



405:NAFTA: 10 Years Later

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Faculty Biographies

Brian D. Day

Brian Day was legal counsel to Vancouver International Airport Authority, responsible for legal services, revenue contract administration, and risk management and insurance. Vancouver International Airport is Canada's second largest airport and was recently rated the #1 Airport in North America by the International Air Transport Association. The Airport Authority also manages and operates 14 other airports in Canada, the Caribbean, Chile, and elsewhere.

Before joining the Airport Authority, Mr. Day was in private practice in the areas of civil litigation, criminal law, employment, administrative and commercial law, and all aspects of aviation law. He advised Canada's federal Department of Transport on aeronautics and airports. Mr. Day has now returned to private practice specializing in airport law but continues to provide legal services to the Airport Authority as outside counsel.

Mr. Day is a member of the Union International des Avocats and the Canadian Corporate Counsel Association. He is chair of the Canadian Airports Council (CAC) Legal Committee whose members advise Canada's major international airports. He is also a member and former chair of the CAC Risk Managers and Insurance Committee. Mr. Day teaches Airport Law for the International Air Transport Association.

Mr. Day received his BA and LLB from the University of Victoria and was called to the Bar of British Columbia in 1979.

Félix Todd Piñero

Félix Todd Piñero is secretary of the board of directors and legal counsel of Tubos de Acero de Mexico, SA (Tenaris-Tamsa). His responsibilities include providing legal advice to Tenaris, SA in its business in Mexico. His principal substantive areas include commercial, antitrust, corporate, and securities laws.

Prior to Mr. Todd's position in Tenaris-Tamsa, he was in-house legal counsel for Union Carbide Mexicana, SA de CV and legal director of Colgate Palmolive, SA de CV, both companies in Mexico.

Mr. Todd is currently first vice president of the General Bureau of Asociacion Nacional de Abogados de Empresa, AC ("ANADE").

Mr. Todd received his title from the Universidad Veracruzana and holds a post-graduate degree in law from the Universidad Nacional Autonoma de Mexico ("UNAM"). He has taken several additional courses in different law matters in the Instituto Tecnologico Autonomo de Mexico ("ITAM") and Universidad Panamericana ("UP").

Alex A. Shorten

Alex A. Shorten is vice president and general counsel of Weyerhaeuser Company Limited (WCL), headquartered in Vancouver, British Columbia, is a director of the company, and a director and officer of several subsidiary companies. WCL is a wholly owned subsidiary of Weyerhaeuser Company of Federal Way, Washington. The law and corporate environmental services departments report to Mr. Shorten.

Prior to joining Weyerhaeuser, he was managing partner in the Vancouver law firm of Swinton & Company now Miller Thomson, practicing in the areas of corporate commercial, construction, and forestry law. Mr. Shorten has worked in private practice and as in-house counsel in the construction and forest products industries.

Mr. Shorten is a former chair of the corporate counsel section of the Canadian Bar Association, B.C. branch, and former chair of the construction law section, C.B.A., B.C. branch, and is a former director of the Canadian Corporate Counsel Association. He was also a director of the Canadian Construction Association. Mr. Shorten has participated in a number of legal education workshops as a speaker on topics as varied as the North American Free Trade Agreement, law office management, international litigation, mergers and acquisitions, and construction law and has chaired two conferences of the Canadian Corporate Counsel Association.

Mr. Shorten is a graduate of the University of Saskatchewan Law School.

Paul Vandevent

Paul K. Vandevent is an attorney in the Office of General Counsel at Ford Motor Company. He is responsible for handling international trade and customs matters affecting Ford on a worldwide basis.

Prior to joining Ford, Mr. Vandevent was senior international counsel at Delphi Automotive Systems and customs attorney at General Motors Corporation. He was responsible for international trade and customs issues at Delphi and GM. Prior to these positions, he was an associate with Soller, Shayne & Horn, a law firm that specialized in customs and international trade matters.

Mr. Vandevent is a member of the international law section of the ABA and the Michigan State Bar Association. He has been an active member of the customs committee in both organizations. For the Michigan State Bar, he organized a seminar on NAFTA. He is the author of "Corporate Comment: The Uruguay Round and the World Trade Organization: A New Era Dawns in the Private Law of International Customs and Trade," which was published in the *Case Western Reserve Journal of International Law*.

He received an AB from Columbia University and a JD from Case Western Reserve Law School.

Francisco J. Velazquez

Francisco Velazquez-Osuna, is a senior partner of the Mexican full-service law firm Goodrich, Riquelme y Asociados. He has extensive experience in the international, corporate, business

transactions, and international trade areas advising clients including large and medium sizes multinational companies.

Mr. Velasquez-Osuna has been a lecturer in the U.S., Canada, and Mexico, on doing business in Mexico, strategic alliances, foreign investment, competition law product liability, cross border legal issues, and NAFTA issues and has written several articles on such areas. He taught on legal aspects of NAFTA at the Universidad Iberoamericana in Mexico City and family and estates, obligations civil procedure, economic law, and consular law at the Universidad Nacional Autonoma de Mexico, Acatlán Campus.

He was the national chairman of the National Association of Corporate Attorneys in Mexico in Spanish ("ANADE") and the coordinator of the NAFTA dispute-settlement committee of the Mexican Business Coordinating Council during NAFTA negotiations. He is currently chair of the ANADE's international law committee. Mr. Velazquez-Osuna is a board member of the ANADE, the Mexican Bar Association, the Mexican law committee of American Chamber of Commerce of Mexico and the section of international law and practice of the ABA.

Mr. Velazquez-Osuna is a licensed attorney in Mexico who graduated from the Universidad Nacional Autonoma de Mexico and received a Masters of Law degree from the American University in Washington, DC. He served as an intern at the U.S. International Trade Commission.

NAFTA: 10 YEARS LATER

Mexico's Industrial Development

- Mexico's industrialization process began in mid-50's.
- The strategy was import-substitution.
- The domestic demand became the main engine of growth.
- An industrial base was developed.

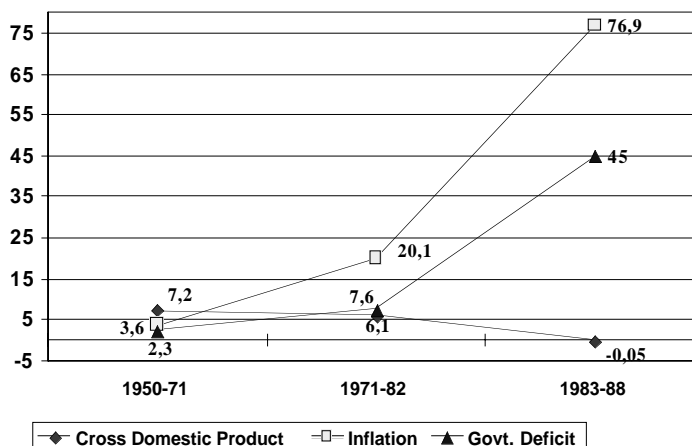
There were 3 distinct economic stages

1957 – 71: The golden years: high economic growth with low inflation.

1972 – 82: The beginning of problems: slower growth with raising inflation.

1983 – 88: The lost years: no growth and high inflation.

Mexico
Selected Macroeconomic Variables
(Annual growth rate)



Trade Regime

During the beginning of the 80s the Mexican economy was closed:

- High import duty rates.
- Import licensing system.
- Import permits.
- Price controls.
- No membership in GATT.

