

**THE U.S.-MEXICO FREE TRADE AGREEMENT:  
LEGAL ISSUES FOR AGRICULTURE**

Fred O. Boadu\*

*U.S.-Mexico Free Trade Issues for Agriculture Series  
TAMRC International Market  
Research Report No. IM-9-91  
April 1991*

\* Assistant Professor of Agricultural Economics, Department of Agricultural Economics, Texas A&M University.

---

## THE U.S.-MEXICO FREE TRADE AGREEMENT: LEGAL ISSUES FOR AGRICULTURE

---

Texas Agricultural Market Research Center (TAMRC) U.S.-Mexico Free Trade Issues for Agriculture Series, TAMRC International Market Research Report No. IM-9-91, by Dr. Fred O. Boadu, Department of Agricultural Economics, Texas A&M University.

**ABSTRACT:** A free trade agreement (FTA) is first and foremost a *legal document*, a governance mechanism. This paper discusses some of the legal issues concerning the proposed United States-Mexico FTA and how the resolution of the issues would affect agricultural trade between the two countries. A brief overview of the legal aspects of U.S. Mexico agricultural trade is provided. The legal issues surrounding the negotiation of a U.S.-Mexico free trade agreement are surveyed. Finally, the priority legal issues relating to agriculture for consideration in the negotiations are set out.

*The Texas Agricultural Market Research Center (TAMRC) has been providing timely, unique, and professional research on a wide range of issues relating to agricultural markets and commodities of importance to Texas and the nation for more than two decades. TAMRC is a market research service of the Texas Agricultural Experiment Station and the Texas Agricultural Extension Service. The main TAMRC objective is to conduct research leading to expanded and more efficient markets for Texas and U.S. agricultural products. Major TAMRC research divisions include International Market Research, Consumer and Product Market Research, Commodity Market Research, and Contemporary Market Issues Research.*

---

## THE U.S.-MEXICO FREE TRADE AGREEMENT: LEGAL ISSUES FOR AGRICULTURE

---

### EXECUTIVE SUMMARY

A free trade agreement (FTA) is a *legal* document. Under the constitution of both Mexico and the United States, international agreements entered into by the federal government stand on equal footing with federal law. This means a U.S.-Mexico FTA would preempt state laws and render all *inconsistent* states' agricultural trade rules and regulations *unconstitutional*.

A U.S.-Mexico FTA would be governed by international law, especially the General Agreement on Tariffs and Trade (GATT). Under GATT rules, the tariff and nontariff concessions exchanged between the U.S. and Mexico would not have to be extended to third countries as required under the most-favored nation (MFN) clause. This would allow the U.S. and Mexico to internalize benefits under the FTA.

The U.S. and Mexico have similar negotiation objectives: to reduce border and nonborder measures impeding agricultural trade between the two countries. Border measures refer to those policies that restrict the entry of imports into a country. Nonborder measures (NBMs) refer to those domestic policies that tend to give unfair advantage domestic producers and discriminate against imports.

Border measures include tariffs, preference schemes, and quantitative and qualitative restrictions. Negotiations on tariffs will focus on U.S. duties on Mexican horticultural, fruits, and vegetables imports. Duties on these items range between .06% to 7%. Elimination or reduction of these tariffs will significantly increase Mexican horticultural imports into the U.S. Most other Mexican agricultural imports enter the U.S. duty-free under the U.S. Generalized System of Preferences (GSP). Mexican duties on U.S. agricultural products range between 10% to 20% and primarily affect U.S. exports of beverages, dairy products, processed fruit products, and live animals. Elimination or reduction of Mexican tariffs may have only a moderate effect on U.S. exports due to the income elasticity of demand for these products in Mexico.

Quantitative restrictions include quotas, voluntary restraint agreements (VRAs), and licensing. Quotas and VRAs primarily affect beef and sugar imports from Mexico. Coffee may be subject to Mexican quotas if the International Coffee Organization (ICO) is able to come up with an agreement. The principal concern of the U.S. at the moment is import licensing laws in Mexico. Licensing is being used in Mexico to restrict imports of U.S. grain, beverages, dairy products, and live animals. Negotiations will be difficult on these points given the potential effect on production of grain in the rural areas of Mexico.

