



**REMARKS BY AMBASSADOR OF MEXICO TO CANADA
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"NORTH AMERICAN INTEGRATION:
MIGRATION, TRADE AND SECURITY"**

Is there a need for new institutions in North America?

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Mr. Gordon Giffin,

Mr. Allan Gottlieb,

Ladies and Gentlemen,

It is a great honor to join you this morning. We in Mexico take great pride in our close ties with organizations and think-tanks that promote the analysis aimed at deepening our understanding of North America. To Hugh Segal, the IRPP and SMU's John Goodwin Center: My sincere appreciation for inviting me to participate in this series of discussions regarding the current state of affairs and the future of our region.

Hard to foresee an answer

Allow me to open my remarks by reintroducing the question entitling this panel: **Is there a need for new institutions in North America?** Tough question. No doubt. If you ask it to, let us say, Professor Robert Pastor... you would likely agree with me, he will most probably come up with a "yes"... although... it would be harder to foresee the answer, for example, put forth by the Canadian, Mexican and/or U.S. taxpayer, who, at the end of the day, should be receiving the concrete deliverables of new institutionalization in North America. This issue illustrates how difficult –if not impossible and sometimes, futile— it is to forecast in international affairs. The purpose of my presentation is thus not to offer a "final answer"; instead I will attempt to highlight some ideas that will probably have to be addressed by the experts to find out whether such "need" for new institutions exists or not.

NAFTA: Mimimum institutions

Let us begin by extracting a couple of lessons from what we have experienced until today. If I recall correctly, since the days of the North American Free Trade Agreement (NAFTA) negotiations, the three governments made **two fundamental decisions** regarding its institutional architecture: One, that NAFTA was to become a free trade agreement exclusively and, two, that the agreement's governmental institutions and mechanisms were to be limited to the minimum. In other words, the integration path taken by Europe –customs and political union with diverse supra-governmental institutions— became the paradigm of what NAFTA was not to become. The ultimate goal of the European model –intertwine economic and political relationships to curtail the possibilities of war– did not apply for North

America. Security concerns were never an aspect to consider during NAFTA's negotiation. It was the economic matter that clearly defined the scope of the agreement. Sidney Weintreub, one of the key intellectual promoters of free trade in the region, pointed out a decade ago, that the deliberate choice of constituting an arrangement with a reduced bureaucracy is explained by the "abhorrence to establish new institutions" felt by the U.S. Executive and Congress.¹ It was obvious that the U.S. preference echoed within the Mexican and Canadian governments, which, at that time were concerned among other things, with the issue of national sovereignty and with each country's capacity to make and act on their own decisions. It certainly seems that NAFTA's negotiators had the clear conviction to create only those strictly necessary institutions to get the agreement up and running. This might explain why the Free Trade Agreement Commission was constituted by the three trade ministers, who retained the final authority and it was hence, decided not to hand-off authority to any *ad hoc* arrangement as demonstrated in the European case. A similar argument would probably stand as the reason why NAFTA's Secretariat –which was supposed to be based in Mexico City-- never emerged.

As obvious as it might sound, the first thing to do is **verify whether the "justification" to create new institutions is there.** The NAFTA negotiators knew exactly what they were aspiring toward... and they understood that regulating trade and investment in North America definitely required at least, a couple of institutions.

The difficulty at NAFTA's tenth anniversary lies, in general terms, in the fact that the trilateral consensus on "where we want to go next" in the integration continuum is quite fuzzy. Many political leaders in Mexico, Canada and the U.S. agree that

¹ NAFTA. What Comes Next?, The Center for Strategic and International Studies, Washington, 1994

greater economic and political coordination among the three countries is desirable. However, no unique formula or path for achieving that coordination has emerged. Such paths are perhaps clearer on the bilateral basis and in regard to certain issues of each bilateral agenda. At the trilateral level, there are several preferred formulas or paths. There are a couple of differences on how we are proceeding, depending on a range of factors, including specific interests at stake, ideological preferences and pragmatic judgments of what is possible. So, observers such as myself are thinking: How can we talk institutions, when for some aspects of the agenda, we are still deciding **--jointly and trilaterally--** where and how we want to go next in North America? Again, as obvious as it might seem, NAFTA has demonstrated that there is a pressing need to devise what the three North American governments want to happen next, to see if that new phase requires norms and institutions so that the latter may emerge with a **clear and precise mandate**.