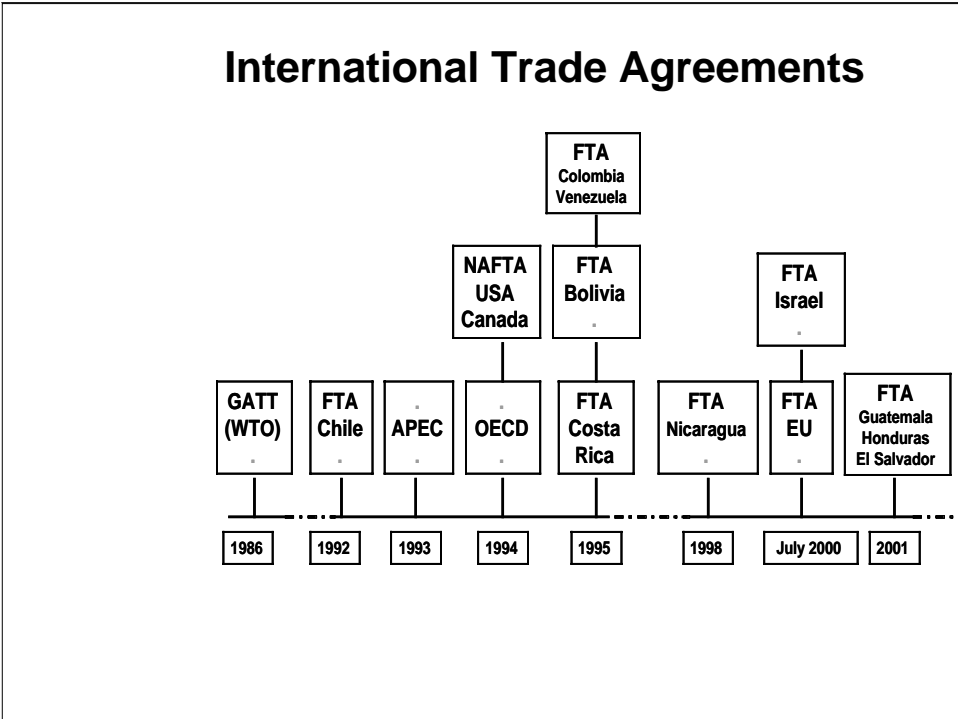
Trade liberalization and structural changes

1984 – 1985

- Import tariff reduction.
- Import license requirements.
- Export controls eliminated.

1985 –1988

- The process of trade liberalization was accelerated.
- 1986: GATT membership.



- ### NAFTA
- NAFTA is one of the most comprehensive regional free-trade agreements in the world.
 - It was the first agreement between a developed and an emerging country.
 - 10 year transition period.
 - Elimination of non-trade barriers.
 - Including Government procurement.

NAFTA

Elimination of restrictions on investment.

- Open services trade.
- Intellectual property rights.
- Contains 3 dispute settlements mechanisms.
- Side agreements on labor and environment.

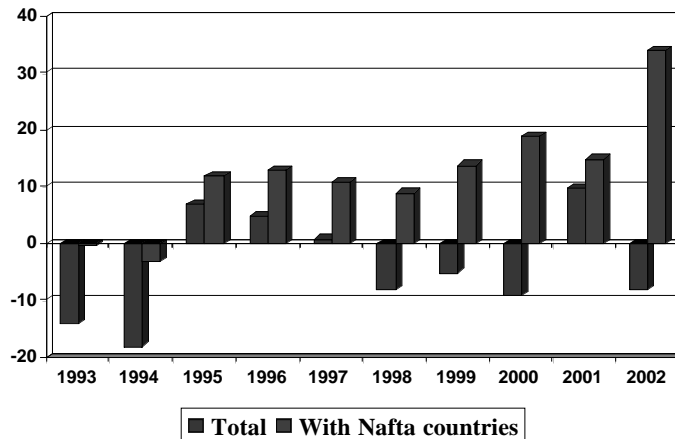
Benefits of NAFTA

- NAFTA was not only a free trade agreements but also was the mechanism to promote the changes within Mexico needed to support the new economic strategy.
- NAFTA implementation required changes in regulations, laws, institutions, way of doing business, competitiveness, attitudes, etc.

Benefits of NAFTA

- No need to re-invent Mexico every 6 years, every time the government changes.
- The biggest change was the perception of the USA from a “distant neighbor” to a “business partner”.

Merchandise trade balance



Source: IMF, Secretaria de Economia

The Economic Effect

1. Mexico went from 13th largest to the 9th largest trading nation in the world,
2. Exports more than quadrupled since 1994.
3. Direct foreign investment grew from \$3.2 billion to \$14.5 billion a year.
4. USA absorbs more than 88 percent of exports.

The Economic Effect

5. Mexico is ranked 7 in the world in exports and number 9 in imports.
6. Largest exporter in Latin America.
7. Ranked 3 among the emerging economies as recipient of direct foreign investment.
8. Exports are the main engine of economic growth.
9. Main concern: increased dependency on the US economy.

Threats to Mexico as part of NAFTA

The purpose was to use NAFTA to industrialize Mexico but 10 year later, it has not brought the high levels of sustained economic growth expected.

Since 1994-2003 two successive government led by Ernesto Zedillo and Vicente Fox have failed to make reforms to open the mexican economy (e.g.: energy sector).

Peasants are forcing the Mexican government to negotiate a postponement of the tariff reduction with the USA in the agricultural sector.

