fulfilled without interruption, either in Mexico or the EU (Territorial Rule); and (3) the products must be transported directly between Mexico and the EU (Direct Transportation Rule).[24] Thus, products enjoy the benefits of 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: (1) the products that are wholly obtained either in Mexico or in the EU, and (2) the products that are obtained either in Mexico or in the EU, 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 EU as established in Appendix 2 of FTAEU.[25] 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 EU.

The Territorial Rule establishes that the originating status mentioned above in Appendix 2 must be constantly applied in the territory of the parties.[26] This rule ensures 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 EU. 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.[27] 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 FTAEU, while such products are being transported out of those signatory countries.

FTAEU contains other relevant provisions expected in any treaty of this kind, such as nontariff 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 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

24. *See* Decision 2/2000, art. 3, D.O., June 26, 2000.
25. *See* Decision 2/2000, art. 2, Annex III, D.O., June 26, 2000.
26. *See* Decision 2/2000, art. 12, Annex III, D.O., June 26, 2000.
27. *See* Decision 2/2000, art. 13, Annex III, D.O., June 26, 2000.

laws, regulations and requirements, affecting their internal sale, offering for sale, purchase, transportation, distribution or use."[28] 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.[29]

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: (1) serious injury to a similar domestic industry, or directly competitive products in the territory of the importing party, or (2) serious disturbances in any sector of the economy, or difficulties that 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 EU, 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: (1) it shall be temporary (from one to three years), and (2) the party that applies the clause shall compensate the other party with a substantially equivalent liberalization in another sector.[30] 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.[31] The objective of the Decision is to reach the necessary agreements with respect to: (1) the progressive and reciprocal liberalization of trade in services; (2) the progressive

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28. Decision 2/2000, art. 26, D.O. June 26, 2000.
29. Article III of GATT establishes that

> 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... 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 one.

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

30. *See* Decision 2/2000, art. 15, D.O. June 26, 2000.
31. *See* D.O., Feb. 28, 2001.

liberalization of investment and related payments; (3) ensuring an adequate and effective protection of intellectual property rights in accordance with the highest international standards; and (4) establishing a dispute settlement mechanism.[32] 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, the liberalization process shall take place in no more than ten years from the date the Decision enters into force.[33]

The Decision includes all types of services with the exception of: (1) audiovisual services; (2) air services, including domestic and international air transportation services, whether scheduled or nonscheduled, 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 (3) maritime sabotage.[34]

The Decision also contains specific regulations for maritime transportation,[35] and financial services.[36] 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,[37] and National Treatment Clause.[38] These clauses were also adopted in consistency with Articles II and XVII, of the General Agreement on Trade in Services (GATS).

32. *See* Decision of the Joint Council of the Agreement of Economic Association, Political Understanding and Cooperation between Mexico and the European Union, art. 1, D.O. June 26, 2000 [hereinafter Decision of Political Understanding].
33. *See* Decision of Political Understanding, art. 7, D.O. June 26, 2000.
34. Decision of Political Understanding, art. 2, D.O. June 26, 2000.
35. *See* Decision of Political Understanding, art. 10, D.O. June 26, 2000.
36. *See* Decision of Political Understanding, arts. 10 & 11, D.O. June 26, 2000.
37. 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* Decision of Political Understanding, art. 5, D.O. June 26, 2000.
38. 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* Decision of Political Understanding, art. 6, D.O. June 26, 2000.

III. Features of FTAEU—Understanding the Differences

For several reasons that are discussed below, FTAEU is the most important free trade agreement that Mexico has executed after NAFTA. First, the EU represents a huge market, and also a great source of foreign investment for Mexico. It is clear that the execution of 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, 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 mentioned before, the customs duties applied by the EU to Mexican products, will be almost fully eliminated in 2003, while the schedule of elimination of Mexican customs duties to EU products will be almost fully eliminated in 2007.