Regarding NAFTA's core issues, it is possible to see that there are certain areas where the governments and stakeholders would be willing to see if not completely new... at least, **improved institutions** arising. The three partners are certainly supportive of further commercial integration and to achieve this aspiration, it is crucial that, at a minimum **NAFTA be fully implemented**. Here, the trilateral consensus is crystal clear. Most probably the agreement's full implementation will call for, as just mentioned, if not new institutions, improved mechanisms. If NAFTA's Secretariat never came to life, it was likely—I am just making a guess here-- due to the fact that the agreement was being implemented "by the book" and the complexities in the disputes such as those characterizing the widely known sugar, trucking and softwood lumber controversies have arisen in the last years. Very often we hear stakeholders, scholars and businessmen pushing forward and actively lobbying for the idea of upgrading the existing NAFTA dispute settlement

mechanisms included in Chapter 20, by coming up with a permanent judicial-type body or institution equipped with professional, knowledgeable and ethical staff that could guarantee impartiality and transparency in its decisions. NAFTA's *ad hoc* dispute settlement mechanisms have performed well, but some actors would endorse the idea of fine-tuning them. Some would go farther by suggesting that the NAFTA requires a Permanent North American Court on Trade and Investment² which would replace the current *ad hoc* tribunals provided for under the agreements. Pundits of closer North American links argue that, for the next several years, the three governments ought to focus on resolving these various disputes and work to ensure the full implementation of NAFTA. Several arguments are cited to support this view.

Other NAFTA institution that is in great need of being polished-up and where immediate progress is pressing, is the North American Development Bank (NADBank). Recommendations and new initiatives on development programs and infrastructure for the less-developed sectors and regions in all three countries could be analyzed and channeled through the NADBank. NADBank has function well, albeit in a very limited way. It just needs to be modified, expanded and streamlined for channeling resources for example, to the environmental projects at the US-Mexico border, which without doubt, are a priority.

A handful of experts have also made the case regarding NAFTA's lack of an "executive arm". NAFTA –unlike the European Union— deliberately did not create a central executive arm or to put it in more familiar terms, "a PR body" from its inception. The success stories attributed to NAFTA are told either by each

² Pastor, Robert. *Toward a North American Community: Lessons from the Old World to the New*. p.103. Also see the initiatives put forth by Thomas D'Aquino, President & CEO of the Canadian Council of Chief Executives, who has also lobbied for the creation of a NAFTA permanent dispute settlement mechanism.

government or by CEOs; if a dispute arises between two parties, we will not see an impartial body providing both sides of the story' to the public; if younger generations have doubts about NAFTA's benefits, merits and even shortcomings and they go out into the streets to manifest such doubts, there is no NAFTA institution providing these young people with strategic information. This work has been carried out by the governments themselves. As in the case with the dispute settlement mechanisms, here is a potential area where a "real institutional need", does exist. I am of the idea that a permanent mechanism through which to channel ideas and proposals, as well as in which to undertake the complex task of transforming those ideas into action would not hurt any of the three parties and NAFTA actors. On the contrary, it will definitely facilitate their mandates and jobs.

Institutions outside the trade and investment realms: Need but also appetite

The question guiding this panel's discussion becomes more complicated when we consider going outside the trade and investment realms. The search continues to be aimed at finding the real necessity, but the issue of whether there is enough political appetite or will to come up with new and/or improved trilateral institutions at this point in time, also enriches the debate.

In other words, the query falls more into place and becomes more relevant when analyzing not merely the issue of "**deepening**"³ but "**widening**" NAFTA to non-trade and investment issues and where no institutions were constitutionally provided. Do we need new institutions to begin a post-NAFTA trilateral dialogue or vision? Building on the NAFTA experience, do we need a new general institutional

³ More trade and investment: NAFTA's core issues.

framework to guide the next stages of integration that go beyond the issues of trade and investment? Can we continue talking integration without the emergence of new institutions? Shall we look for new norms to regulate issues with cross-border impacts? Various realities and lessons spring from these grilling.