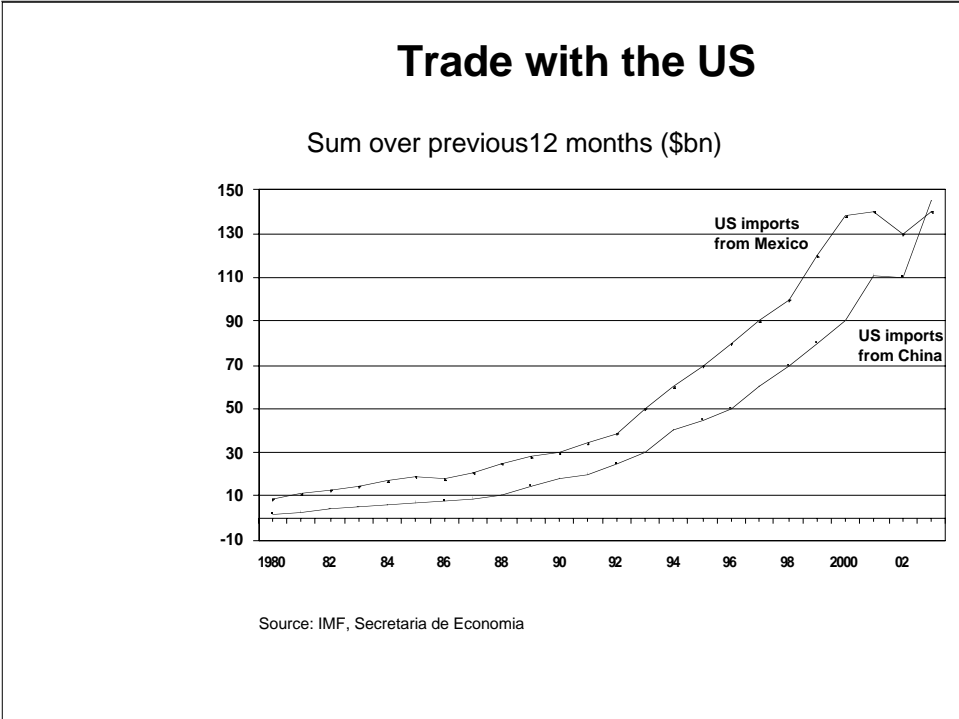
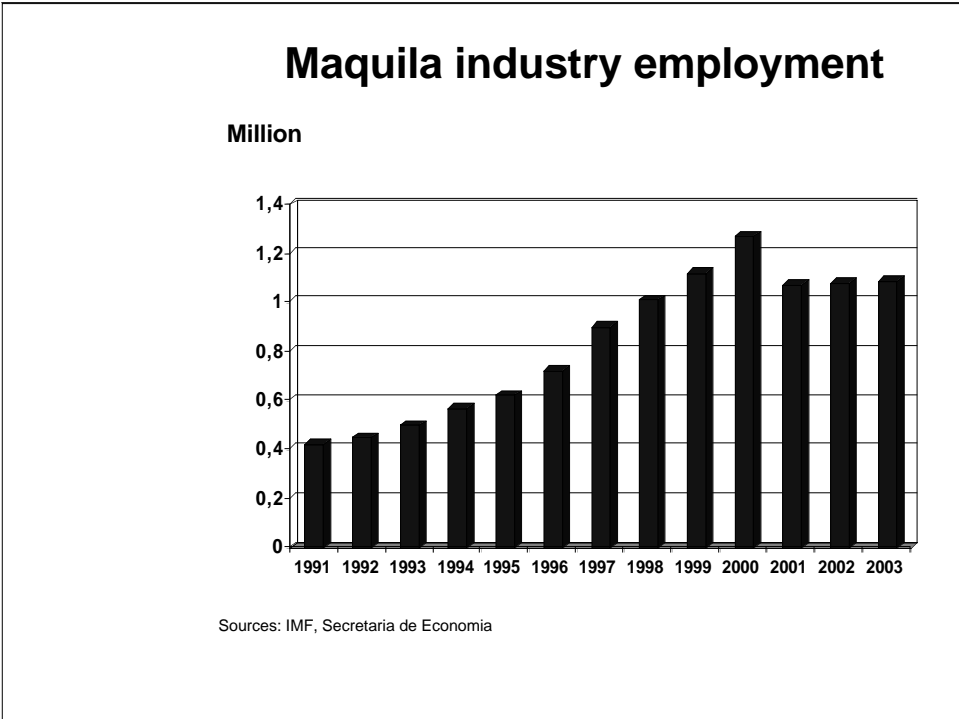
After September 11, 2001 and due to safety and security reasons the concept of seamless borders and an integrated three nations economy is still way off.

China

Mexico is facing severe competition as supplier of USA especially from China.

In 2002, China overtook Mexico as the largest exporter to USA after Japan.

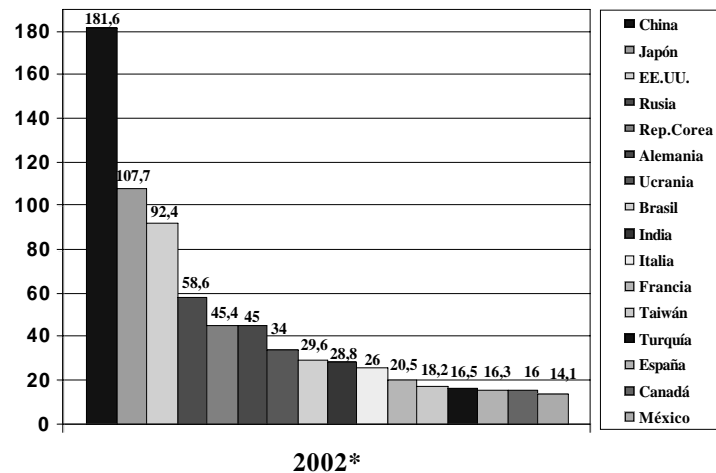
The maquiladora sector flourished from 1998-2000. In the past two years more than 600 maquiladoras have left Mexico. An estimated 200,000 jobs were lost in search of cheaper labor especially in China.



STEEL SECTOR UNDER NAFTA

- Trade in the NAFTA region has grown significantly since 1994.
- The steel sector has faced an important process of industrial complement.
- The steel sector has reached one of the most important process of regional integration in the industrial sector.
- The steel sector is studying the creation of a possible "Steel NAFTA Customs Union".

