

**Coherence and Conditionality in European Trade Strategy:
Negotiating the EU-Mexico Free Trade Agreement**

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Prepared for delivery at the bi-annual meeting of the
European Community Studies Association
Madison, WI, June 1, 2001.

We would like to thank the European Union center of the University System of Georgia for financing the research on which this paper is based. We would also like to thank the European Union officials who agreed to be interviewed for this project.

The global trend toward regional economic integration reached new heights on 1 July 2000 when a multifaceted trade and political agreement between Mexico and the European Union (EU) entered into effect. In the making since May 1995, the "Economic Partnership, Political Coordination and Cooperation Agreement between the European Union and Mexico" (hereafter, "Global Agreement") replaces the "Cooperation Framework Agreement," which regulated the relationship between the two countries beginning in April 1991. Although the preparatory nature of the 1991 Cooperation Framework Agreement was typical of the way the EU stages its negotiations with third countries, the long-awaited outcome represented by the Global Agreement can only be described as unique. It is the first free-trade agreement between the EU and any Latin American country, and the farthest-reaching ever negotiated by the EU. Further, it is the first free-trade pact Mexico has ever accepted that conditions the relationship to the respect of democratic principles and human rights. Finally, the agreement links the two largest markets in the world: that of the North American Free Trade Agreement (NAFTA) and the EU, and it may be an important step in the process leading to a Free Trade Area of the Americas (FTAA).

The distinctive features of this agreement, its implications, and the fact that it was reached at all despite internal obstacles on both sides of the Atlantic present a number of puzzles for students of political economy in general and of regional integration in particular. Why did the EU threaten such a path-breaking agreement with Mexico by insisting on a political conditionality clause, and why did Mexico agree to such conditions in the end? As the economic case for this agreement is only moderately compelling on both sides, we must also consider political motivations. In particular, we show how the Global Agreement upholds two emerging, fundamental political principles in EU trade strategy, and explain why Mexico agreed to these principles despite serious reservations over doing so. By answering these questions, we also hope to shed light on the politics of trade strategy

in regional organizations and explore the constraints and opportunities faced by such organizations when pursuing their trade strategies.

Trade strategy can be defined as a general plan or method for obtaining certain objectives in the international economy related to the import or export of goods and services (Lake, 1988, p. 4). However, trade strategy must also be sensitive to other foreign policy goals, such as the containment of the Soviet Union during the Cold War. One fundamental principle of European trade strategy involves the EU's internal workings (coherence), the other is imposed on the EU's external partners (political conditionality). Indeed, making external relations more coherent across policy sectors is an increasingly important objective of the EU, and the pursuit of this goal in the Global Agreement posed a number of unique challenges to the makers of EU trade policy, chiefly the Commission but also the European Parliament (EP). The roles of both these actors in the EU's external relations greatly expanded during the gestation and conclusion of the Global Agreement, yet they still faced major obstacles in this domain. The Global Agreement thus offers unique insights into how the Commission and the EP define and pursue their priorities, which do not always mesh with each other or with EU member states. The propensity for pragmatic flexibility and strategic behavior within these organizations was often demonstrated in this case, as they faced not only external challenges (namely a strongly unified Mexican state), but also internal ones, as the Global Agreement was finalized in the context of the resignation of the entire Santer Commission as well as during one of the EP's five-year election cycles.

Respecting the principle of political conditionality was possibly even more problematic, as the EU faced the challenge of using its trade policy to influence the political development of a state that was not in line to join the EU. Thus, unlike with the EU's many "Europe Agreements" with Central and Eastern European states, which also include political conditionality, the EU was not able

to offer the incentive of EU membership to Mexico in order to gain its acceptance of this somewhat controversial principle. Political conditionality, which we will define in more detail below, basically links the goal of trade liberalization among the parties with continued respect for democratic norms and human rights, which may be seen as an unacceptable violation of state sovereignty. Indeed, the EU's ability to make the trade agreement with Mexico contingent on political factors represents an important source of external political power for the EU.

The argument proceeds as follows. In the first section of the article, we discuss the historical context in which the Global Agreement was pursued. The purpose in this section is to explain the general motivations, economic and political, of both sides when they first agreed to discuss a deal. In the second section we describe in more detail the principles of coherence and political conditionality which informed the negotiation of the agreement. In the third section, we examine the initial stages of the negotiations, focusing on why Mexico initially rejected the EU's proposals for linking political conditionality with a trade agreement. In the fourth section we explain how the EU managed to secure Mexico's acceptance of the EU's terms in the Global Agreement. In the fifth section, we briefly compare the final Global Agreement with the NAFTA pact to further illustrate the novel features of the EU-Mexico arrangement. In the conclusion we speculate on the future of this agreement, stressing its implications for global free trade and theories of regional integration.

The EU-Mexico agreement: The context

At first glance, it does not seem very logical that the EU - the largest market in the world with 371.5 million people in 1995 and per capita income of US \$21,832 - would seek to enter into a free-trade arrangement with Mexico. Although Mexico's population of 91.1 million makes it a relatively large market, its per capita income in 1995 was only \$3,342. The partners obviously do

not share a common border, and the benefit of duty-free commerce between them would seem limited as the volume of EU-Mexico trade hardly reached \$11.7 billion in 1998. Moreover, the EU trades primarily within its own borders and gives preferential treatment to its neighbors and future members, while Mexico's trade is highly integrated with the United States (the volume of U.S.-Mexico trade in 1998 reached \$195.97 billion).

The EU's eastward expansion and the call by the United States to create an FTAA by 2005 reflect a trend toward organizing globalization into large continental blocks. For the EU, the risks of being completely shut out of the Americas became apparent immediately after the passage of NAFTA, when its trade figures with Mexico began a rapid decline. In 1993, Mexican imports from the EU amounted to \$11.9 billion, but by 1997 they had fallen to \$9 billion. In 1995 Spain took the lead in bringing NAFTA-related issues to the attention of other EU countries, and led them into establishing a clear policy and strategy toward Latin America.¹ The result was expressed in the document "European Union/Latin America: Overview and Perspectives for a Closer Partnership, 1996-2000." An updated version of this plan, providing policy and strategy for the years 2000 to 2005, was approved by the European Council before the first EU-Latin America Summit in Rio de Janeiro (June 28-29, 1999). One should note that the government of the United States has never produced a comparable document about its relations with Latin American countries.