Qualitative restrictions in the U.S. and Mexico also hamper increased trade between the two countries. Sanitary and phytosanitary regulations in the U.S. and Mexico, U.S. marketing orders, and customs procedures are critical issues for negotiation under the proposed FTA. Imports of horticultural products and live animals are affected by U.S. qualitative restrictions while exports of U.S. animals are hampered by these restrictions. The binational technical committee formed in 1989 will be instrumental in setting guidelines for the negotiations on qualitative restrictions.

NBMs are primarily government subsidies and payments to domestic producers. Thus, U.S. farm and commodity programs and export credits are NBMs. Mexico also has export credit programs.

The U.S.-Mexico FTA would likely have little effect on existing support programs in the U.S. especially because they contribute to lower food and commodity prices in Mexico. Mexico has eliminated most government support under its restructuring and privatization programs. Government subsidy and support programs will be dealt with under the antidumping and countervailing duty laws of the countries.

Some of the critical issues that will shape the final outcome of the proposed negotiations include whether to proceed with a bilateral or trilateral (U.S.-Mexico-Canada) agreement, the implications of the FTA for hemispheric political and economic interdependencies, the relationship between the proposed FTA and political and economic stability in Mexico, and the extent to which the U.S. and Mexico link negotiations on agricultural issues with issues from other sectors of the economy (for example, petroleum in Mexico and immigration in the U.S.). Negotiations will proceed on a trilateral basis but agreements may be a series of bilaterals. Streamlining concessions under the FTA with existing tariff arrangements in Latin America and the Caribbean could present problems. The FTA will emerge as the centerpiece of the Mexican restructuring program. Only good faith negotiations on the part of the U.S. and Mexico will resolve potentially subversive linkage issues.

## **THE PROPOSED U.S.-MEXICO FREE TRADE AGREEMENT: LEGAL ISSUES FOR AGRICULTURE**

A free trade agreement (FTA) is first and foremost a *legal document*, a governance mechanism. This paper discusses some of the legal issues concerning the proposed United States-Mexico FTA and how the resolution of the issues would affect agricultural trade between the two countries. The standard legal issues in any FTA are those associated with the reduction or elimination of tariff and nontariff barriers, application of each nation's trade remedy laws, sectorial issues, trade-related investment measures, dispute settlement mechanisms, and safeguard clauses (Van Heuven; Nolle). Following a brief overview of U.S. Mexico agricultural trade and the role of FTAs, the legal issues surrounding the negotiation of a U.S.-Mexico free trade agreement are surveyed. Finally, the priority legal issues relating to agriculture for consideration in the negotiations will be set out.

### **LEGAL ASPECTS OF U.S.-MEXICO AGRICULTURAL TRADE**

An overview of U.S.-Mexico trade and the legal framework which governs that trade will help set the stage for considering the implications of legal issues relating to agriculture in a U.S.-Mexico FTA. After a brief review of the history and present trend of U.S.-Mexico trade, the domestic and international law context of a U.S.-Mexico FTA is discussed. The negotiation objectives of both countries are examined, the time frame for the negotiations is outlined, and U.S. legislation relevant to a U.S.-Mexico FTA is presented.

#### **History and Present Trend in U.S.-Mexico Agricultural Trade**

U.S.-Mexico agricultural trade dates back to the 1800s (Smith). Despite disparities in technology and stage of development, the two countries have been able to accommodate each other's import and export needs fairly well. Agricultural trade was \$4 billion of the total trade of \$52 billion in 1989 [\$25 billion in exports to Mexico and \$27 billion in imports]. More importantly, the growth in agricultural trade between the two countries far exceeded the growth in worldwide agricultural trade during the same period (about 12% growth between U.S.-Mexico versus 2.6% growth worldwide) (GAO). A properly-designed FTA should lead to increased agricultural trade between the two countries based on these historical trends.

