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SOME THOUGHTS ON NAFTA AND TRADE INTEGRATION IN THE AMERICAN CONTINENT [2]

I. Introduction

The North American Free Trade Agreement (NAFTA) came into effect on 1 January 1994 with a primary function to create a free trade zone between the United States, Canada and Mexico, that would capitalise on the North American annual $6 trillion market and its 350 million consumers. NAFTA already rivals the European Union as the world's largest trade area and is set to become the eventual nucleus of a possible pan-American economic area.[3]

This article seeks to examine in brief a selected number of the basic elements of the North American Free Trade Agreement.[4] It evaluates some of its key characteristics and provides a short outline of its historical background and economic nature. It takes the European Single Market as a point of reference where needed, since a conceptual comparison between a NAFTA-type free trade area and an EU-model customs union may demonstrate the relative uniformity of both types of trading conglomerates but also their taxonomic and functional differences. The second part of the article contains a summary outline of the Agreement's more important provisions regarding market access (abolition of tariffs and quantitative restrictions, rules of origin) in order to describe the way that this specific issue has been tackled in North America. Finally, as an example of NAFTA's approach to the problems that all international trade areas are confronted with, further focus is brought on the system of dispute resolution that the Agreement foresees.

II. Integration for the Future

1. The Rise of NAFTA

The negotiations for the North American Free Trade Agreement started in Toronto in June 1992.[5] An integration scheme that involves the economic might of the United States, along with the vast resources of Canada is of considerable importance in the first place, but it was the incorporation of Mexico to this equation that added another dimension to the issue: it was the first case of a developing country's accession to this type of agreement with developed states on a fully reciprocal basis. If successful, the agreement promised to make the whole North American continent into one economic zone and perhaps even set a precedent for trade and economic cooperation between the wealthy North and the less developed South.

NAFTA took effect on 1 January 1994, one year after the formal completion of the European Single Market. It provided a new set of regulations to cover investment and more than a six trillion dollar market. Over the next decade, the free trade agreement will eliminate all tariffs amongst Canada, Mexico and the US and consequently reduce the cost of thousands of imported products and services. The intention of all three countries was to conclude a trade agreement that would lead to an integrated market for goods as well as most services and capital, and provide for greater mobility for professional and business travellers. In order to achieve this, they decided to expand on their pre-existing GATT obligations, including the anticipated results of the Uruguay Round. Consistent with the GATT and the CUSFTA, the new agreement also avoided sensitive issues such as cultural industries, national security and constitutional exemptions.

As far as its structure is concerned, NAFTA in some areas can be seen to be three collated bilateral deals. To a certain extent, the new agreement was similar to that of the pre-existing Canada-US Free Trade Agreement (CUSFTA),[6] but it moved beyond it by eliminating Mexican tariffs and trade control barriers, some immediately and the rest over the remainder of the transition period. At the same time, it contained clearer and more advanced rules of origin, an extension of duty

drawback clauses and an improved mechanism for consultation and dispute settlement. Finally, environmental issues received expanded coverage in the agreement.[7] All three countries confirmed their commitment to sustainable development and incorporated the GATT exemption that allowed governments to protect the environment even when the measures conflict with other provisions of the Agreement. [8], [9]

2. NAFTA, FTAA and the Future

NAFTA includes provisions to broaden its coverage, both in terms of issues and in terms of membership. An accession clause allows countries to negotiate their way in by accepting the same obligations as the other members. One can foresee, in a not too distant future, the adhesion of other Latin American countries to this Agreement. Indeed, this has already been accepted in principle as an overriding policy statement by all the governments of the American continent, although the target date set for the creation of such a pan-American free trade area (2005) may appear rather optimistic to most pragmatic observers. The ultimate goal of inclusion of all American states in the Free Trade Area of the Americas would represent a significant step towards north-south economic harmonisation and one yielding formidable economic power, at that. Indeed, FTAA would encompass the whole of the Western hemisphere under a single umbrella of integrated trade.[10]