For several reasons, Europe chose to initiate a closer relationship with Mexico after a series of visits by European heads of state in the first half of 1995. The EU was responding to the extraordinary recovery of the Mexican economy a few months after the financial crisis of December 1994, and to that country's market and trade with the U.S. In addition, the Europeans were concerned about the reduction of EU trade with Mexico since NAFTA appeared on the horizon. At

¹ The EU's roots in Latin America actually predate the NAFTA accord, extending back to the San Jose agreement of 1984.

the time, having recently negotiated NAFTA, Mexico had indicated its interest in obtaining a free-trade agreement with the EU to help broaden its economic base and attract more foreign investment. EU member states responded receptively and the stage was set for talks.

Following a procedure described below, on May 2, 1995, Mexico and the EU signed their first document, promising their intention to negotiate a new political, economic and cooperation agreement. It is important to note at this point the repetition of the three aspects of the new accord. As we pointed out above, the EU's external relations are always characterized by political and development interests in addition to commercial goals. It is necessary to be aware of the difference it makes with respect to NAFTA, where only trade and trade-related matters are considered. This important contrast between the American and the European approach to Mexico (and Latin America) will be discussed in more detail below.

Mexico, for its part, had every interest in at least appearing to diversify its highly integrated trade with the U.S., and there are clear political advantages to being the only country, besides Israel, to have duty-free access to the two largest economies of the world. Mexico signed free-trade agreements with 8 countries² between 1992 and 1998. By mid-2000 the country had negotiations under way with other 12 Latin American countries and Japan. These agreements make Mexico a very attractive economic partner, as a sort of entrepôt for international trade, conveniently providing ports to two oceans and sharing a 2000-mile border with the rich American economy. Anything that is produced in Mexico (with a certain percentage of local content, of course) has customs-free access to an increasing number of countries. On the other hand, since the main feature to attract foreign direct investment into Mexico is its access to the U.S. market, Mexico has no interest in the establishment of the FTAA. That would mean competing for access to the American consumer with other Latin American producers of similar goods.

Although the EU-Mexico agreement does not engage NAFTA itself, it offers the Europeans free-trade access to the United States' second trading partner. Also, the U.S. is the main trade partner of the European Union outside Europe. Indeed, in 1998 the EU exported over \$160 billion to the U.S. As announced to the media, one of the main interests of the EU in concluding this accord was therefore to obtain what they called "NAFTA parity in real-time," which they got. Starting in 2007, both American and European goods will enjoy full duty-free access to the Mexican market. For its part, starting in July 2000, Mexico will have free access to Europe for 82% of all its manufactured products; the remaining 18% will pay zero duties by 2003. This privileged position of Mexico with respect to the U.S. and the EU will last possibly until 2005, the year in which the FTAA might be in place, and when Mercosur concludes its own free-trade agreement with the EU, a process that could take two to three years. Trade-related negotiations between the EU and Mercosur started on April 6, 2000, in Buenos Aires.

Coherence and conditionality in EU trade strategy

In this section we examine the origins and roles of the principles of coherence and conditionality in terms of governing the EU's agreements with third countries. Although these principles did not originate with the EU-Mexico negotiations, the Global Agreement between these actors has further institutionalized these principles as key elements of the EU's external relations. And while the economic case for the EU-Mexico trade agreement is moderately compelling primarily because of its link to the U.S. market via NAFTA, the EU was remarkably insistent (for an international organization) on linking its trade strategy to other political goals. In fact, the EU seemed quite willing to abandon the agreement rather than violate these principles. This attitude reflects a clear

² Canada, United States, Colombia, Venezuela, Costa Rica, Bolivia, Chile, Nicaragua.

evolution of the EU's agreements with third countries. The first generation of these agreements (1970s) tended to deal with cooperation only, largely in the form of development aid. The second generation of these agreements (1980s) began to include trade provisions. The third generation (1990s) began to link trade provisions with what one Council official (Interview, 2001) calls "evolutive" clauses to cover additional matters, such as political dialogue, democracy, and human rights. Toward those ends, the EU insists that coherence and conditionality play key roles in any such agreements.

Coherence

Coherence emerged as a fundamental general principle for EU governance during the years leading up to the Treaty on European Union (or Maastricht Treaty) negotiations in the late 1980s. In retrospect, there is little mystery about why this Treaty attempted to enhance the EU's external capabilities, and why it references "coherence" in this domain. Debates about the relationship between Europe's external economic and political relations were clearly influenced by an extraordinary series of events surrounding the Maastricht negotiations. After more than fifteen years of informal (and very limited) policy coordination between these domains (the European Community for economic affairs and European Political Cooperation for political affairs), they were linked and legalized in treaty form with the Single European Act in 1986. Yet only two years after the Act entered into effect it was confronted with an unprecedented set of challenges: the fall of the Berlin Wall, the unification of Germany, democratic change in the former Soviet bloc, the Persian Gulf War, and the first signs of disintegration in the Soviet Union and Yugoslavia. Most EU states clearly felt their external capabilities

needed improvement to cope with such problems, if only because of their potential to disrupt other important goals such as monetary union and enlargement. Uncertainty about the willingness of the U.S. to play a leading role in the post-Cold War era provided an additional motivation in this area.

These considerations weighed heavily during the intergovernmental conference on political union that helped produce the Maastricht Treaty (Corbett 1992; Larsen and Vanhoonacker 1992; Baun 1995/96; de Schoutheete de Tervarent 1997). Thus, under Articles A and C of Maastricht, the EU is charged with ensuring the coherence of its actions, in particular ensuring “the consistency of its external activities as a whole in the context of its external relations, security, economic, and development policies” (Art. C). Title V (Arts. J.1 and J.8), also mentions the concept as a guiding principle behind the Common Foreign and Security Policy (CFSP), which replaced European Political Cooperation (EPC). The fact that the TEU established a single institutional framework covering all three pillars of the EU’s activities further demonstrates the importance of coherence in European integration (Curtin 1993).