In addition to the trade in agricultural products, the two countries are interdependent in several important ways. The proposed FTA will be an additional arrangement among many multilateral and bilateral treaties to which the two countries are parties. One count puts the number of U.S. agencies involved in managing U.S.-Mexico treaties at 85 (Rudolph; Congressional Research Service). Also, the two countries share a 2,000-mile border, probably the most economically lucrative international border in the world. Six states in Mexico (Baja California Norte, Sonora, Chihuahua, Coahuila, Nuevo Leon and Tamaulipas) and four in the U.S. (California, Arizona, New Mexico, and Texas) are sometimes considered a single economy based on trade flows and population movement. Despite the visible interaction between the border states, the economic and legal implications of the FTA will be felt throughout the U.S. and Mexico. Thus, the legal aspects of the FTA will be examined from both national and state perspectives.

### International Law Context of the FTA

Both U.S. and Mexican laws relating to free trade agreements are relevant and are discussed in this section.

#### *U.S. International Law and FTAs*

The U.S. is a contracting member of the most important multilateral trade arrangement governing world trade: the General Agreements on Tariffs and Trade (GATT). Formed following World War II, the U.S. has been, and continues to be, a leading advocate of organizing world trade under the rules of the GATT. Every so often, GATT member countries meet to discuss new rules and procedures for organizing world trade. These meetings and discussions are popularly referred to as "Rounds". The current 'Round' of negotiations, known as the "Uruguay Round," takes the name of the place where the announcement for a new round of negotiations was first made.

The GATT operates under two basic principles: *reciprocity* and *most-favored nation*. Reciprocity means that a GATT member may lower or eliminate its tariffs only in response to a *concession* made by another member. Once a tariff concession is made on a particular item, that item is *bound* against increase above the agreed level (Dam). The most-favored-nation principle requires that, even though tariff concessions are made and bound between two members, the bound tariff level must be applied to *all* members of the GATT on a non-discriminatory basis. Even though GATT rules have dealt mostly with tariffs, non-tariff barriers to trade have become a matter of heated negotiation among the contracting parties in recent years. Later sections of this paper deal with various issues of non-tariff barriers to trade.

GATT rules are important to a U.S.-Mexico FTA for several reasons. First, the current round of negotiations (Uruguay Round) focuses primarily on eliminating subsidies to agriculture. The U.S. initially proposed ending all agricultural restrictions and subsidies affecting international trade by the year 2,000 but modified its proposal to freeze all farm supports, subsidies, and protection for several years. The European Community (EC) proposed reducing rather than eliminating subsidies while the Cairns group initially proposed eliminating world agricultural subsidies by the year 2,000 with certain exemptions for developing countries (Smith). Negotiations broke off in December of 1990 without reaching agreement. A proposed compromise agreement offered just before negotiations were suspended would have reduced domestic support, import tariffs, and export subsidies by 30% from 1990 levels for 1991 through 1995 with some exceptions for developing countries (Rosson). Also, sanitary and phytosanitary regulations affecting agricultural trade were under discussion. It would have been more efficient from both procedural and substantive perspectives to have negotiated the sanitary and phytosanitary rules under a U.S.-Mexico FTA within the guidelines provided by a GATT agreement. Absent such an agreement, U.S. and Mexican negotiations will have to develop such rules which later may be inconsistent with rules developed under the GATT if the talks resume in earnest at some date.

GATT rules are important to the proposed FTA for another reason. The rules would allow the U.S. and Mexico to be the sole beneficiaries of any concessions made to one another. GATT Article XXIV defines an FTA as "a group of two or more customs territories in which the duties and other restrictive regulations of commerce....are eliminated on substantially all the trade between the constituent territories in products originating in such territories." Once the U.S. and Mexico satisfy the GATT definition, the concessions under the FTA will *not* be subjected to the most-favored-nation principle. The exclusion of bilateral concessions from most-favored nation treatment might have influenced Mexico's decision to join the GATT prior to initiating FTA discussions with the U.S.