It emerges as undoubted that NAFTA will serve as the central nucleus around which the Latin American countries wishing to constitute the FTAA will eventually coalesce.[11] The question arises as to whether this hemispheric integration will take the form of individual states seeking membership or it will proceed by means of en bloc incorporation of the pre-existing regional trade areas in Central and South America.[12] So far, there is a number of such subregional trade areas in Latin America, exercising varying degrees of influence, and their divergent features and modus operandi could play a fundamental role in the formation of a hemispheric trade strategy.[13] These subregional economic groupings are: i) the Central American Common Market (CACM) comprised of Costa Rica, Guatemala, El Salvador, Honduras and Nicaragua,[14] ii) the Andean Group by Bolivia, Colombia, Ecuador, Peru and Venezuela[15], iii) the Caribbean Community (CARICOM) composed of 13 Caribbean states, and iv) the Southern Cone Common Market[16] (MERCOSUR) with Argentina, Brazil, Uruguay and Paraguay as its members.[17] In addition to making vital contributions to the area's political stability, these regional economic groupings will play a significant part in the negotiation and implementation of the FTAA.[18] Thus, the piecemeal accession model may risk damaging the market development of the regional trade areas and the incentives for hemispheric trade liberalisation. On the other hand, bloc accession will be a slower but more sustainable and liberalising path to integration but it may have adverse economic and political consequences for the leading member-states within the trading organisations as they would risk losing appreciable short term benefits that an accelerated entry into the NAFTA/FTAA capsule would bear.[19] This may lead US policy makers to favour piecemeal accession for political reasons, with the ultimate intent of strengthening the democratic and market-oriented reforms of such 'leaders' amongst the Latin American countries.[20]

III. Evolving Models for Globalisation in America and Europe

As business is becoming increasingly global, domestic enterprises in most countries are increasingly depending on foreign markets to enhance their growth. In order to capitalise on the internationalisation of business, many countries have initiated the formation of trading groups, designed to reduce tariffs and thus increase the trade amongst the participating members.[21] The implications of the proliferation of economic integration in the form of free trade areas is a subject of constant debate amongst those who regard them as a legitimate tool to promote regional free trade and those who consider them as damaging to the global trading system and a threat to the interests of non-participants.[22] In attempting to examine the general rationale behind such moves, this kind of evolution may be viewed as a result of heightened social and economic interdependence brought about by advances in technology that allow persons, goods, capital, services and ideas to cross artificial national frontiers at increased rates of speed.[23]

A central structural difference between e.g. the European Single Market and the 'single market' purportedly created by NAFTA is to be found in the underlying conceptual distinction between a common market, a customs union and a free trade area. In a free trade area, customs duties and quantitative restrictions are abolished between members, but each country retains its own tariffs against non-members. A customs union involves the equalisation of trade tariffs with the outside world, i.e. the creation of a common customs policy.[24] And a common market includes in the integrating process not only the liberalisation of movement of goods but also of the other factors of production, namely services, labour and capital.[25] In principle therefore, a free trade area implies a more limited purpose than a single market or even a customs union, but this difference in design may be somewhat misleading. An economic conglomeration along the american models is likely to be a greater impediment to external trade than an EC-style single market, because it grants preferences to goods originating inside its boundaries without providing to imports the corresponding customs union benefit of free circulation within the internal borders.[26] NAFTA, although more confined in purpose than the European Community, is therefore likely to be more prone to erect barriers to outsiders and generate a 'fortress' mentality. It could therefore be misguided to suggest that NAFTA is infinitely more limited than the European Single Market, since "both concepts are open-ended"[27] essentially. In that respect, NAFTA can even be seen as antagonistic to the European Single Market, inasmuch as they compete for the same 'lebensraum' of external trade goods and services and against each other.[28] At the same time, free trade agreements do not necessarily need to lead to a 'fortress' mentality.[29] They may promote freer trade by involving countries that share similar objectives and are willing to enter into such an agreement on a fully reciprocal basis. Furthermore, free trade agreements send a signal to the rest of the world that another option exists should multilateral trade negotiations fail. This relates not only to further liberalisation in areas already covered by the WTO but also indicates that new areas should be included (such being the case of CUSFTA and NAFTA which included services and investment). An additional advantage of regional integration schemes is that some of them contain dispute resolution procedures which provide greater legal certainty than the WTO system. Such is the case of the binding dispute system of CUSFTA and NAFTA in anti-subsidy and anti-dumping cases. Furthermore, free trade agreements open to accession by other countries may become a "WTO-plus" if such agreements supplement WTO and include new areas such as investment, environment and services. In this case, the obligations are based on reciprocity and not on the most-favoured-nation principle.[30]