Despite these various references to what seems to be an increasingly fundamental principle in governing the EU, coherence has not received a great deal of attention (Neuwahl 1994; Krenzler and Schneider 1997; Tietje 1997).³ However, it should also be noted that the concept of coherence as mentioned in the TEU is not entirely new; it continues a trend that had been developing for some time in the EC’s external affairs (Smith 1998, pp. 319-21; also see Lak 1989; Coignez 1992). In fact, EPC developed an

³In fact, the term itself is not used consistently in various translations of the TEU. As Tietje (1997: 211-12) points out, the English translation favors “consistency” (or the absence of contradictions) while most continental languages use the term “coherence” (meaning positive connections). For Tietje,

entire body of legal arguments and other decision-making principles, such as mixed agreements and dualist case law, to enhance might be called the “damage-limitation” function of EPC, and to improve the general institutional linkages between EPC and the EC, particularly when EPC wished to use EC competencies for its own ends. In addition, becoming a “cohesive force in international relations” was an explicit incentive behind the inclusion of EPC as Title III of the Single European Act (Art. 30.2[d]). Maastricht merely attempted to clarify and reinforce this trend. In a sense, then, the EU’s increasing emphasis on coherence represented a transition from its original focus on negative integration (ensuring that member state foreign policies did not adversely affect the Community) to positive integration (equipping the EU with the means to act coherently in world politics).

This paper also focuses on what Tietje (1997, p. 211) has called “horizontal coherence,” or the extent to which the various foreign affairs activities - or policy domains - of the EU are logically connected, or mutually reinforcing, in terms of the application of decision-making procedures and in terms of their policy coherence. “Vertical coherence,” or the extent to which the foreign policy activities of individual EU states actually mesh with those of the Union, is another matter. In general, horizontal coherence means that the EU’s policies toward, or agreements with, third countries should serve the same general goals (Smith, 2001). These goals involve those codified by Maastricht and the specific objectives set down by the European Council, particularly the June 1992 Lisbon summit (Council of Ministers 1992).

coherence is evidently the favored term for most EU states and it clearly sets a higher standard for the EU’s policies. Thus, we use the term here.

In terms of improving the coherence of its specific relationship with Latin America (and other third countries), the EU stresses linkages between three main arenas or “pillars”:

1. Political and strategic: building alliances to defend common interests within multinational bodies, including topics of security and finance.
2. Economic and commercial: helping Latin America to successfully integrate into the global economy, linking economic growth to social development, so that the benefits reach the poorest population.
3. Cooperation: basically in the form of aid funds and affordable credits (\$2.2 billion spent in Latin America between 1995-99).

As we shall see below, meeting these goals in actual negotiation sessions with third countries is no easy task for the EU, as it still attempts to compartmentalize certain aspects of its external affairs (such as trade in goods and trade in services). The Commission would have to find a way to adapt the EU’s complicated institutional arrangements for external relations to the specific requirements of the negotiation with Mexico. Finally, although coherence is largely an internal concern of the EU intended to help improve its own standing in world politics, the EU is increasingly willing to support that goal by imposing certain demands on its interlocutors. One of the most important of these demands is political conditionality.

Conditionality

Unlike the principle of coherence, the appearance of political conditionality as a basic clause in the EU's external agreements developed over the course of several negotiating sessions with different countries. Although many of the EU's agreements with third countries had long included some form of political dialogue to help reinforce democratic principles and human rights (Olsen, 2000), they did not specifically provide for the suspension of those agreements in case of violations

of democracy or human rights principles by either side.⁴ These two elements of the Global Agreement – the "suspension clause" and the *bilateral* application of the suspension clause – comprise the principle of conditionality that became a major obstacle for the Mexicans. Somewhat ironically, the ultimate source of the conditionality principle can be found in the EU's negotiation of cooperation agreements in the early 1990s with other Latin American states (Chile and Argentina), both of whom requested some form of suspension clause in order to protect their own fledgling democracies from a military coup. In the event of such a threat to democracy, they wanted the EU (and other outsiders) to be able to immediately cut off all trade and aid measures to that country. For its part, the EU realized the principle of conditionality could promote global human rights to help compensate for the fact that the EU is not a signatory to the UN Declaration on Human Rights since it is not a sovereign state (Interviews, 2001).

After including such a suspension clause in the Chile and Argentina agreements, the EU began to realize its utility not only in terms of promoting democracy in these countries, but also in terms of improving the coherence of the EU's agreements with third countries. In May 1995 the EU decided to incorporate the principle of conditionality as Article 1 of every cooperation agreement it signed; it is thus compulsory.⁵ By the time of the early EU-Mexico negotiations in 1995, the EU had further institutionalized the general wording of the suspension clause and planned to include it in the Global Agreement. This would turn out to be no easy task, as we shall see in the next section. However, it should also be noted that the EU does not expect Mexico (or any other third country) to fend for itself in terms of meeting the commitments it makes with the EU (whether involving

⁴ However, we should note that the Commission has occasionally resorted to suspending the negotiation or implementation of an agreement on political grounds, as in the case of the Interim Agreement with Russia due to Russian actions in Chechnya.

⁵ Based on a decision adopted by the 1847th session of the General Affairs Council, held in Brussels on May 29, 1995. This decision followed a vote over the document "Communication de la Commission sur la prise en compte du respect des principes démocratiques et des droits de l'homme dans les accords entre la Communauté et les pays tiers," Brussels, 23.05.1995, COM(95) 216 final.

political or economic goals). Thus, the EU relations with Latin America for the period 2000-2005 will be based on the following priorities:⁶

1. The EU will assist in the consolidation of democratic regimes by supporting the rule of law, improving transparency in public service, and facilitating a more active participation of civil society.

2. The EU will support efforts for a more equitable distribution of wealth, including help to reform structures to maintain a stable macro-economic environment, cooperation for industrialization with respect for the environment, and special attention to government programs aimed at investment in human capital, equal opportunity and fiscal reforms to redistribute income to the poor.