1. First and foremost is that a post-NAFTA type of integration is happening with or without the need for additional institutional frameworks. The trilateral synergy boosted by NAFTA has made integration in North America a non-stoppable *continuum*. The North American steel market is a case in point. This non-NAFTA sector did not wait for an institutional framework to be established by the governments and stakeholders to have it integrated. The steel market in our region was marking a “de facto” integration, that is, one that was actually taking place without any legal framework or norms regulating transnational cooperation. This industry has recently witnessed the emergence of a new North American institution: The North American Steel Trade Committee. It will facilitate the consultation process already in place, but it will also endow certainty to the trilateral dialogue on steel matters and to the partners as well. Certainty is clearly one of the merits of institutionalization.

2. New North American dialogue mechanisms are emerging for norm issues that were considered “sensitive” during NAFTA negotiations and hence were excluded from the original agreement. The North American energy market is the clearest example, being one of the richest energy pools of the world. The symbiotic energy relationship between Mexico, Canada and the United States has called for this sector’s actors to begin a formal dialogue and increased consultations. Energy crises are playing a major role in devising the future of the regional energy market and **certainty** was required to smartly tackle such crises. The North American

buyers and suppliers of energy, in all its forms, needed to speak a common language; share a common assessment on the region's energy needs and also needed to share the same table to exchange views and make decisions to benefit all players. Presidents Vicente Fox and George W. Bush together with former Primer Minister Jean Chrétien made that point dear in the declaration signed in Quebec almost three years ago, a declaration that broke new ground for the creation of the North American Energy Group. After having unilaterally excluded energy from the original NAFTA negotiations, it is quite thrilling to be witnessing the countries engaging today, in a constructive dialogue aimed at forging a common energy strategy. We might also be witnessing the genesis of a future North American Energy Policy.

3. Although these new institutions have emerged following a more pragmatic/incremental approach, this should not preclude the three parties from reflecting the possibility of coming up with new institutions to increase cooperation in crucial matters for the trilateral agenda. Take the issue of security. I have stated previously in the different fora in which I have had the opportunity to participate as a speaker, that there is a clear need to enhance and broaden trilateral dialogue on security issues. Such a dialogue has already begun among the three countries, although this has partly been on a bilateral basis. Mexico and Canada have signed their respective *Smart Border Accords* with the U.S. This step sets out the basic ground to consider the trilateral dialogue a real possibility in the near future. President Fox has constantly reiterated his intention to establish a comprehensive security policy comprising all of the territory included in NAFTA. Mexico has a keen interest to develop in a joint effort with Canada and the U.S., the "NAFTA security concept/mechanism/dialogue/institution", that could guarantee the protection of all North American borders. For Mexico, the

development of this concept is viewed as a logical and natural post-NAFTA step. While some would argue that the fight against terrorism is the natural enemy of regularizing migration, others agree that now more than ever the countries of North America need to address this issue trilaterally.

4. Finally, institutions in North America underscore naturally, the concern regarding “convergence” or “harmonization”. I believe that more formal cooperative arrangements --label them as institutions or not-- are the *sine qua non* for greater convergence and coordination. If the ultimate goal is to look for, and achieve more coordinated policies in critical areas of cooperation, the need for an arrangement to guide such harmonization process is thus, inevitable. This is a trend that is becoming very much evident in the field of customs and migration procedures of the three countries. Post-September 11th North America and security concerns have necessarily made the three countries, in a mandatory fashion, work towards the improvement of customs and immigration regulations and procedures.

Final remarks

No one knows for certain what our common future will bring. It is true that time plays a major role when referring to institutions in North America. It remains a mystery whether we will end-up like the European Union. Today, North America and Europe are two very different “animals”. Some will say that regarding institutions, “time will tell”. However, I highly urge all North American players to marshal the political will to move forward. The role and characteristics of any new institution will depend on how strongly the actors want to accelerate integration efforts and their common vision of

how those efforts should proceed. Let us then, act promptly to avoid acting ex post facto in the North American integration process. This is definitely not a simple challenge.

Thank you very much.