- Increasing U.S. agricultural exports by eliminating barriers to trade (including transparent and non-transparent barriers) and reducing or eliminating the subsidization of agricultural production consistent with the U.S. policy of agricultural stabilization in cyclical and unpredictable markets;
- Creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access, and eliminating and substantially reducing other specific constraints to fair trade and more open market access, including tariffs, quotas, and other non-tariff practices such as unjustified phytosanitary and sanitary restrictions; and
- Seeking agreements by which the major agricultural exporting nations agree to pursue policies to reduce excessive production of agricultural commodities during periods of oversupply, with due regard to the fact that the U.S. already undertakes such policies and without recourse to arbitrary schemes to divide market shares among major exporting countries (Tocco).

Mexican agricultural trade negotiation objectives are tied to the overall economic transformation planning objectives set out by President Salinas. The key elements of the transformation program include:

- Keeping inflation low;
- Further promoting non-oil exports;
- Continuing to privatize and deregulate the economy;
- Stimulating investment - national and foreign, public and private; and
- Lowering the financial deficit of the public sector (Weintraub).

Mexico's attainment of its interrelated objectives has important implications for a U.S.-Mexico FTA. For example, a policy to keep inflation low may not support rigid enforcement of dumping and countervailing duty laws which make agricultural commodities cheap in Mexican markets (Smith). On the other hand, the promotion of non-oil exports will require the elimination of tariff and non-tariff barriers to agricultural exports from Mexico to the U.S. The privatization program will help Mexico attract investments to both the industrial and agricultural sectors of the economy and may lead to increases in exports to the United States. Furthermore, the privatization effort will help reduce the financial burden of the public sector by reducing/eliminating government intervention. In short, the U.S.-Mexico FTA could be argued to be a centerpiece in the Mexican restructuring program.

#### **Time Frame**

The President's authority to negotiate bilateral trade agreements is contained in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418). Under the Act, if an agreement is reached by May 31, 1991, the Congress quickly and without amendment will consider the agreement and implementing legislation. This is the "fast track" procedure and requires the Congress to either accept or reject the agreement without amendments (Congressional Research Service). Congress has 60 legislative days to disapprove "fast track" authority. The 60 legislative days since the President submitted his intent to proceed with negotiations expired at the end of February of 1991 without

- *H.R. 1360 (Richardson)* Contains provisions to revitalize trade between the U.S. and Mexico and to stimulate the international competitiveness of both countries. Introduced March 9, 1989 and referred to the Committees on Rules and Ways and Means.
- *H.R. 4680 (Kolbe)/S. 2428 (Gramm)* Authorizes U.S.-Mexico FTA negotiation and for other purposes. H.R. 4680 introduced April 30, 1990 and referred to the Committees on Rules and Ways and Means. S. 2428 introduced April 30, 1990 and referred to the Committee on Finance.
- *H.R. 5000 (Richardson)* Contains provisions regarding the establishment of a U.S.-Mexico FTA. Introduced June 11, 1990 and referred to the Committee on Ways and Means.
- *S. 356 (Gramm)* Authorizes North American Free Trade Area negotiation and for other purposes. Introduced February 7, 1989 and referred to the Committee on Finance.
- *H.Con.Res. 59 (Kolbe)* Expresses the sense of the Congress that the President should commence negotiations with the Government of Mexico to conclude an agreement to establish free trade between the U.S. and Mexico. Introduced February 27, 1989 and referred to the Committee on Ways and Means.
- *H.Con.Res. 107 (Bustamante)* Urges the President to enter into bilateral negotiations with the Government of Mexico for the purpose of securing reductions in import duties on products of which each country is a principal supplier of the other. Introduced May 12, 1989 and referred to the Committee on Ways and Means.
- *H.Con.Res. 341 (Udall)* Expresses the sense of the Congress with regard to a U.S.-Mexico FTA. Introduced June 19, 1990 and referred to the Committee on Ways and Means.