3. The EU will help these states achieving harmonious integration into the global economy, based on improved resistance to financial turbulence and including trade agreements.

4. The EU will help reinforce integration processes in the region by supporting the gradual opening of markets and the implementation of the necessary reforms to ensure monetary and financial stability.⁷

In short, by including political conditionality in its economic and cooperation agreements with third countries, and by committing itself to the assistance of those countries in meeting the conditions, the EU is creating a mutually-reinforcing system of trade pacts to help strengthen the internal coherence among its policy goals. Since this conditionality is also bilateral in nature (meaning both sides must protect democracy and human rights), it acts as a political counterpart to the principle of reciprocity in tariff reductions that has long governed free trade pacts. Whether this norm will be replicated in other trade negotiations (involving the EU or otherwise) will depend on the EU's success in helping its interlocutors actually meet the conditions, making Mexico an important test case for non-association type agreements in the EU's external relations strategy. Moreover, not only does the Global Agreement with Mexico set a precedent in

⁶ As presented during the First EU-Latin America Summit in Rio de Janeiro, June 28-29, 1999.

⁷ In Latin America, the EU sees global integration problems caused by growing poverty and inequality. These are compounded, it believes, by increased international pressure for them to open their markets, what the EU calls "the challenges of globalization". The EU proposes to support the region in order to maintain "coherent development strategies" and to help countries there to set up policies for social

terms of providing a legal foundation for protection of human rights in the EU's agreements with third countries, it is also a living document. It established an EU-Mexico Joint Council to monitor relations and take decisions regarding the EU-Mexico relationship, even to the extent of amending the agreement. The Agreement is thus flexible enough to grow and change, and is likely to set additional precedents concerning the governance of the EU's external relations (Interview, 2001).

Negotiating the Global Agreement

Although the EU continually refused to make changes to the suspension clause during the negotiations, we should note that the EU is still able to adjust its negotiation procedures at key phases to fit particular circumstances. Since the EU has signed more than 102 trade and cooperation agreements with countries as distant as Kazakhstan, it cannot afford to design new procedures each time, but they do allow for some limited flexibility. The EU's ability to manipulate the circumstances of the negotiations while still attempting to impose its rigid conditionality principle (which is intended to promote a larger goal: coherence) was quite extraordinary. In this section we focus on how disputes over these issues arose between the EU and Mexico; in the following section we analyze how those disputes were resolved. Again, we focus only on the negotiation of the democracy and human rights aspects (i.e., conditionality) of the Global Agreement (negotiated between 1995-97); agreement on these areas, however, paved the way for the economic cooperation aspects of the agreement to be finalized between 1998-99.

protection, education, working conditions and protection of the environment. In the international arena, the EU offers to support initiatives to prevent damage caused by erratic capital flows.

The early stages

The Commission led the negotiations for the EU side, although it was limited by a specific mandate, or set of negotiation guidelines, unanimously approved by the Council of the EU (composed of government ministers from all 15 EU states). The EP also had the power to impede the entry into force of the agreement; in this case, the EP voted twice in Plenary Session during the final stages of the process (May 1998 and May 1999) to either accept or reject the negotiated text (the EP cannot propose amendments).⁸ On the Mexican side, the decision to negotiate is a direct responsibility of the president, and it was placed under the supervision of both the Ministry of Foreign Affairs and the Ministry of Trade and Industry (SECOFI). The national parliaments of EU member states and the Mexican Senate had only one occasion to ratify or reject the text in its entirety. Ratification by the 15 national parliaments began in January 1998 and is expected to be finished by May 2000, since they follow their own agendas and procedures.

The initiative to explore the possibility of a new EU-Mexico agreement came from the Council, following an enthusiastic letter of the then-Foreign Affairs Minister of France, Alain Juppé, to Jacques Delors, President of the Commission.⁹ The Commission then was asked by the Council to draft a proposal for such an agreement, detailing costs and benefits, which was debated by the member states separately. To aid the decision, the Council ordered the Commission to present to it three studies about the impact on the EU economy of a free trade agreement with Mexico, which were carried out by independent consultants.¹⁰ On 8 February 1995, the Council approved a

⁸ There was also some input by the EU's Economic and Social Committee and the Committee of the Regions, both of which submitted their opinions to the Council and the Parliament before the EP voted. However, they did not affect the negotiation process in any significant way and we do not consider their roles in this discussion.

⁹ Ref. 15 April 1994 006789 CM.

¹⁰ These studies are: a) "The Economic Impact on the EU of a Trade Liberalization Agreement with Mexico," Final Report, IRELA, Madrid, 1995; b) "Conséquences de l'ouverture du marché de l'UE aux produits agro-alimentaires en provenance du Mexique," European Consultants Organization (ECO),

document proposing to "deepen" relations between Mexico and the EU.¹¹ At the same time, Mexico began a very active lobbying campaign in Europe, pressuring the EU to produce a written statement of their intention to achieve a new agreement to include free trade. Since only a general agreement among the 15 was necessary to proceed with that promise, the Solemn Joint Declaration signing ceremony was organized in Paris on May 2, 1995. A few days later, general elections in France confirmed Jacques Chirac as President and Alain Juppé as Prime Minister. The next step was for the Commission to submit to the Council a draft of the negotiation mandate, which, once unanimously approved, would allow for the immediate beginning of formal negotiations.

Even before the dispute over conditionality arose, however, events on both sides of the Atlantic threatened the agreement. The French elections, instead of being good news for Mexico, marked the transformation of France into the staunchest skeptic of free trade. A series of paralyzing strikes from all productive and public sectors hit France from August to December 1995, bringing the new administration to change its political discourse to a more France-centered policy. The social tension crossed borders to Belgium and Germany, leaving the largest and most influential member states strangely silent about further opening their economic borders, let alone to a country like Mexico, which had much lower labor costs and virtually no social protection for its workers. Meanwhile, the proposal for a mandate was bouncing back and forth between the Commission and the Council: the French seemed increasingly opposed to the notion of free trade, and a good number of EU member states stood behind them.