As a free trade area, NAFTA reflects by definition a less comprehensive integration scheme than the European Union. It does not place emphasis on eventual political integration but has been constructed as a mechanism for trade liberalisation.[31] Moreover, the United States, Canada and Mexico were not compelled to establish a free trade area by the same reasons that initiated the movement towards European integration. This may explain in part why NAFTA does not make reference to significant central regional institutions with supra-national authority.[32] Thus, NAFTA has been endowed with a very modest institutional structure.[33] Its paramount organ is the Free Trade Commission, whose purpose is to oversee the implementation and functioning of the dispute settlement mechanism. The NAFTA Secretariat assists the Commission in the performance of its duties but neither body has the capacity of taking decisions binding to the member states, nor is there an equivalent of the European Court of Justice. However, in the European Union, the Council -as the principal legislative organ- can adopt binding rules for the member states in the form of regulations directives and decisions; whilst the European Commission is its executive arm and also occupies the position of 'guardian of the treaties'. In spite of these fundamental differences, it is conceivable that eventually NAFTA will be institutionalised[34], when the limitations of integration arrangements without central institutions become apparent, and also through the political and social fallout that the operation of the free trade will cause.[35] It is possible therefore that, by the time the creation of the FTAA is underway and the Latin American states have started to accede, NAFTA will have evolved towards more integrational structures.[36]

IV. The North American Free Trade Agreement and the Free Movement of Goods

The key to any free trade is the elimination of duties and other restrictions on "substantially all trade between the parties". These provisions, known generically as market access rules, regulate trade in goods with respect to customs duties and other similar charges, quantitative restrictions, such as quotas, licences and permits, and import and export price requirements.[37]

The North American Free Trade Agreement creates an improved legal framework for the conduct of trilateral trade and the liberalisation of movement of goods and services amongst its signatories. From a legal perspective the main task before the parties to NAFTA was to create a regulatory framework in order to promote increased trade between them through immediate elimination or gradual phase out of tariff and non-tariff trade barriers.[38] While the general thrust of NAFTA aims at promoting competition, the concrete measures adopted in this Agreement are not so clear-cut and portray a combination of relative pro-competitive and protectionist objectives.[39]

1. Tariffs

At the time of the conclusion of the CUSFTA negotiations, more than 75% of bilateral trade between the USA and Canada moved free of duty. But tariffs were a significant barrier to trade in specific areas, for example, 15% and more of United States tariffs applied on petrochemicals, metal alloys, clotting and many other products. Additionally, the existence of Canadian tariffs on imports from the United States was costly to Canadian consumers and producers. Although aggregate tariffs between the European Community and NAFTA no longer constitute a significant barrier, they still provide protection to important sectors in both economies.

NAFTA provides for the progressive elimination of all tariffs on goods qualifying as North American under its rules of origin.[40] For most goods, existing customs duties are either eliminated immediately or phased out in five or ten equal annual stages.[41] For certain sensitive items, tariffs will be phased out over a period of up to 15 years. Tariffs will be phased out from the applied rates on 1 July 1991, including the United States Generalised System of Preferences (GSP) and the Canadian General Preferential Tariff (GPT) rates. As between the United States and Canada tariff phase-out will continue as scheduled by CUSFTA. NAFTA provides that the three countries may consult and agree a more rapid phase-out of tariffs.

The phased elimination of tariffs between the United States and Canada will continue on the basis of CUSFTA Article 401. These base rates for calculating the phased elimination on trade with Mexico are those that were in effect 1 January 1991 for Canada. For Mexico, the base rate will be its import duties applied in practice, ranging up to 20%, rather than the much higher of up to 50% established through its GATT obligations.

Because Mexico benefits from Canada's preferential tariffs and many products enter Canada under the terms of the Canada-United States Auto Pact, almost 80% of Mexican goods already enter the Canadian market duty-free. Canada included most products in either the immediate or five-year categories and limited 10-year phase-outs to sensitive products. The ten year category includes, in the case of Canadian products entering Mexico, furniture, pharmaceuticals and toys. Canada included in this category such products as clothing, apparel, footwear and toys.