## **SURVEY OF LEGAL ISSUES FOR AGRICULTURE RELATING TO A U.S.-MEXICO FTA**

The primary legal issues for agriculture relating to a possible U.S.-Mexico FTA can be organized into three categories relating to the three main types of trade restrictions faced by agricultural product trade between the two countries: 1) border measures, 2) non-border measures, and 3) qualitative restrictions.

### **U.S.-Mexico Agricultural Border Measures**

Border measures directly restrict the inflow and outflow of goods and services to a country. The most important border measures are tariffs, preference schemes, and quantitative restrictions.

#### *U.S.-Mexico Agricultural Tariff Restrictions*

Commodity trade in both directions across the U.S.-Mexico border a subject to a complex web of tariffs and duties. Imports of horticultural products (fruits and vegetables) are the primary target

**Table 1: Ad Valorem Equivalent Tariff Rates for Top U.S. Horticultural Imports from Mexico, Fiscal Year 1988.**

Product	Duration	Tariff (cents/kg)
Tomatoes	variable	3.3 - 4.6
Onions	all year	3.9
Peppers, Chili	all year	5.5
Peppers, Bell	all year	5.5
Cucumbers	variable	3.3 - 6.6
Squash	all year	2.4
Strawberries	variable	0.4 - 1.7
Lettuce	variable	0.88 - 4.4
Beans, Green	all year	7.7
Eggplant	variable	2.4 - 3.3
Garlic	all year	1.7

**Table 2: Ad Valorem Equivalent Tariff Rates for Major Mexican Agricultural Imports from the U.S.**

Commodity	Tariff
Dairy Products	20%
Live Cattle	10%
Butter	Value-added tax (10%)
Raisins	20%
Almonds	15% - 20%
Canned Fruit	20%
Wine, Beer	20%
Wood Products	Up to 20%

**Table 3: Mexican Licensing Practices Impeding Imports From the United States**

Commodity	Policy or Practice	Reason for Barrier
Feed grains	Discriminatory regulation of public purchases from private trade; restrictive licensing	Prevent graft and protect producers
Oilseeds	Restrictive licensing during harvest	Protect producers and crushers
Vegetable oils	Restrictive licensing during harvest	Protect producers and crushers
Poultry meat	Fluctuating licensing regulations	Protect producers and processors
Tallow and lard	Restrictive import licensing	Protect producers and processors
Apples; Selected other fruits and vegetables	Restrictive import licensing; tariffs	Protect producers and processors
Seeds for planting	Non-uniform application of plant health regulations increases import delays for corn, sorghum, cucumber, squash, and eggplant	Protect producers and processors

Source: Burst.

*Mexican Agricultural NBM*s

Mexico is not a signatory of the GATT subsidy code. However, Mexico has maintained a bilateral understanding on export subsidies with the U.S. since 1985 (U.S. Senate Report). Mexico claims full compliance with the 1985 understanding even though U.S. exporters still raise issues about some practices. The major Mexican export subsidies objected to by U.S. producers include preferential pre-export and export financing under the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX); tax rebates under the system of Rebate Certificates for Indirect Taxes (CEDI); tax credits and exemptions under the Certificates of Fiscal Promotion (CEPROFI); and preferential pricing of energy (USITC, 1989). Consistent with the objective of the Mexican government to rationalize the economy, most of the subsidy programs have been terminated or rationalized to reflect market conditions.

*U.S. and Mexican Antidumping and Countervailing Duty Laws*

Potential NBM issues for a U.S.-Mexico FTA could be handled within the framework of the Bilateral Subsidies Agreement of 1985. Under that agreement, the U.S. agreed to apply an "injury test" in investigating charges of dumping and unfair subsidization. Charges of dumping, subsidy violations, and other unfair export trade practices are handled by the U.S. Escape Clause (Section 201), dumping laws, and the countervailing duty laws. Antidumping and countervailing duty laws are especially relevant to policing NBMs.