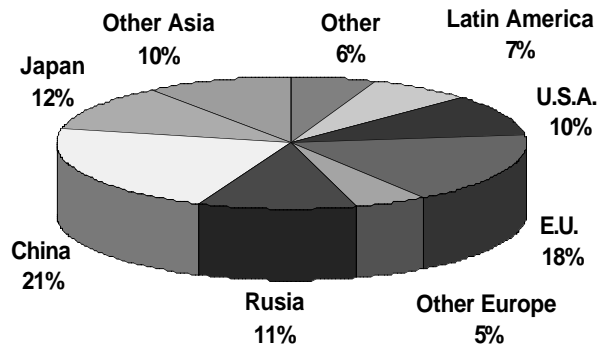
World Steel Production by Country



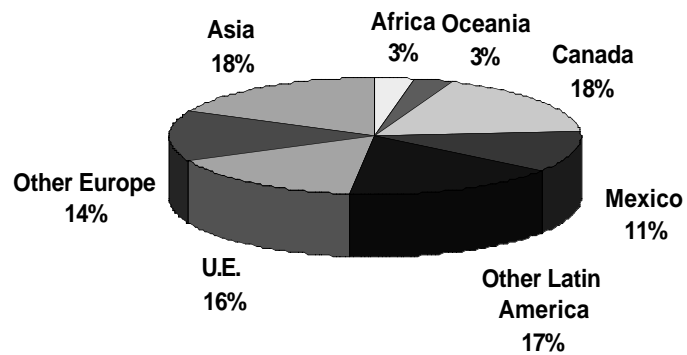
Source: IISI Latinamerica : ILAFA

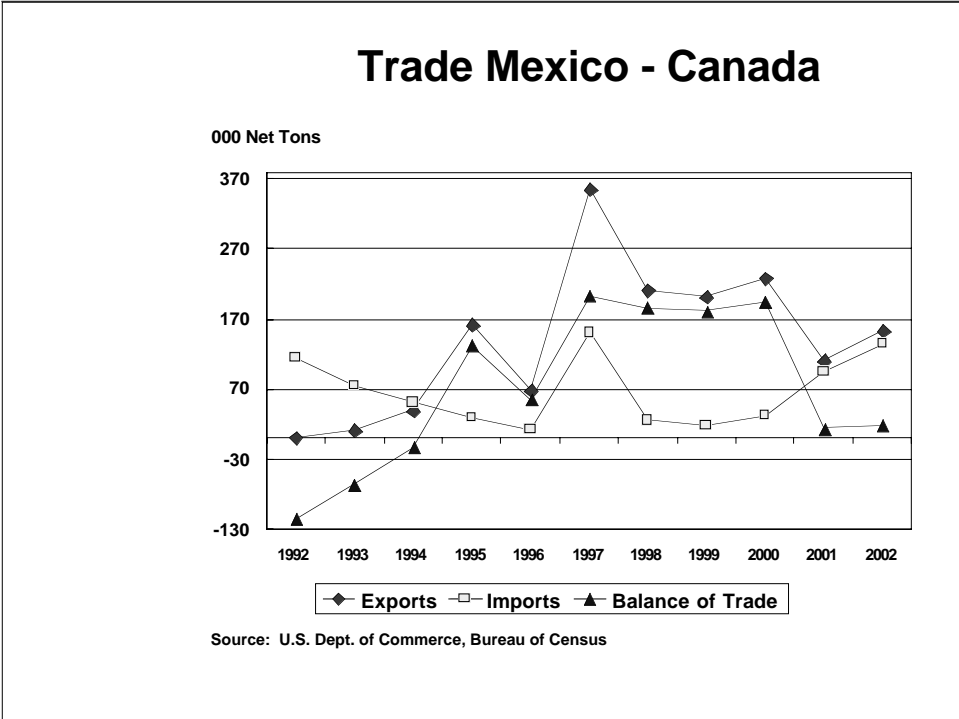
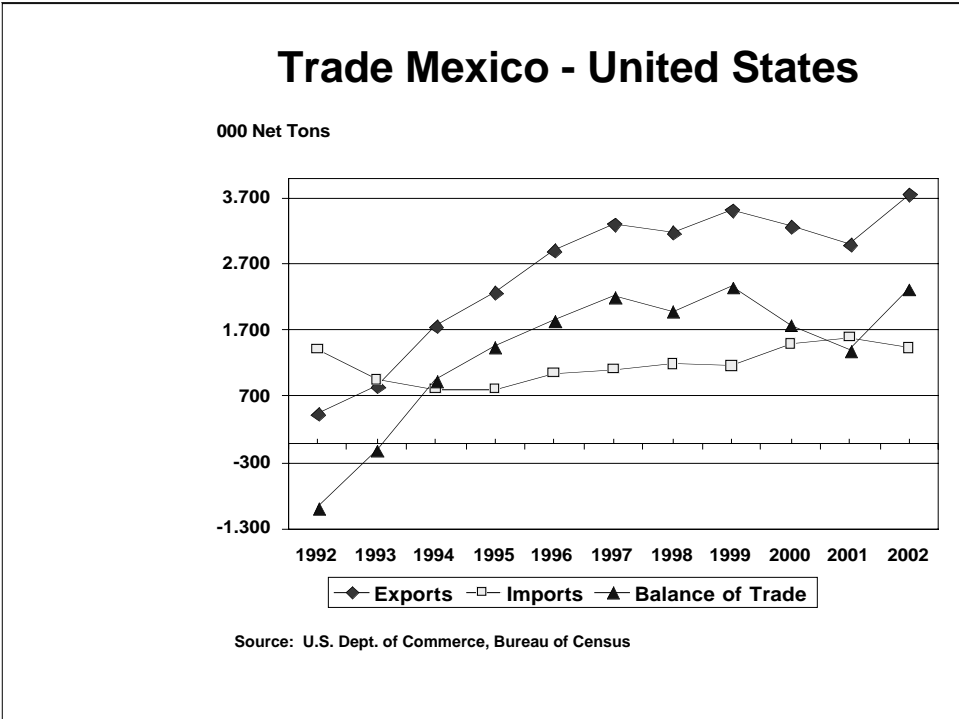
* Preliminary figures

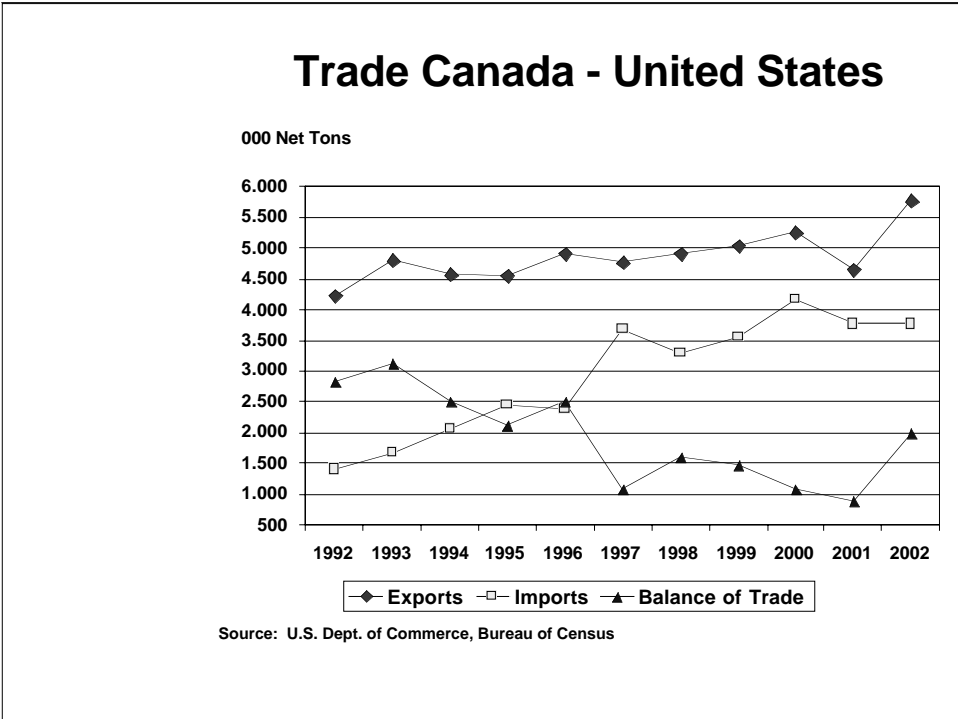
World Bulk steel production: February 2003



Imports of steel to the US: 2002







201 Resolution

On March 5, 2002 the US President imposed steel safeguard measures covering certain steel products. Canada and Mexico were excluded from this steel safeguard.

On March 14, 2003 the International Trade Commission (ITC) started its review about the steel safeguard.

On March 18, 2003 the Congress of the United States requested to the ITC institute an investigation to address the effects of the steel safeguard remedies on steel consuming industries

The Commission should provide its completed report no later than September 20, 2003 and based on this report the US President may reduce, amend or terminate the steel safeguard.

Conflicting Commerce (Antidumping cases in the Steel Industry)

	1999	2000	2001	2002*
Antidumping	28	38	37	33
Subsidies	50	69	44	50
Safeguards	6	6	83	81

* Información de 6 meses

Source: Mayer, Brown, Rowe and Maw: Global Trade Protection Report

Conclusion

NAFTA was the first step in a long term integration process of the United States, Canada and Mexico. This process is natural, necessary and inevitable.

1. The original gains from the NAFTA have been diminished by the events of September 11, 2001 and the economic downturn in the U.S. There has been a change of focus in the region to increased border security and a postponement of a potential agreement on migration which was promised under the terms of the NAFTA.
2. Commercial advantages realized under the NAFTA have been undermined by China's emergence as a competitor, particularly in the "maquiladora" (manufacturing) sector.

Conclusion

3. Consequently Mexico is experiencing a growth in unemployment, provoking a corresponding increase in migration as workers search for opportunities.
4. A migration agreement would represent a way to regulate the surge in migration, while maintaining vigilance against terrorism at the border.
5. Any agreement on migration cannot be tied to discussions on opening up Mexico's energy sector to foreign interests.
6. Nevertheless, Mexico should construct a legal framework that would open to foreign investment the production of electricity and natural gas, to recover the competitiveness that has been lost in recent years.