2. Customs Duties and Regulations

The United States and Canada refund the customs duty levied on imported materials and components when they are incorporated into exported goods. The US, for example, uses foreign trade zones as means for exporters to avoid having to pay United States duties on imported components. In this respect NAFTA establishes rules on the use of 'drawback' or similar programs that provide for the refund or waiver of customs duties on materials used in the production of goods subsequently exported to another NAFTA country. Existing drawback programs

will terminate by January 2001, for Mexico-United States trade and Canada-Mexico trade; the Agreement will extend for two years the deadline established in CUSFTA for the elimination of drawback programs. When these programs are eliminated, each NAFTA country will adopt a procedure for goods still subject to duties in the free trade area to avoid the 'double taxation' effects of the payment of duties in two countries. Under these procedures, the amount of customs duties that a country may waive or refund under such programs will not exceed the lesser of: a) duties owed or paid on imported, non-North American materials used in the production of a goods subsequently exported to another NAFTA country; or b) duties paid to that NAFTA country on the importation of such goods.

Local customs regulations permit duties paid on imports to be refunded to specific companies if they meet certain conditions related to performance such as production, exports, and employment. CUSFTA provided for the elimination of duty waivers in cases where such waivers are linked to specific performance requirements such as production in one country or exports to the other except for automotive waivers as listed in Chapter Ten. No new customs duties waivers incorporating performance requirements were permitted to be introduced after June 1988, and all such customs duty waivers were eliminated by 1 January 1998. These provisions continue in operation since NAFTA Annex 304.2(b) provides for the incorporation of Article 405 of the Canada-US Free Trade Agreement solely with respect to measures adopted by Canada or the United States prior to the date of entry into force of NAFTA.[42] Existing programs in Mexico will be eliminated by 2001.

Equally, customs regulations and practices affect the flow of trade and have, historically, been from time to time used by both the European Community and the NAFTA members as a disguised non-tariff barrier to trade. The goal of the NAFTA negotiations was to achieve, by the end of the transition period, similar rules on trilateral trade, each country retaining separate customs and tariff regimes for trade with third countries. Specifically, they addressed customs user fees, duty drawbacks and duty remissions.

The United States applies a custom user fee calculated as a percentage of the value of each transaction. Even if the tariff is zero, the exporter must pay this amount when goods cross from Canada into the United States This fee constitutes an additional tariff and increases the cost of exporting. CUSFTA Article 403 provided for the customs user fee applied by the United States to be phased out on imports from Canada by 1 January 1994 and prevented either country from establishing a new customs user fee on imports of goods which meet the origin rules. The three NAFTA countries also agreed not to impose new customs user fees similar to the United States merchandise processing fee or the Mexican customs processing fee. Mexico eliminated in 1999 its existing customs processing fee on North American goods.[43]

3. Quantitative Restrictions

Existing quantitative restrictions to the free movement of goods will be eliminated, either immediately or according to an agreed timetable. With respect to export measures taken for reasons of short supply or conservation, the Agreement provides for co-operation on implementing short supply or conservation measures to prevent diversion to third parties. All three member states of NAFTA will eliminate prohibitions and quantitative restrictions applied at the border, such as quotas and import licences. However, they maintain the right to impose border restrictions in limited circumstances, for example, to protect human, animal or plant life or health, or the environment.[44] Special rules apply to trade in agriculture, automobiles, energy and textiles.

4. The Rules of Origin in NAFTA

Most countries establish standards to determine the country of origin or legal nationality of imported goods that are not wholly grown, mined, or produced in a single country. These rules exemplify the fact that international trade is regulated on a country-specific as well as a product-specific basis. In agreements like NAFTA, special rules are entered in order to limit the extent of the foreign content or value in or of the goods which are to be accorded its benefits, so that these

accrue principally to the contracting parties. In their larger context, rules of origin and preference are critical in this type of agreement because they are closely linked with increased trade, job creation and preservation, and added investment. Accordingly, the business communities of the member countries receive the benefits of duty reduction or elimination along with other negotiated advantages. Therefore, the 'origin rule' defines the criteria for establishing the country of origin of a product. This is of primary importance in order to establish, for example, duty liability, anti-dumping and countervailing duties. Not surprisingly, rules of origin have been referred to as "tools of discrimination" because they are used to determine which goods qualify for preferential treatment.[45] As such they are an integral part of all the existing free trade agreements.

Because of their importance, the rules of origin and preference are some of the most complex and potentially the most politically controversial part in NAFTA. The agreement contains over two thousand specific rules based on different method for ascertaining origin. Depending on the specific origin criteria adopted, a product might be considered as originating in a specific country if, for example, its domestically produced content or domestically added value in that country equal or exceeds a specified proportion, or if it has undergone substantial transformation in the course of processing or manufacturing in the country.