Antidumping and Countervailing Duty Laws play different but interrelated roles in international trade. *Antidumping duties (AD)* are intended to check unfair pricing practices by private exporters. Dumping occurs when a foreign exporter charges a lower price on exports to the duty-imposing country than on sales in the country of export (Dom). On the other hand, *countervailing duties (CVD)* are intended to offset governmental unfair practices affecting prices charged by private exporters. CVDs are aimed primarily at subsidies offered a foreign exporter by his/her government. GATT Article VI:1 requires that a country intending to impose an AD or CVD must establish that there has been a "material injury" to its domestic industry. Several contracting GATT countries have enacted AD and CVD legislation to protect domestic industry.

U.S. Antidumping and Countervailing Duty Law

U.S. CVD law states that if a country provides a direct or indirect subsidy to exports to the United States and if the USITC determines that a U.S. industry either is materially injured or is threatened with material injury or that the establishment of an industry in the U.S. is materially retarded by reason of subsidized imports, then a countervailing duty, in addition to any other duties, equal to the amount of the net subsidy can be imposed. "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant" (7 U.S. Code Annotated Section 1677 (4)(D)(7)(A)). "Net Subsidy" is obtained by "subtracting from gross subsidy, the amount of export taxes, fees, etc." [7 U.S. Code Annotated Section 1677 (4)(D)(6)].

U.S. AD law allows that where imports are being or likely to be sold in the U.S. at less than fair market value (FMV) and has the same effect on U.S. industry as under the countervailing duty law, then an antidumping duty may be imposed equal to the amount by which the FMC exceeds the U.S. price of the imports. The FMC is determined based on the price of the imported products in other markets. Where no identifiable market is available for the item, the USITC uses "the Best Evidence Available (BEA)" rule. The use of this rule has generated a lot of controversy between the U.S. and

**Table 4: The Application of U.S. Antidumping and Countervailing Duty Laws to Mexican Imports**

Action	Product	Outcome	Date
Escape Clause (Sec. 201)	Asparagus	Positive ITC recommendation rejected by the President	1976
Escape Clause	Shrimp	Positive ITC recommendation rejected by the President	1976
Escape Clause	Honey	Positive ITC recommendation rejected by the President	1976
Escape Clause	Lime	Complaint dismissed by ITC	1989
Dumping	Tomatoes	No dumping found by the Commerce Dept.	1978
Dumping	Fresh Flowers	Dumping found by ITC and AD duty imposed	1987
CVD	Fresh Cut Flowers	Not countervailable	1983
CVD	Fresh Asparagus	Not countervailable	1983

Source: Smith and USITC.

#### *Sanitary and Phytosanitary Regulations*

Sanitary and phytosanitary regulations affect international trade in animal and plant products. These regulations are major barriers to agricultural trade between the U.S. and Mexico and are likely to become even more restrictive in the future unless some agreement on common standards acceptable to both countries is reached. Three main factors complicate negotiations in this area. First, sanitary and phytosanitary regulations and guidelines are being discussed in a multilateral context under the GATT. Negotiations for a U.S.-Mexico FTA have already been delayed pending the outcome of those talks. If GATT talks resumed again in earnest, U.S.-Mexico deliberations on sanitary and phytosanitary regulations could await resolution in GATT. Second, there are both Federal and State animal and plant health regulations in the U.S. which need streamlining. Finally, sanitary and phytosanitary regulations are often used specifically to restrict trade rather than to protect animal and plant health. Separating out legitimate regulations and those intended simply to restrict trade may prove difficult.

The major imports into the U.S. affected under these regulations include avocados (banned completely from the U.S. due to the seed weevil) and oranges, grapefruit, and tangerines because of citrus canker and fruit flies (Table 5). Animal health regulations are strict in both countries. Exports and imports between the countries require certification of inspection at the border areas. Vehicles entering from Mexico are subject to inspection to prevent the introduction of insect pests and plant diseases. These requirements sometimes cause delays at border points.

for domestic produce. Marketing orders are agreements among U.S. producers of a given commodity to provide collective solutions for marketing and distribution problems (GAO).