Adding ammunition to the opponents of the agreement, Mexico had been in the news for the previous two years because of a series of extraordinary and very unpleasant events. First, the

Brussels, August 1995; c) "A Free Trade Area between the European Union and Mexico", Commission staff working paper, SEC(96) 843, Brussels, 30.04.1996.

¹¹ "Comunicación de la Comisión al Consejo y al Parlamento Europeo. La profundización de las relaciones entre la Unión Europea y México." COM(95)03 final, Brussels, 08.02.1995.

Zapatista uprising in the state of Chiapas began on January 1, 1994. The government seemed unable to control the situation and resorted to questionable practices to suppress it, including the expulsion of foreign observers. Two political assassinations took place during that year, as well as the presidential elections that brought Ernesto Zedillo to power. To make matters worse, the new government faced a major crisis when the Mexican peso crashed on December 19, 1994. The following year was entirely marked by the "Tequila effect" spilling over all the emerging economies, the 200% devaluation of the Mexican peso, the loss of millions of jobs and a gross domestic product contraction of 7%. At this point, Mexico appeared a most unattractive trade partner for the EU. Thus, the EU-Mexico negotiations saw no progress until May 1996, when finally the Council approved a mandate for the Commission, and negotiations were scheduled to start on October 14, 1996.

It was at this point that Mexico tried to avoid the insertion of the so-called "Democratic Clause," the first article in every agreement signed by the EU, an attitude that would poison the negotiation environment right up until the signature ceremony in December 1997. At the first meeting in October 1996 both parties decided to call it off after only one day of conversations. Mexico disagreed with the order of the topics for negotiation and refused to accept a non-binding sequence that left vaguely "for later" the beginning of the trade talks. The EU had tried to do as with any other third country negotiation: first talk about the political and development cooperation terms and then, if both parties were still committed to those terms, proceed with the talks on "gradual and reciprocal liberalization of trade." The EU responded that Mercosur and Chile had accepted that system, but Mexico refused to budge; it wanted to negotiate the three aspects of the new accord simultaneously and to obtain a clear commitment from the EU for a trade liberalization pact. At that point, to continue the negotiation would have required a fundamental change in the mandate, which

the Commission wanted to avoid at almost any cost, particularly because so many EU member states were searching for pretexts to cancel the effort. A few weeks later, Mexico proposed the signature of two agreements: one for political dialogue and another one for cooperation aid and trade. However, the Commission could not agree to mix trade with cooperation since, under the Maastricht Treaty, they belong to different spheres of competence.¹² This "mix of competence" would help the EU uphold the principle of coherence but would also require two approvals of the all parliaments of the EU member states, with each procedure requiring no less than two years. In order to handle this and other procedural problems, the Commission devised a two-step formula that satisfied Mexico (and thus encouraged coherence), and could now be the model for other EU trade negotiations.

The Commission's proposals

The Commission proposed to sign three different documents that would comprise all aspects of the negotiation, clearly separating the spheres of competence. This would allow cooperation and negotiations on unresolved issues to proceed without waiting for final ratification by EU member states. These agreements would involve:

1. The Global Agreement.¹³ Covers all details regarding the democratic clause, the political dialogue, and the cooperation fields, but only mentions trade liberalization. It creates a Joint EU-Mexico Council, with full decision-making power over the agreement. Its entry into force would be contingent upon the satisfactory conclusion of the second document.

Title I. (Arts. 1-2) summarizes the Democratic Clause and the objective of the agreement: "The object of this Agreement is to strengthen existing relations between the Parties on the basis of reciprocity and mutual interest. To this end, the Agreement shall institutionalize political dialogue, strengthen commercial and economic relations by means of the liberalization of trade in conformity with the rules of the WTO and shall reinforce and broaden cooperation." Title II (Art. 3) discusses Political Dialogue: "With the objective of covering all subjects of shared interest, to open paths

¹² The issue of "European Community Competence", that delegates decision power to the Commission, and "Member State Competence", by which the EU countries retain independence in their decision regarding particular domains, such as defense, culture and trade in services.

¹³ The official title of this agreement is: *Economic Partnership, political coordination and cooperation agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part.*

towards new forms of cooperation with shared objectives, including joint international initiatives." Titles III through VIII discuss economic issues and final provisions.

2. The "Interim" Agreement¹⁴ on trade and trade-related matters, which detailed the scope and regulation of the trade negotiations, not the trade liberalization itself. It had the effect of granting a sort of "fast-track authority" to the Commission, providing that the member states could be present during all of the negotiation rounds. The Interim Agreement did not cover trade in services, a matter of member state competence. It established that trade negotiations were to start one month after both parties had completed their own procedures of approval (including the EP first ratification), which took place in May 1998. The Interim Agreement would expire as soon as the decision was taken by the Joint Council to adopt the Global Agreement.

3. The Final Act, including unilateral and interpretative declarations by both parties, including a Joint Declaration on trade of services.

Although the text of the agreement does not seem exceptional, it includes a number of features that Mexico had not accepted before, and marks a departure from a tradition of "protection of sovereignty," (i.e., non-intervention in Mexico's internal affairs), a principle largely derived from Mexico's experience with the United States. However, the standards on which Mexico could base a new relationship with the EU were not as clear, and the Mexicans were highly sensitive to the possibility that any concessions they made to the EU might also have to be extended to the U.S. Three issues in particular emerged as major points of contention:

The democratic clause. Mexico had singled itself out of the rest of the Latin American countries in its opposition to the "democratic clause" mentioned in the previous section. The clause (Article 1, "Basis for the Agreement") is a binding statement that acts also as a condition for the validity of the agreement. It reads as follows: "Respect for democratic principles and fundamental human rights, as proclaimed by the Universal Declaration of Human Rights, underpins the domestic and external policies of both Parties and constitutes an essential element of this Agreement."