By establishing a legal standard for which imports qualify for preferential treatment, reduced or no tariffs, rules of origin constitute a two-edged sword. On the one hand, when properly crafted they may well serve the stated purposes of NAFTA by restricting preferential entrance into the market only to those goods that fall within the established legal definitions. On the other hand, it must be borne in mind that the application of those rules is technically taxing and is a decision which ultimately rests on the hands of customs authorities in the importing country. The unilateral character of this determination is underscored by the fact that the NAFTA rules are applied according to detailed customs regulations developed in each country. As a result it is likely that, even unintentionally, they may be construed in a manner that effectively becomes a non-tariff barrier to trade.[46] The potential impact of this is that, if goods originating in the free trade area are denied preferential treatment not only the gains of such agreements are forgone but also that it creates irritation in the affected country and domestic pressure to retaliate in kind.

NAFTA's rules of customs administration have undergone noticeable improvement since the days of CUSFTA.[47] In addition to its predecessor free trade agreement, they now contain: first, uniform regulations to ensure consistent interpretation, application and administration of the rules of origin. Secondly, a uniform Certificate of Origin a well as certification requirements and procedures for importers and exporters that claim preferential tariff treatment. Common record-keeping requirements in the three countries. Rules for both traders and customs authorities with respect to verifying the origin of such goods. Provisions that will allow importers, exporters and producers to obtain advance rulings on the origin of goods from the customs authority of the country into which the goods are to be imported. Requirements that the importing countries give exporters and producers substantially the same rights of review and appeal of its origin determinations and advance rulings as it provide to importers in its territory. A trilateral working group to address future modifications of the rules of origin and the uniform regulations. Finally, specific time period is laid down to ensure the expeditious resolution of disputes regarding the rules of origin.

Despite these improvements NAFTA's rules of origin are extremely selective. Because of them, it has been considered that NAFTA has left itself open to criticism.[48] Their restrictive character could pose dangers to the trade liberalising objectives of the agreement. They seem to penalise regional producers by forcing them to source from less efficient regional suppliers undermining their global competitiveness. Furthermore, the NAFTA rules could be copied by other preferential trade schemes in an effort of keeping competitors out of their markets.

V. The NAFTA Dispute Resolution Procedures

Trade disputes are a fairly common occurrence and tend to increase as the

volume of trade and the sheer number of transactions get larger.[49] One country's measures taken in its own interests are sometimes viewed as protectionist by its trading partner. If specific systems resolving such disputes are not included in a trade agreement, trade of a product or service between the two countries can be endangered.

The North American Free Trade Agreement includes measures to reduce the likelihood of trade disputes between the three participating countries.[50] It sets a course for settlement by strengthening the system of dispute review panels established by the CUSFTA and has also clarified such issues as customs administration and procedures.

1. General Trade Disputes

The NAFTA's dispute settlement provisions are designed to provide for a reasonably rapid settlement including, if necessary, the use of impartial panels to study issues in dispute and render findings. There are three basic steps to the process:[51]

(a) Consultations between the three countries with the goal of a satisfactory settlement.
(b) If the first round of consultations fails to solve the dispute, the NAFTA Trade Commission will examine the case. Comprising cabinet-level representatives from each country, the Trade Commission' s role is to settle arguments over the interpretation or application of the trade rules established by the NAFTA.
(c) If the Trade Commission cannot resolve the issue, a specially selected panel will objectively review the dispute. The panel, composed of five members, is chosen from a trilaterally agreed roster in such a way as to promote an impartial decision. Two panellists from the complaining party are selected by the defending party, and two from the defending party are nominated by the complainant. The panel’s chair may be a representative from the third NAFTA country or from another neutral country. The chair is chosen by mutual agreement or drawn by lot.

2. Countervail and Anti-Dumping Duty Disputes

A member state maintains its right to have special duties levied against imports from the other two, if these are proven to be competing unfairly in that state' s home market. Countervailing duties may be applied when the foreign product is subsidised.[52] Antidumping duties may be applied when the import is priced unfairly ("dumped" on the market).

Under the Canada-U.S. Free Trade Agreement, a system of binational panels was established to review countervailing and anti-dumping decisions and to make binding determinations on their conformity with domestic legislation. The NAFTA enhanced these rules and extended them to Mexico.[53] The binational dispute settlement system was strengthened and procedural safeguards ensuring the implementation of panel decisions were introduced.[54]

The binational panel system is based on the following:

(a) Every government will select two panellists and jointly choose a fifth member. Each government can challenge the other's choice of panellists.