Mexico has been able to meet U.S. marketing order requirements in general but has been hurt by the expansion in number of commodities subject to orders and/or the changes in marketing order specifications. Discussions on U.S. marketing orders in the U.S.-Mexico FTA negotiations will likely follow the guidelines set by the five binational technical groups established in August 1989 to deal with issues of technical and administrative assistance programs, marketing, inspection and research systems, data collection procedures, and harmonization.

#### *Administrative Barriers*

Administrative barriers to trade constitute "invisible tariffs" (Dam). Some of the important administrative barriers that will need to be addressed in U.S.-Mexico FTA negotiations include documentation, rules of origin, customs procedures, and valuation. Negotiations on administrative procedures are difficult because such procedures are necessary for trading to occur but are easily and often abused. The problem for negotiators, of course, will be to sort out those requirements and procedures that are more burdensome than necessary to accomplish legitimate non-protective functions of trade administration (Dam). The work of the binational technical group will likely be invaluable to negotiators of a U.S.-Mexico FTA in developing fair and open administrative procedures to trade. If Mexico adopts the "Line Release" automated commercial system used by U.S. customs, processing of imports at the border would improve considerably. Two procedural issues deserve further comment: rules of origin and national treatment.

#### Rules of Origin

Even though a U.S.-Mexico FTA would be intended to eliminate all tariffs and non-tariff barriers to trade between the two countries, both will maintain their tariffs against third countries. Consequently, third countries would have an incentive to transship their goods through one country to reach the other in order to avoid the tariff and nontariff barriers of both countries. Rules of Origin will be needed to eliminate this problem. The rules are usually stringent as is the case in the U.S.-Canada FTA. Goods produced by either U.S.-or Canadian-owned maquiladora operations in Mexico are denied free trade treatment in both countries (DOC). The general rule is that the goods must be wholly produced in the country of one of the FTA partners or must have undergone substantial transformation in that country. Textile and apparel goods have presented difficult problems in enforcing the "Rules of Origin" provisions of previous FTAs.

#### National Treatment

"National treatment" provisions require that each country participating in an FTA treat imported goods from other participating countries as favorably as their own. Consequently, "Buy America" or "Buy Mexico" laws would violate the spirit of National Treatment provisions. The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Farm Bill) includes provisions to require country of origin labelling of fruits and vegetables at the retail level. These laws could be interpreted by Mexico as having discriminatory purposes. On the other hand, the labelling requirements may force Mexico to export more competitive products because the source of the product will be known by the consumer. Because many products of each country are well known in the markets of the other country, national treatment requirements may not significantly affect trade under a U.S.-Mexico FTA.

Mexican imports preference over imports from other countries. At a minimum, the Mexicans will likely request that Mexico be consulted prior to changes in marketing order specifications or additional commodities are added.

#### **Issue 4: Canadian Participation in the Negotiations**

Both Mexico and the U.S. have agreed in principle to allow Canada to participate in U.S.-Mexico FTA negotiations. The U.S. is the major agricultural trading partner of both countries but the trade between the other two countries is low. A trilateral agreement would alleviate several problems such as rules of origin and differences in sanitary and phytosanitary rules. However, a trilateral arrangement will require a longer time to negotiate and may require further concessions from Mexico that may be politically difficult to satisfy. Although the U.S. has agreed to pursue negotiations on a trilateral basis it is not yet clear whether the FTA will be a trilateral document or a series of bilaterals.

#### **Issue 5: Linkages to Other Latin American Initiatives**

There are strong interests in the Caribbean and the rest of Latin America for trade arrangements with the U.S. Brazil, for example, recently expressed an interest in an FTA with the United States. The agreement with Mexico will have to address not only potential but also existing initiatives such as the Caribbean initiative, the Andean nations initiative, and the recently introduced Enterprise for the Americas initiative. If Mexico emerges as the dominant trade partner with the U.S., with the door essentially closed to the other Latin American nations, U.S. influence and interests in the rest of the region could be threatened. At the same time, Mexico will be concerned about its linkage to the Latin American Integration Association (ALADI).