NAFTA, which entered into force in January 1994, is a free trade agreement comprising Canada, the United States and Mexico, NAFTA exceeds 360 million consumers and a combined output of \$6 trillion which is larger than the European Community. NAFTA's consumer population is slightly smaller than the European Economic Area which has over 380 million consumers.

The objectives of the Agreement are to eliminate barriers to trade, promote of fair competition, increasing investment opportunities, provide adequate protection for intellectual property rights, establish effective procedures for the implementation and application of the Agreement and for the resolution of disputes and to further trilateral, regional and multilateral cooperation. The NAFTA countries will meet these objectives by observing the principles and rules of the Agreement, such as national treatment, most-favored-nation treatment and procedural "transparency".

The Agreement:

- Progressively eliminates almost all U.S.-Mexico tariffs over a 10-year period, with a small number of tariffs for trade-sensitive industries phased out over a 15-year period. Mexico-Canada tariffs are also phased out over a 10-year period. Tariff reduction schedules between the United States and Canada negotiated in the Canadian Free Trade Agreement are retained.
- Eliminates other barriers to trade such as import licensing requirements and Customs user fees.
- Establishes the principle of national treatment, for ensuring that NAFTA-origin products trade between NAFTA countries will receive treatment equal to similar domestic products.
- Guarantees service providers of the three countries equal treatment in the NAFTA area, including the right to invest and the right to sell services across borders.
- Establishes five basic principles to protect foreign investors and their investment in the trade area: (a) nondiscriminatory treatment, (b) freedom from performance requirements, c) free transference of funds related to an investment, (d) expropriation only in conformity with international law, and (e) the right to seek international arbitration for a violation of the agreement's protections.

NAFTA contains special provisions for sensitive economic sectors, including agriculture, automotive products, energy and textile and apparel. The Agreement also created a Border Environment Cooperation Commission and a North American Development Bank.

Two side agreements were created as a result of NAFTA: The North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC), which are aimed to protect and improve the environment and promote sustainable development and increasing cooperation and an enhancement of the

enforcement of environmental laws and policies (NAAEC) and, to improve working conditions and living standards and fostering compliance with and effective enforcement of labor laws (NAALC).

More than half billion dollars of merchandise crosses the U.S.-Mexico Border each day and more than a billion dollars crosses the U.S.-Canada each day. According to Mr. Sidney Weintraub (NAFTA Evaluation, Issues in International Political Economy, Aug. 2000, Num. 6), for each of the 3 NAFTA countries, the percentage increase in exports to the other 2 has been larger than the export increase to the rest of the world from 1994-1999. For Canada and Mexico, intra-NAFTA exports now represent between 85% and 90% of total exports. The U.S. proportion of intra-NAFTA exports is lower, but still amounts to 36% of all U.S. exports.

There are 4 non-trade aspects of NAFTA which are analyzed by Weintraub which are very interesting and could be summarized as follows:

- (i) NAFTA has created an institutional development by fostering a vast network of business relationships. Mexico has a growing and increasingly assertive environmental movement, which hadly existed earlier and probably will not exist at all if not for NAFTA. Universities throughout the 3 countries have inaugurated NAFTA research and study centers. Civil organization with cross-border connections, focusing on women's and labor rights to the promotion of democracy, have mushroomed. NAFTA is the basis for constructive long-term relationships in North America and it has played an indispensable role in institution building.
- (ii) U.S. job loss and creation. There are no solid data on job losses or job gains from NAFTA.
- (iii) Politics of free trade. Mexico shifted from a managed, state-controlled development model to a drive for export expansion, building on low import protection prior to and as a condition for becoming a NAFTA Party.
- (iv) Concern over sovereignty. Reality has shown no actual loss of sovereignty stemming from free trade.

Now, moving on into some legal issues we would like to very briefly provide some basics ideas of 4 NAFTA Chapters dealing with 3 mechanisms provided in NAFTA to settle trade and investment dispute as well as some basic ideas dealing with government procurement, which I would further elaborate during my panel presentation.

1.- Government Procurement.

Chapter 10 of the NAFTA opens each country' government procurement market by obligating members to provide national and non-discriminatory treatment to the goods and services produced by the other member countries. The basic rule is that the 3 governments must treat goods and services from another NAFTA country "no less favorably" than domestic goods, services and suppliers with respect to purchases made by government entities.

Transparency and competitive procurement procedures are contained in Chapter 10 and aimed to achieve a fair, open and unambiguous government procurement market. NAFTA requires government entities to follow procedures with respect to awarding contracts, bid challenge, qualification of suppliers, time limits for tendering and submission, receive and opening of tenders.

2.- Investor-to-State Dispute Settlement.

Nafta Chapter 11 establishes a mechanisms for the settlement of investment disputes that assures both equal treatment among investors of the NAFTA members in accordance with the principal of international reciprocity and due process before an impartial tribunal.

A NAFTA investor who alleges that a host government has breached its investment obligations under Chapter 11 may, at its option, have recourse to one of the following arbitral mechanisms:

- the World Bank's International Center for the Settlement of Investment Disputes (ICSID);
- ICSID's Additional Facility Rules;
- The rules of the United Nations Commission for International Trade Law (UNCITRAL rules);

Alternatively, the investor may chose the remedies available in the host countries' domestic courts.

An important feature of the Chapter 11 arbitral provisions is the enforceability in domestic courts of final awards by arbitration tribunals.

3.- Panel Review of Antidumping or Countervailing Duties and Injury Final Determinations.

Article 1904 offers binational panel review as an alternative to judicial review or appeal in local courts.

NAFTA contains rules to designate arbitrators who had to render a final panel decision within 315 days of the date on which a request of a panel is made. Strict deadlines have been established relating to the selection of panel members, the filing of briefs and reply briefs and the setting of the date for oral argument.

As a safeguard against impropriety or gross-panel error that could threat the integrity of the process, Article 1904 provides for an "extraordinary challenge procedure". In a very

limited circumstances, a participating Party can appeal a panel's decision to a 3-member committee of judges or former judges. The committee would make a prompt decision to affirm, vacate, or remand the panel's decision.

4.- State-to-State Dispute Settlement.

When general disputes concerning NAFTA are not resolved through consultation within a specific period of time, the matter may be referred at the request of either party to a non-binding panel under NAFTA Chapter 20.

Chapter 20 also provides for scientific review boards which may be selected by a panel, in consultation with the disputing Party, to provide a written report on any factual issue concerning environmental, health, safety or others scientific matters to assist panels in rendering their decisions.

After providing the above basic facts, ideas and conclusions, I am enclosing to this document the following Annexes with the purpose of providing some additional information and statistics:

Annex 1.- Regional Trade Under NAFTA 1993-2000 and FDI Flows before and after NAFTA.

Annex 2.- NAFTA Investor-State Cases.

Annex 3.- NAFTA Chapter 11 Investor-to-State Cases.

Annex 4.- NAFTA Chapter 19 Binational Panel Decisions and Chapter 20 Arbitral Panel Reports.