(b) Strict time limits will ensure against delays in the process. Both parties are expected to develop arguments and debate the other party's statements.

(c) To ensure the integrity of the panel process, a party can invoke an extraordinary challenge procedure. An extraordinary challenge committee may affirm the panel's decision or, if it finds that there are grounds for the challenge, either refer the matter back to the original panel for action or call for a new panel to review the issue.

VI. Conclusion

The North American Free Trade Agreement, was signed by Canada, Mexico and the United States and entered into force in January 1994. Its adoption followed an intense debate about its likely effects and its overall rationale. NAFTA removed the majority of former tariffs, quantitative restrictions and import licences on all manufactured goods, provides greater market access for service industries, permits more mobility for professional and business travellers, and allows freer entry to a united North American market of 350 million people. With the inclusion of Mexico, NAFTA set an important precedent for north-south trade, but, most importantly, it looks set to assume a pivotal role towards an integrated pan-American commercial zone.[55] With negotiations to enlarge it so as to include the growing Latin-American market, a possible Free Trade Area of the Americas would represent the world's largest trading bloc and the first hemispheric trading area. Thus, NAFTA has set the pattern for the future of economic integration in the Western hemisphere.

FOOTNOTES

[1] Demetrius Andreas Floudas, Senior Associate, Hughes Hall College, University of Cambridge, Associate Fellow of the Hellenic Institute of International and Foreign Law, Member of the British Academy of Experts, Vice-President, Interstice Consulting Corporation and Dr. Luis Fernando Rojas, Attorney-at-Law Costa Rica, Vice-President, Interstice Consulting Corporation, formerly of the Mexican Section of the NAFTA secretariat

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[3] Already in 1994, the leaders of 34 American countries made a public commitment to create by the year 2005 a Free Trade Area of the Americas FTAA, which would encompass the entire western hemisphere. The creation of such an entity would unite 850 million people and create the most extensive trading bloc on the planet.

[4] North American Free Trade Agreement between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, 17. XII. 92, 32 I.L.M. 605 1993.

[5] On aspects of the negotiations preceding the signing of NAFTA, Cameron & Tomlin, 'Negotiating North American free trade', International Negotiation, 2000, p. 43.

[6] For an overview, see: Baker & Battram, The Canada-United States Free Trade Agreement, International Lawyer, 1989, p. 37.

[7] Lazega, 'NAFTA Accession and Environmental Protection: The Prospects for an Earth friendly Integration of Latin American Nations into the North American Trading Bloc', Journal of Transnational Law and Policy, 5, 1996, p. 315; Mall, 'The Effect of NAFTA's Environmental Provisions on Mexican and Chilean Policy', International Lawyer, 32, 1998, p. 153.

[8] Porras, 'The Puzzling Relationship between Trade and Environment in NAFTA: Competitiveness and the Pursuit of Environmental Welfare Objectives', Indiana Journal of Global Legal Studies, 3, 1995, p. 65.

[9] The NAFTA also exempts measures necessary to meet obligations arising under certain international environmental agreements from most of its disciplines,

while recognising that governments should not establish 'pollution havens' by lowering standards to attract investment. Any conflicts that raise environmental issues will be adjudicated by panels with access to scientific expertise in environmental matters. In addition, the environmental lobbyists have seen the economic growth promoted by NAFTA as likely to improve environmental quality in itself. The income generated in Mexico by freer trade should assist the Mexican government with the enforcement of its standards, which may be good on paper but have been rather difficult to police. Atik, 'Environmental Standards within NAFTA: Difference by design and the Retreat from Harmonisation', Indiana Journal of Global Legal Studies, 3, 1995, p. 81.

[10] Barry, 'Pursuing free trade: Canada, the Western Hemisphere, and the European Union', International journal, 55, 2000, p. 292; Stephenson, 'Standards, the Environment and Trade Facilitation in the Western Hemisphere: Negotiating in the FTAA', Journal of World Trade, 31, 1997, p. 137.

[11] See further: Bayer, Expansion of NAFTA: Issues and Obstacles Regarding Accession by Latin American States and Associations', Geojournal, 26, 1997, p. 615; Rutherford & Martinez, 'Welfare effects of regional trade integration of Central American and Caribbean nations with NAFTA and MERCOSUR', World Economy, 23, 2000, p. 799.