#### **Issue 6: Consistency with GATT**

The currently deadlocked GATT negotiations could pose some timing problems for negotiations of a U.S.-Mexico FTA. The deadlock has had a negative impact on Congressional perceptions of U.S. participation in trade agreements in general. Also, the U.S. has repeatedly made it clear that a U.S.-Mexico FTA must be consistent with GATT. If the deadlock on the GATT agreement delays negotiations on a U.S.-Mexico FTA further, momentum could be lost in both the U.S. and Mexico and ultimately derail the negotiations. On the other hand, policymakers may treat the failure of the GATT negotiations as evidence of the futility of *multilateral* negotiations and push the U.S. towards a *bilateral* arrangement with Mexico. However, it may be difficult for the President to obtain "fast track" approval from Congress under these circumstances.

#### **Issue 7: Political and Economic Stability in Mexico**

Adherence to the principles of a negotiated agreement depends on the acceptance of the agreement into national life and culture (Henkin). In order for U.S.-Mexico FTA to make a contribution to strengthening U.S.-Mexico trade, it must be accepted into the national life of both

## REFERENCES

- Burst, A., Inter-American Group, Foreign Agriculture Service, U.S. Department of Agriculture, Washington, D.C., private communication with author, March 3, 1991.
- Cable, V., "Textiles and Clothing" in Finger and Olechowski, eds. *The Uruguay Round: A Handbook on the Multilateral Trade Negotiations*. (Washington, D.C.: World Bank, 1987).
- Congressional Research Service, "Report on Inter-American Relations," 100<sup>th</sup> Cong., 2D Sess. (S.PRT. 100-168), 1988.
- Dam, K.W. *The GATT: Law and International Economic Organization*. (Chicago: The Univ. of Chicago Press, 1970).
- Finger, M.J. and A. Olechowski (editors). *The Uruguay Round: A Handbook on the Multilateral Trade Negotiations*. (Washington, D.C.: World Bank, 1987).
- "The General Agreement on Tariffs and Trade," Geneva, Switzerland, 1986.
- Hathaway, D.E., *Agriculture and the GATT: Rewriting the Rules*, Institute For International Economics, No. 20, Washington, D.C., 1987.
- Henkin, L. *How Nations Behave*. (New York: Bethuen, 1970).
- Herget, J.E. and J. Camil. *An Introduction to the Mexican Legal System*. (Buffalo, N.Y.: William S. Hein and Co., 1978).
- Hudec, R.E. *The GATT Legal System and World Trade Diplomacy, 2d ed.* (Salem, New Hampshire, Butterworth Legal Publishers, 1990).
- Messerlin, P. "Nonborder Measures to Assist Industry," in Finger and Olechowski, eds. *The Uruguay Round: A Handbook on the Multilateral Trade Negotiations*. (Washington, D.C.: World Bank, 1987).
- "Mexico: Not So Sweetcorn", *The Economist*, March 2, 1991, p.44.
- Nolle, D.E. (Editor). *The Canada-U.S. Free Trade Agreement*. (New York: New York Univ. Press, 1990).
- Olechowski, A. "Nontariff Barriers to Trade" in Finger and Olechowski, eds. *The Uruguay Round: A Handbook on the Multilateral Trade Negotiations*. (Washington, D.C.: World Bank, 1987).
- Rudolph, J.D. (Editor). *Mexico: A Country Study*. Washington, D.C.: U.S. Government Printing Office, 1985.
- Smith, J.F., "United States-Mexico Agricultural Trade," *U.C. Davis Law Review* Vol. 23, No. 3, Spring 1990.
- Tocco, A.F., "United States-Mexico Free Trade Agreement," *Hamline Law Review* Vol. 12, No. 3, Fall 1989.