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Regional trade under NAFTA, 1993-2000

(Billions of US dollars)

	1993	1994	1995	1996	1997	1998	1999	2000
U.S. Imports from Canada	111.2	128.4	144.4	155.9	168.2	170.0	198.7	229.2
U.S. Imports from Mexico	40.0	49.5	62.1	74.3	86.0	94.5	109.7	135.9
Canadian Imports from U.S.	88.3	100.5	109.8	115.4	132.5	135.2	144.9	154.4
Canadian Imports from Mexico	2.9	3.3	3.9	4.4	5.0	5.1	6.4	8.1
Mexican Imports from the U.S.	45.3	54.8	53.8	67.5	82.0	93.5	105.2	127.6
Mexican Imports from Canada	1.2	1.6	1.4	1.7	2.0	2.2	2.9	4.0
TOTAL	288.9	338.1	375.4	419.2	475.7	500.5	567.8	659.2

Source: U.S. Department of Commerce, Statistics Canada and SECOFI.
For accuracy purposes import data is the preferred source.

FDI flows before and after NAFTA

(in millions of dollars)

	From World	From NAFTA Countries	From Rest of the World	%From NAFTA Countries				
	1989-1994	1995-2000	1989-1994	1995-2000	1989-1994	1995-2000	1989-1994	1995-2000
Canada	42,422	134,950	21,126	69,108	21,297	65,842	49.8%	51.2%
Mexico	49,659	64,379	26,442	42,428	23,217	21,951	53.2%	65.9%
U.S.	313,983	1,013,766	15,565	90,772	298,418	922,994	5.0%	9.0%
Total	406,064	1,213,095	63,133	202,308	342,932	1,010,787	15.5%	16.7%

Note: Mexican data from 1998-2000 is not strictly comparable to earlier data. US and Canadian data from 1999-2000 is not strictly comparable with earlier data.

Sources: OECD (2000) for 1989-1998 data; SECOFI (2001) for 1997-2000 Mexican data; BEA (2001) for US FDI in Canada 1998-2000 and NAFTA FDI in the US 1998-2000; UNCTAD for world FDI 1998-2000. Canadian data converted to US\$ using exchange rates from the IMF(2002).

The above 2 charts were taken from: Hufbauer, G. And Vega, G.; Whither NAFTA: A Common Frontier? Integration and Exclusion in a New Security Context, Peter Andreas and Thomas J. Riersteker editors, Routledge, 2003

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NAFTA Investor-State Cases to Date

Case	Venue	Damages Sought (US\$)	Status	Issue
Ethyl v. Canada Sept. 1996	UNCITRAL	\$201 million	Settled; \$13 million paid to Ethyl	U.S. chemical company challenges environmental law on gasoline additive MMT.
Metalclad v. Mexico Jan. 1997	ICSID	\$90 million	Metalclad wins \$15.6 million	U.S. firm challenges Mexican municipality's refusal to grant construction permit for toxic-waste dump.
Azinian v. Mexico Mar. 1997	ICSID	\$19 million	Dismissed	U.S. company challenges Mexican court's revocation of waste-management contract for a suburb of Mexico City
Waste Management v. Mexico Oct. 1998	ICSID	\$60 million	Dismissed on jurisdiction; resubmitted. Decision pending.	U.S. company challenges City of Acapulco revocation of waste-disposal concession.
Loewen v. USA Oct. 1998	ICSID	\$725 million	Dismissed	Canadian funeral company challenges Mississippi jury damage award.
S.D. Myers v. Canada Oct. 1998	UNCITRAL	\$20 million	S.D. Myers wins	U.S. waste-treatment company challenges Canadian ban of PCB exports in compliance with multilateral environmental agreement.
Sun Belt v. Canada Nov. 1998	UNCITRAL	\$10.5 million	Pending. Appears to not to have progressed to arbitration.	U.S. water company challenges British Columbia's moratorium on bulk water exports.
Pope & Talbot v. Canada Dec. 1998	UNCITRAL	\$381 million	Pope & Talbot wins \$461,566	U.S. timber company challenges Canada's implementation of 1996 U.S.-Canada Softwood Lumber Agreement.
Feldman v. Mexico Apr. 1999	ICSID	\$50 million	Karpa loses on issue of expropriation, wins on national treatment	U.S. cigarette exporter challenges denial of tax rebate by Mexican government.
Methanex v. USA Jul. 1999	UNCITRAL	\$970 million	Dismissed, resubmitted on more limited grounds	Canadian company challenges California phase-out of gasoline additive MTBE.
Mondev v. USA Sept. 1999	ICSID	\$50 million	Dismissed	Canadian real-estate developer challenges Massachusetts Supreme Court ruling on local government sovereign immunity.
UPS v. Canada Jan. 2000	UNCITRAL	\$160 million	Pending	U.S. company claims Canadian post office unfairly subsidizes local parcel delivery service.
Adams v. México Jan. 2000	UNCITRAL	\$75 million	Pending	U.S. landowner challenges Mexican court ruling on real-estate title.

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Case	Venue	Damages Sought (US\$)	Status	Issue
ADF Group v. USA Jul. 2000	ICSID	\$90 million	Dismissed	Canadian steel contractor challenges U.S. "Buy America" law.
Ketcham v. Canada Dec. 2000		\$19.5 million	Withdrawn	U.S. company challenges Canadian implementation of 1996 U.S.-Canada Softwood Lumber Agreement.
Trammell Crow v. Canada Jul. 2001	UNCITRAL	\$32 million	Settled	U.S. real-estate developer challenges Canada Post outsourcing of real-estate management service.
Crompton v. Canada Nov. 2001		\$100 million	Pending	U.S. company challenges Canadian ban on use of lindane in fertilizer.
Canfor v. USA Nov. 2001	UNCITRAL	\$250 million	Pending	Canadian timber company challenges U.S. countervailing duties on softwood lumber.
Fireman's Fund v. Mexico Nov. 2001	ICSID	\$50 million	Pending	U.S. company challenges Mexican government's discrimination against dollar-denominated over peso-denominated debentures.
Calmark v. México Jan. 2002		\$400,000	Pending	U.S. company challenges Mexican court's handling of legal dispute on cancelled land sale.
Kenex v. USA Jan. 2002	UNCITRAL	\$20 million	Pending	Canadian company challenges U.S. confiscation of industrial hemp seeds.
Frank v. Mexico Feb. 2002	UNCITRAL	\$1.5 million	Pending	U.S. investor challenges Mexican court's handling of dispute over development of beachfront property.
Baird v. USA March 2003		\$13 billion	Pending	Canadian investor challenges U.S. rules on disposal of nuclear waste.
Gami v. Mexico Apr. 2002	UNCITRAL	\$27 million	Pending	U.S. investor challenges changes in Mexican subsidies to and regulation of sugar industry.
Doman v. USA May 2002		\$513 million	Pending	Canadian company challenges U.S. countervailing duties on softwood lumber.
Tembec v. USA May 2002		\$200 million	Pending	Canadian company challenges U.S. countervailing duties on softwood lumber.
Thunderbird v. Mexico March 2002	UNCITRAL	\$100 million	Pending	U.S. investor challenges Mexican government's regulation and closure of its gambling facilities.

Sources: www.naftalaw.org; Canadian Foreign Affairs website (<http://www.dfait-maeci.gc.ca/tnanac/NAFTA-en.asp>); U.S. Department of State website <http://www.state.gov/s/l/c3439.htm>; Public Citizen, NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy, 24 September 2001; *Canada Newswire*, "Softwood Lumber: Tembec announces its intention to file a claim against the U.S. under NAFTA", 5 May 2002.