[12] Gutierez, 'Is Small Beautiful for Economic Integration? The Americas', Journal of World Trade, 30, 1996, p. 173.

[13] Burguete, 'Repensando teóricamente la integración en las Américas: la integración desde el norte y la integración desde el sur', Relaciones Internacionales, 79, 1999, p. 11.

[14] For further details on the regional and subregional groupings, see: O'Hop, 'Hemispheric integration and the Elimination of Legal Obstacles under a NAFTA-based System', Harvard International Law Journal, 36, 1995, p. 127.

[15] Da Cruz Vilaca & Sobrino Heredia, 'The European Union and the Transformation of the Andean Pact into the Andean Community: From the Trujillo Protocol to the Sucre Act', European Foreign Affairs Review, 3, 1998, p. 13.

[16] Cason, 'On the road to Southern Cone economic integration', Journal of Interamerican Studies and World Affairs, 42, 2000, p. 23.

[17] Casella, 'Legal Features and Institutional Perspectives for the MERCOSUR: The Common Market of the South after the End of the Transition Period', VRÜ, 31, 1998, p. 523; Grandi, 'Bilan de sept années de Mercosur', Problemes d'Amérique Latine, 32, 1999, p. 73.

[18] deGoyos, 'Prospects for integration in the Americas: MERCOSUL, NAFTA and the FTAA', Comparative and International Law Journal of Southern Africa, 31, 1998, p. 307.

[19] Garcia, 'NAFTA and the Creation of the FTAA: A Critique of piecemeal Accession',Virginia Journal of International Law, 35, 1995, p. 539; Wise, 'Latin American Trade Strategy at Century's End', Business & Politics, 1999, p. 117.

[20] E.g. Gilmore, 'Expanding NAFTA to handle all of the Western Hemisphere: Making Chile the Next Member', Journal of International Law and Practice, 3, 1994, p. 413; Müller-Brandeck-Bocquet, 'Schatten über dem Mercosur - Die "Brasilienkrise" und die Zukunft des gemeinsamen Marktes' BdIP, 1999, p. 205.

[21] Lazega, op. cit.

[22] Cf. Deblock & Brunelle, 'De l'ALE a la ZLEA: régionalisme et sécurité économiques dans les Amériques', Études Internationales, 28, 1997, p. 313.

[23] Abbott, 'Integration Without Institutions: The NAFTA Mutation of the EC Model and the Future of the GATT Regime', American Journal of Comparative Law, 1992, p. 917.

[24] Krueger, 'Free trade agreements versus customs unions', Journal of Development Economics, 54, 1997, p. 169.

[25] So Balassa, The Theory of Economic Integration, London, 1961.

[26] For an assessment of competition impediments in some of the other american regional groupings see Mancero-Bucheli, 'Anti-Competitive Practices by Private Undertakings in Ancom and Mercosur: An Analysis from the Perspective of EC Law', International and Comparative Law Quarterly, 47, 1998, p. 149.

[27] Abbott, Integration without Institutions, at p. 919.

[28] Cf. Rojas, 'We are not alone…': The impact of the North American Free Trade Agreement in: Caiger & Floudas eds., 1996 Onwards: Lowering the Barriers Further, Chichester, 1996, p. 255.

[29] Beyer, 'Die USA, die NAFTA und der "Neue Regionalismus", Welt Trends, 24, 1999, p. 131.

[30] For expansive coverage of both theoretical underpinnings of the issues related here, as well as comparative analysis between the European Union and the NAFTA regimes, see Weiler ed., The EU, the WTO and the NAFTA: Towards a Common Law of International Trade, Oxford, 2000.

[31] Paelinck & Polese, 'Modelling the regional impact of continental economic integration: lessons from the European Union for NAFTA', Regional Studies, 33, 1999, p. 727.

[32] Abbott, Integration without Institutions at p. 918.

[33] See in depth d'Appendini & Bislev, eds., Economic integration in NAFTA and the EU: deficient institutionality, Basingstoke, 1999.

[34] As appears to be the trend in some of the other subregional free trade areas in America, e.g. Costa & Zivy, 'Un tribunal supranational dans le Mercosul', Revue Internationale de Droit Comparé, 50, 1998, p. 923.

[35] Abbott, 'The North American Free Trade Agreement and its implications for the European Union', Transnational Law and Contemporary Problems, 4, 1994, p. 119.