IV. What Does FTAEU Mean for Mexico?

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, FTAEU opens the door for U.S. and Canadian companies to export Mexican manufactured products to the EU, while paying very low customs duties, or without paying custom duties at all, depending upon the product. In such cases, the products will have to comply with the rules of origin to be considered Mexican products. This requirement assures that U.S. and Canadian companies will have to invest in Mexico to manufacture such products, which will result in massive employment opportunities for Mexico, with all of the derivative benefits. On the other hand, EU 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. FTAEU will significantly increase the investment coming from EU countries *into* 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 EU. From 1994 to 2000, the U.S. and Canadian investments in Mexico represented 64.7 percent of the total direct foreign investment in the country, while during the same time the EU investment in Mexico represented only 21.3 percent of the total direct foreign investment. Thus, FTAEU will be an instrument to promote EU 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,[39] 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 FTAEU and NAFTA: What is Next?

The execution of FTAEU will liberalize commerce between Mexico and the European countries. 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 FTAEU and NAFTA. The future and success of 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 multilateral free trade agreements in the Americas, as well as for free trade agreements between North American and Latin American countries. NAFTA was also the first free trade agreement in the Americas 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 (1) free trade zones, (2) customs unions, (3) common markets, (4) economic unions, and (5) 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.[40]

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 EU 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

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39. 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.

See Jason Gutierrez, *Singapore and Mexico Expect FTA Agreement By Year's End*, 18 INT'L TRADE REP. (BNA) 509 (Mar. 29, 2001).

40. 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).

are having, such as the EU, and to a lesser scale MERCOSUR. NAFTA countries, however, have shown more interest in extending the free trade zone in the Americas 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.

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.[41] The participant countries[42] have the ambitious target to make FTAA a reality by 2005.[43] 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: (1) feasibility of the U.S. 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; (2) labor and environmental issues are heavily important for North American countries, and they may conflict with many Latin American countries' regulations, policies, and practices;[44] and (3) integration of MERCOSUR as a common market into FTAA.[45]

The United States has played an important role in the creation of FTAA. The leadership of the United States has been, and is still, essential for the success of FTAA. After NAFTA, the United States has supported FTAA as the next step in its international free trade policy, though there are some opinions that have questioned such policy.[46]

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41. *See* SICE, The Free Trade of the Americas Process, *available at* http://www.sice.oas.org/ftaa_e.asp (last visited July 10, 2002).
42. 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, United States, Uruguay, and Venezuela. *See id.*
43. *See id.*
44. *See* North American Agreement on Environmental Cooperation, Hein's No. KAV 3722, Sept. 13, 1993; *id.* art. 14, 15. *See also* North American Agreement on Labor Cooperation, Hein's No. KAV 3733, Sept. 13, 1993.
45. The problem of integrating a common market or custom union was evidenced with the membership of Chile with MERCOSUR. Chile did not fully become a member of MERCOSUR because, among other factors, of its external tariffs averaged eleven percent compared with the MERCOSUR—wide average of 14 percent. *See* 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).
46. 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, and not with Latin America for 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).

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 the Americas. The current tendency of FTAA apparently discourages any intention to currently convert NAFTA into a customs union, or common market before such free trade area in America is created.[47] 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.

FTAA may also, in the long term, interact with FTAEU. In case FTAA becomes a reality, FTAEU may be the commercial link between the Americas 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. One must, however, consider that any free trade agreement has a gradual development in terms of liberalization of trade barriers. Therefore, FTAEU will have a great advantage over such potential free trade agreements, because 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 the Americas have to be part of the process. NAFTA was essential for the execution of other commercial agreements in the Americas. 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. 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 the Americas and Europe. It has contemplated the execution of others as well.[48]

47. 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: (1) 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; (2) 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 (3) the continuation of the isolation policy of the United States future execution of free trade agreements and nondiscriminatory commercial policies of the other partners, including Canada and Mexico, in the international arena.

48. *See supra* notes 6 and 11. Mexico has also contemplated having negotiations with Japan in regard to a possible bilateral free trade agreement. *See* 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).

FTAEU has been for Mexico the most important free trade agreement executed after NAFTA, not only because the EU is the second commercial partner of Mexico,[49] but also because of its impact with NAFTA. FTAEU creates many business opportunities for EU and North and Central-South 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 the Americas that has free trade agreements with the EU, the United States, and Canada, FTAEU will undoubtedly benefit Mexico and its commercial partners.

49. *See* Secretariat of Econ., *supra* note 7.