¹⁴ The official title of the Interim Agreement is: *The Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part.* Note the absence of the phrase "and its Member States" from the official name (unlike the Global

Beyond their general opposition to this clause, the Mexicans were particularly concerned about including the phrase "domestic and external" within it because such a provision might allow the EU to violate Mexico's doctrine of non-intervention. This single phrase would remain an obstacle to an agreement until the very last minute.

The conditionality (or suspension) clause. Article 58 ("Fulfillment of Obligations") of the Global Agreement includes the "conditionality clause," through which the parties accept that a breach of Article 1 above is sufficient to "repudiate the Agreement." Mexican officials attempted to exclude this clause first from the Global Agreement and then from the Interim Agreement, arguing that they failed to see the linkages between democracy and government. As the Mexican foreign minister asked his European counterparts, "Fiscal policy or public transportation policy, for example, are they inspired by those principles?"¹⁵ From his government's point of view, human rights and democracy were political themes and had nothing to do with trade, as the Mexican chief negotiator, Jaime Zabudovsky, also repeated to the press.¹⁶

The cooperation in democracy and human rights chapter. Another innovation of the Global Agreement is the inclusion of a cooperation chapter (linked to a corresponding EU budget line) on human rights and democracy. Although the first Mexican draft of this article proposed that only the government receive this aid, the final version of Article 39 ("Cooperation on Human Rights and Democracy") is sufficiently vague as to allow different channels of distribution for this money, whether through governmental or non-governmental organizations (NGOs), provided their programs adhere to the following objectives:

Agreement), indicating the two different levels of competence mentioned in Title II of the Global Agreement.

¹⁵ Letter from Minister of Foreign Affairs José Angel Gurría to his European counterparts, 24 June 1997.

¹⁶ Marcela Szymanski, "Social dimension absent from Mexico-EU negotiations," ICFTU-Online, 9 February 1999.

1. Development of civil society by means of education, training and public awareness programs;
2. Training and information measures designed to help institutions function more effectively and to strengthen the rule of law;
3. Promotion of human rights and democratic principles.

Mexico was ready to accept financing from the EU to train civil servants and justice officials, but opposed vigorously any direct donation to NGOs active in the field of civil and human rights education (although they accept funding from U.S. NGOs such as the National Endowment for Democracy). Since the Commission has made a habit of using EU funds to strengthen civil society in third countries (such as its support for the anti-apartheid movement in South Africa; see Holland, 1995), Mexico's negative view of this practice was highly problematic. Moreover, given the principles at stake and the potential financial sums involved,¹⁷ this issue in combination with those above helped to draw in other actors to the process and thus further complicate the negotiations.

Between January and July 1997, the negotiation climate was put to the test because of the suspicious attitude of the Mexican government, which had blocked a donation to the Mexican Academy of Human Rights,¹⁸ an institution of sufficiently high profile for the donation issue to create a scandal in Brussels. The EP attacked the Commission on the weakness they had displayed under Mexican pressure, and invited representatives of Mexican NGO's and victims of human rights abuses to testify before different Parliamentary Commissions¹⁹. Mexican interest groups and NGOs received ample support from European associations and the EP; they then mounted a very damaging attack, from Brussels, against the official versions about the situation of the Zapatistas in the state of Chiapas, murders and harassment of journalists and other human rights violations. The event ended

¹⁷ In some years, the EU has spent up to \$22 million in programs related to Mexico. For recent figures, see the Commission's "Mexico Country Strategy Paper (2000-2006)." December 1999.

¹⁸ The Academia Mexicana de Derechos Humanos (AMDH) was to receive its second gift of 340,000 Ecus (then \$410,000) to monitor the elections for mayor of Mexico City.

up creating an incident between Commissioners Sir Leon Brittan (who handled trade affairs) and Manuel Marín (a Spaniard who handled relations with Latin America). Sir Leon had just dropped the negotiations for a new agreement with Australia because this country objected to the Democratic Clause, and Mr. Marín was requesting "flexibility" toward Mexico. After calling the Commission to order, on 12 July 1997 the EU member states finally ordered Mr. Marín to see to it that Mexico adopted the Clause or abandon the negotiations altogether.²⁰

Endgame: Finalizing the democratic clause

After the EU finally made it clear that it was willing to sacrifice the agreement to uphold its principles of coherence and political conditionality, the Mexicans started to re-think their position. After two weeks of ruminations, Mexico accepted the clause in full,²¹ allowing for negotiations on the Global Agreement to be concluded on July 23, 1997. The argument that caused the confrontation between Sir Leon Brittan and Manuel Marín had originated in the final hours of talks, when the Mexicans attempted to strike the phrase "domestic and external policies" from the Democratic Clause, and the Commission initially agreed to go along. However, at the COREPER meeting the following morning, Belgium, Britain, and France objected to this concession on the grounds that the wording of the Clause had to be consistent for all EU cooperation agreements with third countries. The Mexicans finally agreed to include the phrase in the Clause and, following the negotiations, they even backed down on insisting that they add their own "declaration of understanding" to the Global Agreement, which would have effectively nullified the conditionality

¹⁹ On 21 September 1997 and 3 March 1998.

²⁰ Marcela Szymanski and Jean-Paul Marthoz, "México y los derechos humanos: puesta en escena internacional," in the Mexican monthly *Este País*, February 1998, pp 43-46.

²¹ In April 7, 1997, during the Grupo de Rio meeting in The Netherlands.

clause (Interviews, 2001). However, the Mexican article of the Constitution stating the principle of non-intervention in domestic affairs was added as a “unilateral declaration” in the Final Act.

According to those involved in the negotiations, the Mexican change of position was a result of several factors.