This table was taken from: *Lessons from NAFTA: The High Cost of "Free" Trade*, Hemispheric Social Alliance, June 2003

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NAFTA CH. 11

INVESTMENT – TO –STATE – CASES

FILED AGAINST MEXICO

Robert J. Frank v. United Mexican States

Robert J. Frank, a U.S. citizen, has submitted a notice of arbitration under the UNCITRAL rules against Mexico.

Mr. Frank alleges that, in August 1999, the Mexican Government expropriated beachfront property in Baja, California belonging to him. He claims that Mexico's actions have breached the national treatment obligation under Article 1102; the most-favored-nation treatment obligation under Article 1103; under Article 1105(1), the obligation to provide treatment in accordance with international law; and the Article 1110 prohibition on expropriation without compensation. Mr. Frank seeks damages of at least \$1.5 million

Azinian et al v. United Mexican States

Azinian and other shareholders in a Mexican company, Desona, claimed that the City of Naucalpan terminated without cause the contract that had been awarded to Desona to operate a landfill and waste management system for the city. The claimants, primarily alleging violations of Articles 1105 and 1110, requested \$14 million in damages. On November 1, 1999, the tribunal issued an award in Mexico's favor on all issues.

Marvin Roy Feldman Karpa (CEMSA) v. United Mexican States

Marvin Feldman, a U.S. citizen, has submitted claims on behalf of CEMSA against Mexico under the ICSID Additional Facility Rules. The notice asserts that CEMSA, a registered foreign trading company and exporter of cigarettes from Mexico since 1990, was allegedly denied the benefits of a law that allowed certain tax refunds to exporters. Feldman claims expropriation under NAFTA Article 1110 based on Mexico's refusal (1) to implement a 1993 Mexican

Supreme Court decision in CEMSA's favor ordering a refund of taxes paid, and (2) to refund taxes on cigarettes CEMSA exported in 1997. CEMSA claims approximately US\$40 million in damages.

Prior to CEMSA's claims being submitted to arbitration, the United States and Mexico agreed pursuant to NAFTA Article 2103, which governs taxation measures, that one of CEMSA's claims, which was based on certain Mexican tax legislation, could not be pursued.

On December 16, 2002, the tribunal issued an award dismissing the investor's claim of expropriation but upholding the claim of a violation of the national treatment obligation.

Metalclad Corp. v. United Mexican States

The Metalclad Corporation, a U.S. waste disposal company, instituted arbitration proceedings against Mexico under the ICSID Additional Facility Rules. Metalclad alleged breaches of NAFTA Articles 1102, 1103, 1104, 1105, 1106(1)(f), 1110 and 1111. Its notice of arbitration asserted that Mexico wrongfully refused to permit Metalclad's subsidiary to open and operate a hazardous waste facility that Metalclad had built in La Pedrera, San Luis Potosi, despite the fact that the project was allegedly built in response to the invitation of certain Mexican officials and allegedly met all Mexican legal requirements. The notice sought damages of US\$43,125,000 "plus damages for the value of the enterprise taken."

Hearings on the merits were held from late August through early September 1999. On August 30, 2000, the *Metalclad* tribunal issued an award in favor of the investor in the amount of \$16.7 million. Mexico petitioned the Supreme Court of British Columbia to set aside the award on the grounds that the *Metalclad* tribunal exceeded its jurisdiction and that enforcing the award would violate public policy. The British Columbia court set aside the award in part.

Waste Management, Inc. v. United Mexican States

In 1998, USA Waste Services, Inc. (now Waste Management, Inc.), a U.S. waste disposal company, filed claims against Mexico under the ICSID Additional Facility Rules alleging breaches of NAFTA Articles 1105 and 1110. The notice of arbitration asserted that the State of Guerrero and the municipality of Acapulco granted a 15-year concession to USA Waste's Mexican subsidiary, Acaverde, in 1995 for public waste management services (street cleaning, landfilling, etc.), but failed to comply with payment and other obligations set forth in the concession agreement despite full performance by Acaverde. It also asserted that Banobras, a Mexican bank that had issued an unconditional guarantee for the payment, arbitrarily refused to honor the payment guarantee. Waste Management claimed damages of US\$60 million.

A jurisdictional hearing was held in the case on January 31, 2000. The Tribunal issued an award on June 2, 2000, dismissing the investor's claim for lack of jurisdiction. The Tribunal held that Waste Management had failed to submit a valid waiver and that the case therefore was improperly before the Tribunal.

Waste Management resubmitted its case, which ICSID registered on September 27, 2000. Following a jurisdictional hearing in early February 2002, the Tribunal issued an unanimous

award on June 26, 2002, rejecting Mexico's objections to the Tribunal's jurisdiction over Waste Management's resubmitted case.

Fireman's Fund v. United Mexican States

Fireman's Fund Insurance Company, a United States corporation that sells personal and business insurance, including accident and fire insurance, filed a notice of arbitration against Mexico under the ICSID Additional Facility Rules. Fireman's Fund claims that Mexico violated NAFTA Articles 1102, 1105, 1110 and 1405 by facilitating the purchase of debentures denominated in Mexican pesos and owned by Mexican investors, but not facilitating the purchase of debentures denominated in U.S. dollars and owned by Fireman's Fund. Both series of debentures were issued at the same time and by the same Mexican financial services corporation, and each series was issued for the total amount of U.S. \$50 million.

GAMI Investments Inc. v. United Mexican States

GAMI Investments, Inc., a U.S. corporation claiming to hold a 14.18% interest in a Mexican sugar production company, has submitted a claim against Mexico to arbitration under the UNCITRAL Arbitration Rules. In September 2001, Mexican authorities issued a decree for the stated purpose of revitalizing the Mexican sugar industry. GAMI alleges that, pursuant to that decree, Mexican authorities expropriated sugar mills owned by five subsidiaries of its investment. GAMI further contends that Mexican authorities regulated the sugar industry in a discriminatory and arbitrary manner.

GAMI claims that Mexico denied it national treatment as required by NAFTA Article 1102, failed to provide treatment in accordance with international law as required by Article 1105(1) and expropriated its investment without the compensation required by Article 1110. GAMI claims damages of over US\$27 million.

International Thunderbird Gaming Corporation v. United Mexican States

International Thunderbird Gaming Corporation ("Thunderbird"), a Canadian company that owns and operates gaming and entertainment facilities, has submitted a notice of arbitration under the UNCITRAL rules against Mexico.

Thunderbird seeks damages for alleged injuries resulting from the regulation and closure of its gaming facilities by the Mexican government agency that has jurisdiction over gaming activity and enforcement.

Thunderbird claims that Mexico's regulation and closure of its gaming facilities violate the national treatment obligation under Article 1102; the most-favored-nation treatment obligation under Article 1103; the Article 1104 obligation to accord the better of the treatment required under Articles 1102 and 1103; under Article 1105(1), the obligation to provide treatment in accordance with international law; and the Article 1110 prohibition on expropriation. Thunderbird seeks damages of \$100 million.