[36] Possibly evolving its own law in the paradigm of the acquis communautaire within the European Union legal structure, see Ventury, 'First Arbitration Award in Mercosur - A Community Law in Evolution ?', Leiden Journal of International Law, 13, 2000, p. 447; Samtleben, Erster Schiedsspruch im Mercosur - wirtschaftliche Krise als rechtliche Herausforderung?', Europäische Zeitschrift für Wirtschaftspolitik, 2000, p. 77.

[37] Estevadeordal, 'Negotiating Preferential Market Access: The Case of the North American Free Trade Agreement', Journal of World Trade, 34, 2000, p. 141.

[38] Shoyer, 'Market Access and the North American Free Trade Agreement', Transnational Law and Contemporary Problems, 4, 1994, p. 133; for non-tariff barriers see Kerr, 'Removing Health, Sanitary and Technical Non-Tariff Barriers in the NAFTA - A New Institutional Economics Paradigm', Journal of World Trade, 31, 1997, p. 57.

[39] Glossop, 'NAFTA and Competition Policy', European Company Law Review, 1994, p. 191.

[40] Art 302 NAFTA " 1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good. 2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in

accordance with its Schedule to Annex 302.2."

[41] Clark, Sawyer & Sprinkle, 'Tariff elimination staging categories and the North American Free Trade Agreement', Economia internazionale, 2000, p. 141.

[42] CUSFTA Art. 405: Waiver of Customs Duties.

[43] CUSFTA Article 403: Customs Fees. 1 Neither Party shall introduce customs user fees with respect to goods originating in the territory of the other Party. 3. The United States of America shall eliminate existing customs user fees on goods originating in the territory of Canada.

[44] Examples of domestic services and industries that either remain protected or are not affected by the NAFTA: i. cultural industries, including publishing, film and video, music and sound recording, broadcasting and cable, ii. federal and provincial government health care and social service programs, including public law enforcement and correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care, iii water in its natural state, including any inter-basin diversion, iv domestic investment screening systems, v environmental, health, safety and labour standards, vi basic telecommunications services.

[45] Pethke, 'Die präferentiellen Ursprungsregeln in der Nordamerikanischen Freihandelszone NAFTA', Recht der Internationalen Wirtschaft, 1998, p. 128.

[46] Cf . Rojas, op.cit., at p. 275.

[47] Cranker & Gudofsky, 'NAFTA Origin Verifications - A Canadian Perspective', International Lawyer, 31, 1997, p. 1007.

[48] Hufbauer & Schott, NAFTA: An Assessment, Institute For International Economics, Washington D. C., 1993, pp. 5-6.

[49] See Marceau, 'NAFTA and WTO dispute settlement rules - a thematic comparison', Journal of World Trade, 31, 1997, p. 25.

[50] Thomas & Ayllon, 'NAFTA Dispute Settlement and Mexico: Interpreting Treaties and Reconciling Common and Civil Law Systems in a Free Trade Area', Canadian Yearbook of International Law, 1995, p. 75; see also: Baranes, 'Following Suit: A Comparison of Dispute Resolution Mechanisms under NAFTA Chapter 20 and the Canada-Israel Free Trade Agreement', Canadian Yearbook of International Law, 35, 1997, p. 291.

[51] Lopez, 'Dispute Resolution Under NAFTA: Lessons from the Early Experience', TILJ, 32, 1997, p. 163.

[52] Loungnarath & Stehly, 'The General Dispute Settlement Mechanism in the North American Free Trade Agreement and the World Trade Organisation System: Is North American regionalism Really Preferable to Multilateralism?', Journal of World Trade, 34, 2000, p. 1.

[53] Garcia, 'Decisionmaking and Dispute Resolution in the Free Trade Area of the Americans: An Essay in Trade Governance', Michigan Journal of International Law, 18, 1997, p. 357.

[54] Winham, 'NAFTA Chapter 19 and the Development of International Administrative Law - Applications in Antidumping and Competition Law', Journal of World Trade, 32, 1998, p. 65.

[55] Preusse, 'Sechs Jahre Nordamerikanisches Freihandelsabkommen NAFTA: Eine Bestandesaufnahme', Aussenwirtschaft, 2000, p. 333; Castro, 'Una evaluación del TLCAN a quatro años de entrar en vigor', Relaciones Internacionales, 79, 1999, p. 49.