First, the general political climate in Mexico for accepting such a clause had been slowly improving long before the negotiations commenced. Between the 1985 Mexican earthquake and the Chiapas rebellion nine years later, the Mexican government and people had become increasingly willing to consider fundamental political reforms to help shore up their democracy. More specifically, these years saw the development of a more robust civil society in Mexico, encouraged not only by the EU but also by the media and by intensive lobbying (of both Mexican and EU negotiators) by NGOs. Although the Mexican government at the time still did not fully accept the involvement of NGOs in making such decisions, it also realized that a healthy civil society was a hallmark of "first world" democracies. To be a full member of this group, Mexico would have to show more respect for human rights, promote transparency in its government decisions, and fight corruption. In the particular case of the blocked donation to the Mexican Academy of Human Rights (AMDH) in January 1997, due to the stature of the organization, the EU Commissionners and President Ernesto Zedillo began receiving letters of protest from reputed American NGOs that work regularly with the AMDH. The fact that the dispute was extending beyond the EU-Mexico relationship clearly influenced the attitude of the Mexican government. As the NGOs and Mexican media asked, "What does the Mexican government have to hide by not signing the Democratic Clause?"

Second, EU officials made the case to the Mexicans that they need not fear that the U.S. would make similar political demands of Mexico. Indeed, EU negotiators took care to frame the

conditionality clause as a key element of a partnership between equals rather than an instrument of coercion. Upon reflection, one EU insider felt that Mexico's initial negative response to the clause was due to "bad marketing of a good idea" in that the EU's insistence on the clause sounded too much like a diktat to the Mexicans. Commission negotiators thus had to continually stress the *bilateral* nature of the clause, which clearly distinguished the Global Agreement from norms in Mexico-U.S. relations. While the U.S. is certainly willing to unilaterally "certify" certain countries on the basis of certain behaviors (such as cooperation against drug trafficking or terrorism) as a condition of normal relations, it was hardly likely to allow bilateral certification of democracy or human rights issues with any state. One EU negotiator even joked to the Mexicans that they should set up their own NGOs in the EU to ask embarrassing questions about European democracy and human rights. The stark contrast between the EU and the U.S. was made clear: only the EU was willing to allow a true bilateral dialogue with Mexico on these issues, and the bilateral character of the conditionality clause reflected that understanding. Mexico would be permitted to examine Europe's record on democracy and human rights as it saw fit, and could unilaterally suspend the agreement for violating those principles. The Mexicans could never hope to receive such a "concession" from the U.S. Moreover, upon reflection after the negotiations, EU officials noted that the suspension clause is not likely to be used by either side. The democratic clause is also very general; it makes no reference to global law and does not include provisions for monitoring compliance.

Third, the Commission was able to use the EU's peculiar institutional arrangements to "tie its own hands" (i.e., convince the Mexicans that it could not make concessions because of opposition in the EU) and thus strengthen its position, a well-known strategy in negotiations (Putnam, 1988). Tying hands took several forms, at all

stages of the process (forming the mandate, negotiating with the Mexicans, and ratification). First, the Commission used the previous cooperation agreements with other third countries to show that the wording of the Democratic Clause had been formally institutionalized and could not be changed without undermining the EU's general approach (i.e., coherence) to its external relations. Second, the Commission used the general opposition among some EU states to free trade agreements (France) and the particular opposition to changes in the wording of the Clause (Belgium, Britain, and France) to convince the Mexicans that the Global Agreement was the best deal they could get from the EU. Third, the Commission set a new ratification precedent with the EP, allowing it to ratify both the Interim and Final Agreements with Mexico, in addition to the Global Agreement (previously, the EP could not ratify Interim Agreements). This new rule put additional pressure on the Mexicans to accept the wording of the Democratic Clause or risk having the EP reject all three forms of the agreement.

Indeed, the EP became especially crucial once Mexican opposition to the Clause became public. As noted above, the EP (particularly the Green's Political Group) continually raised the issues of democracy and human rights and forged relationships with relevant NGOs concerned about such matters, such as Human Rights Watch, the Copenhagen Initiative for Central America (CIFCA), the Mexican Academy of Human Rights (AMDH), the Mexican Network on Free Trade (RMALC), and the Human Rights Center Miguel Pro (PRODH). Once the EU member states and Mexico had signed the three documents (December 8, 1997), they were translated into the 11 official EU languages and sent to the EP and the 15 national parliaments for ratification. After analyzing the outcome, the EP concluded that it could ratify only the Interim Agreement, on the grounds that it wanted to see the final, detailed result of the trade negotiation before accepting the

Global Agreement. Mexico, it said, was to be surveyed during that period of time in order to see whether or not their engagement regarding human rights and democratic principles was more than rhetorical. The EP's response, addressed to the Council, is called a "Finding of Conformity," and is presented as a "recommendation"²² to illustrate the vote of the members of the EP. The recommendation is a detailed report that gathers the opinions of the EP bodies relevant to the decision.²³ The recommendation was read, amended and ultimately approved by each one of these Commissions before being submitted to the Plenary. Once the vote in Plenary was taken (on May 13, 1998), and the results registered at all instances, the EU-Mexico Joint Council was established on July 14, 1998, allowing a date for the beginning of trade and trade-related negotiations to be set (November 9, 1998).

In spite of the EP's intention to verify the outcome of the trade negotiations, political events exerted pressure on its decisions and accelerated the procedure. In the first quarter of 1999, an accusation of fraud against a member of the Commission, the former French Prime Minister Edith Cresson, resulted in the resignation of the entire EU's executive body and its restructuring. The EP had to approve a newly constituted corps of Commissioners and, at the same time, prepare for European elections of the EP in early June. This purely internal matter decisively affected the EU-Mexico negotiation process: since the members of the EP who had been charged with the follow-up of the ratification process were not up for reelection,²⁴ they became worried that someone else would "mishandle the file." They finally decided to approve the trade negotiation outcome, even when the negotiations were far from ending (Interviews). With other more important matters to care

²² "Recomendación sobre la propuesta de decisión del Consejo relativa a la celebración del Acuerdo interino sobre comercio y cuestiones relacionadas con el comercio entre la Comunidad Europea por una parte, y los Estados Unidos Mexicanos, por otra," PE 225.176/def., 27 April 1998.

²³ In this case, the Commission of Foreign Affairs and Common Security, the Commission of Foreign Economic Relations and the Commission of Cooperation and Development.

²⁴ Spanish Socialist Ana Miranda de Lage and Spanish Christian-Democrat José Ignacio Salafraña.

for (such as campaigning), the rest of the EP paid no attention to the hurried approval of an unfinished text, and voted, in May 1999, in favor of entrusting the new Commission with the final result. The Mexican Senate approved the Global Agreement and the trade outcome on March 16, 2000.