Source: U.S. Department of State web site, www.State.gov/s/l/c3742.htm

ACCA SAN FRANCISCO
PROGRAM 405 NAFTA 10 YEARS LATER
FRANCISCO VELAZQUEZ

NAFTA Chapter 19 Binational Panel Decisions on Mexican Goods

REVIEWING CANADIAN AGENCIES' FINAL DETERMINATIONS

CDA-97-1904-02

CERTAIN HOT-ROLLED CARBON STEEL PLATE, ORIGINATING IN OR EXPORTED FROM MEXICO (Injury)

CDA-MEX-99-1904-01 (Terminated - No Decision Issued)

CERTAIN HOT-ROLLED CARBON STEEL PLATE, ORIGINATING IN OR EXPORTED FROM MEXICO (Injury)

REVIEWING U.S. AGENCIES' FINAL DETERMINATIONS

USA-94-1904-02

LEATHER WEARING APPAREL FROM MEXICO (Countervailing Duty)

USA-95-1904-01

PORCELAIN-ON-STEEL COOKWARE FROM MEXICO (Dumping)

USA-95-1904-02

GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM MEXICO (Dumping)

USA-95-1904-04

OIL COUNTRY TUBULAR GOODS FROM MEXICO (Dumping)

USA-95-1904-05

FRESH CUT FLOWERS FROM MEXICO (Dumping)

USA-96-1904-01 (Terminated - No Decision Issued)

PORCELAIN-ON-STEEL COOKING WARE FROM MEXICO (6th Antidumping Duty Administrative Review)

USA-97-1904-01

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (5th Antidumping Duty Administrative Review)

USA-97-1904-02

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (4th Antidumping Duty Administrative Review)

USA-97-1904-05 (Terminated - No Decision Issued)

PORCELAIN-ON-STEEL COOKWARE FROM MEXICO (8th Antidumping Duty Administrative Review)

USA-97-1904-06 (Terminated - No Decision Issued)

CIRCULAR WELDED NON-ALLOY STEEL PIPE AND TUBE FROM MEXICO (Dumping)

USA-97-1904-07

PORCELAIN-ON-STEEL COOKWARE FROM MEXICO (9th Antidumping Duty Administrative Review)

USA-MEX-98-1904-02 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (6th Antidumping Duty Administrative Review)

USA-MEX-98-1904-04 (Terminated - No Decision Issued)

PORCELAIN-ON-STEEL COOKWARE FROM MEXICO (10th Antidumping Duty Administrative Review)

USA-MEX-98-1904-05 (Active)

CIRCULAR WELDED NON-ALLOY STEEL PIPE FROM MEXICO (Department of Commerce Final Scope Ruling - Antidumping Order)

USA-MEX-99-1904-03 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (7th Antidumping Duty Administrative Review)

USA-MEX-99-1904-05 (Terminated - No Decision Issued)

PORCELAIN-ON-STEEL COOKWARE FROM MEXICO (11th Antidumping Duty Administrative Review)

USA-MEX-2000-1904-03 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (8th Antidumping Duty Administrative Review)

USA-MEX-2000-1904-04 (Terminated - No Decision Issued)

PORCELAIN-ON-STEEL COOKWARE FROM MEXICO (12th Antidumping Duty Administrative Review)

USA-MEX-2000-1904-05 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (Full Sunset Review of the Antidumping Duty Order)

USA-MEX-2000-1904-10 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (Five Year Review of the Antidumping Duty Order)

USA-MEX-2001-1904-02 (Terminated - No Decision Issued)

PORCELAIN-ON-STEEL COOKWARE FROM MEXICO (Department of Commerce Final Results of the 13th Antidumping Duty Administrative Review)

USA-MEX-2001-1904-03 (Active)

OIL COUNTRY TUBULAR GOODS FROM MEXICO (Department of Commerce Final Results of the Full Sunset Review of the Antidumping Duty Order)

USA-MEX-2001-1904-04 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (Department of Commerce Final Results of the 9th Antidumping Duty Administrative Review)

USA-MEX-2001-1904-05 (Active)

OIL COUNTRY TUBULAR GOODS FROM MEXICO (Department of Commerce Final Results of the 4th Antidumping Duty Administrative Review and Determination Not To Revoke)

USA-MEX-2001-1904-06 (Active)

OIL COUNTRY TUBULAR GOODS FROM MEXICO (USITC Dismissal of a Request to Institute a Section 751(b) Investigation)

USA-MEX-2002-1904-01 (Active)

GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM MEXICO (USITC Final Results of the Five Year Review of the Antidumping Duty Order)

USA-MEX-2002-1904-05 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (Department of Commerce Final Results of the 10th Antidumping Duty Administrative Review)

USA-MEX-2002-1904-10 (Active)

CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM MEXICO (USITC Final Injury Determination)

USA-MEX-2003-1904-01 (Active)

GRAY PORTLAND CEMENT AND CLINKER FROM MEXICO (Department of Commerce Final Results of the 11th Antidumping Duty Administrative Review)

NAFTA Chapter 19

Binational Panel Decisions on U.S. and Canadian Goods

REVIEWING MEXICAN AGENCY FINAL DETERMINATIONS

MEX-94-1904-01

IMPORT OF FLAT COATED STEEL PRODUCTS, IN AND FROM THE UNITED STATES OF AMERICA (Dumping)

MEX-94-1904-02

IMPORTS OF CUT-TO-LENGTH PLATE PRODUCTS FROM THE UNITED STATES OF AMERICA (Dumping)

MEX-94-1904-03

POLYSTYRENE AND IMPACT CRYSTAL FROM THE UNITED STATES OF AMERICA (Dumping)

MEX-95-1904-01 (Terminated - No Decision Issued)

SEAMLESS LINE PIPE ORIGINATING IN THE UNITED STATES OF AMERICA (Dumping)

MEX-96-1904-01 (Terminated - No Decision Issued)

COLD-ROLLED STEEL SHEET ORIGINATING IN OR EXPORTED FROM CANADA (Dumping)

MEX-96-1904-02

ROLLED STEEL PLATE ORIGINATING IN OR EXPORTED FROM CANADA (Dumping)

MEX-96-1904-03

HOT-ROLLED STEEL SHEET ORIGINATING IN OR EXPORTED FROM CANADA (Dumping)

MEX-97-1904-01 (Terminated - No Decision Issued)

IMPORTS OF HYDROGEN PEROXIDE ORIGINATING IN THE UNITED STATES OF AMERICA (Countervailing Duty)

MEX-USA-98-1904-01

IMPORTS OF HIGH-FRUCTOSE CORN SYRUP ORIGINATING IN THE UNITED STATES OF AMERICA (Dumping)

MEX-USA-00-1904-01 (Active)

IMPORTS OF UREA ORIGINATING IN THE UNITED STATES OF AMERICA (Dumping)

MEX-USA-00-1904-02 (Active)

BOVINE CARCASSES AND HALF CARCASSES, FRESH OR CHILLED ORIGINATING IN THE UNITED STATES OF AMERICA (Dumping)

MEX-USA-2002-1904-01 (Terminated - No Decision Issued)

BOVINE CARCASSES AND HALF CARCASSES, FRESH OR CHILLED ORIGINATING IN THE UNITED STATES OF AMERICA (Countervailing Duty)

NAFTA Chapter 20 Arbitral Panel Reports

REVIEWING CANADIAN MEASURES

NO CASE REQUESTED BY MEXICO YET.

REVIEWING U.S. MEASURES

USA-97-2008-01

U.S. SAFEGUARD ACTION TAKEN ON BROOMCORN BROOMS FROM MEXICO

USA-98-2008-01

CROSS-BORDER TRUCKING SERVICES AND INVESTMENT

REVIEWING MEXICAN MEASURES

NO CASE HAVE BEEN BROUGHT YET NEITHER BY THE U.S. NOR CANADA.