Human rights and democracy in the EU and NAFTA

Beyond its importance for Europe's external relations, the EU-Mexico Global Agreement (and its related pacts) sets new standards for trade-related international cooperation in contrast to NAFTA. It would seem obvious that once a free-trade area is established, high-level dialogue between government officials would ensue. However, it is worth noting that in the case of NAFTA, President Clinton visited his neighboring country and second-most-important trading partner in 1997, already in his second term. Also, NAFTA has no provisions for regular contact between government officials, which tends to reduce bilateral conversations to strings of accusations on drugs and immigration policy issues, when the U.S. Congress begins its "certification" procedures. The EU-Mexico agreement does not provide a calendar of meetings, but includes this topic the yearly agendas of the Joint Council. One of the implicit objectives of the EU is to get Mexican support for its initiatives within multilateral bodies, such as the UN and its agencies, where Mexico would have ex-officio sided with the United States. This explicit objective of the dialogue is mentioned in the Global Agreement (Article 3).

From an American point of view, and even more so regarding Mexico, the Europeans might seem obsessive in their demands about human rights and democracy. It is necessary, however, to bear in mind the history of Europe in the 20th Century, when two wars destroyed its economy and forced it to begin from scratch. In Europe, a relatively crowded and heterogeneous place, social

tensions get amplified and extended very rapidly, as compared to other less populated and more homogeneous parts of the world. Affiliations with neo-Nazi parties and denying the Holocaust are criminal offenses in many countries of the EU. In Austria, France and Belgium, far-right parties with barely legal discourse are gaining political presence, despite official efforts to minimize their impact. Under these circumstances, Europe is about to "enlarge" and admit former totalitarian/newly democratic countries into the EU. But the EU wants to proceed under certain conditions, one of which is that no undemocratic regime be counted among its members. Nor will the EU fund the development of a government that mistreats its own citizens.

This is the kind of engagement that functions even better without the pressure of a shared border (Marthoz and Szymanski, 1998). In the international arena, since the 1970's the EU has had to assert its position toward the growing number of Latin American dictators and, starting with Chile, chose to support the democratic opposition. Mexico was a very valuable European ally during the Central America crisis, defying together with Europe the actions of the United States in El Salvador (Smith, 1995). After such a history of cooperation between Europe and Mexico in democracy and human rights, the EU was not expecting Mexico's strong rejection of the harmless, standardized text of the Democratic Clause. For Europe, this agreement and this Clause would be proof, however small, of Mexico's political and economic independence with respect to the United States.

The difference between NAFTA and the new EU-Mexico agreement is more visible at this level. NAFTA, lacking of any reference to civil society, democracy and human rights, looks merely like a shopkeepers' contract. Because it can be considered a trade-related matter, and only after fierce opposition by the American trade unions to the signing of the treaty, NAFTA included a "parallel agreement" on labor conditions (it is not a part of the agreement itself). A healthy

economy has never brought justice and freedom by itself; it has always required political forces to shape them, and this is where the cooperation funds of the EU have great responsibility if they fulfill their objectives. Concerning its southern neighbor, the United States has always had to balance between "order without dictatorship and democracy without anarchy".²⁵ But Europe, free from the pressures of geographic proximity, can "afford" to give real meaning to its objective of building its foreign policy on the principles of human rights and democracy, thus upholding the more general principle of coherence.

Recognizing the growing importance of what they call "ancillary issues" over the trade liberalization processes in the world, some American scholars agree with this "European way of trading." They call for the development of "parallel channels for addressing human rights, international labor standards, global warming, narcotics trafficking, or promotion of democracy. They need to develop these in North America," because, "it is self-contradictory to argue simultaneously how important trade has become to people's lives and then to declare it illegitimate to deal with trade's impact on a wide range of values" (Destler, 1998). These arguments, and the increasing number of protests at summits of the World Trade Organization and other international economic organizations would seem to lend much credence to the EU's general approach to these problems as reflected in the Global Agreement with Mexico.

Conclusion

The implications of the EU-Mexico cooperation agreement are extensive. Beyond its economic value, the political aspects of the agreement gave Mexico valuable breathing space in its highly integrated relations with the United States. For its part, the EU now has a foothold in Latin

²⁵ Former Defense Secretary Harold Brown quoted by Marcela Szymanski in the Mexican daily "Reforma", 16 October 1997.

America to help counteract the influence of the U.S. In political and social matters, the way the EU behaves toward Mexico will demonstrate how serious they take their commitment to democratic and human rights principles. The political dialogue framework (another feature absent from NAFTA) provides for regular encounters between officials, members of parliament and non-governmental organizations. This also may provide a stronger cultural link between Europe and Mexico to counter the American cultural influence, and may have a stabilizing effect on democratic rule in Latin America.

Since the agreement entered into effect (July 2000) the results have been very encouraging. An EP delegation now travels to Mexico/Central America two times a year. It went to Chiapas and observed the Mexican elections. There is also an inter-parliamentary dialogue with Mexico, and Mexicans have visited the EU to discuss both economic and political matters. According to insiders, the first meeting of the EU-Mexico Joint Council (February 2001) went very well; it covered trade in services, rules for cooperation, and the political dialogue. The new Mexican government under President Fox seems even more receptive to human rights issues than the previous administration, and EU-Mexico cooperation along those lines should intensify along with trade liberalization.

Beyond its impact on EU-Mexican relations, the scope and form of this accord also set a precedent for the negotiations between the EU and Mercosur, which began on April 6, 2000. Although the Mercosur countries have a larger part of their trade with the EU, the agreement they will reach will probably not differ much from what Mexico got. NAFTA as well may have to improve its content by including "ancillary issues" such as human rights, democratic principles, social inclusion, and institution building,

particularly if the U.S. hopes to transform NAFTA into a Free Trade Area of the Americas. Such a development would represent one of the more important examples of the EU's growing impact on world politics despite its continued lack of a military presence.

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