NAFTA AS AN ARENA FOR CROSS-BORDER LINKAGES AMONG LABOUR AND ENVIRONMENTAL COALITIONS

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Abstract

This major research paper examines the public debate surrounding the North American Free Trade Agreement as well as the supplementary labour and environmental side agreements that were passed alongside the main agreement. Current scholarship on the subject has focused heavily on the outcomes of individual submissions filed under both the labour and environmental side accords at the expense of a broader and more nuanced understanding of the submission process itself. The supplementary labour and environmental side agreements were novel and unique venues for the creation of transnational alliances between once isolated labour and environmental groups. In exploring the factors relevant to a transnational network theoretical framework, a series of interviews were conducted with experts in North American trade policy. Based on the information collected, the debate and subsequent implementation of the labour side agreement strongly unified North American labour coalitions. In contrast, the debate and implementation of the environmental side agreement paradoxically both unified and polarized the environmental movement. Overall, these findings highlight the importance of how new venues of governance can serve to legitimize new actors and new grievances.

Introduction

Since it came into effect on January 1st 1994, the North American Free Trade Agreement (NAFTA) has been the source of much discussion and debate in North American politics. Much of the debate has centred around the controversial and separately implemented labour (NAALC) and environmental (NAAEC) side agreements and their implications on both labour markets and the environment. NAFTA's labour and environmental side agreements were unique in that it attempted to reconcile trade liberalization with protective social measures; in fact, it was the only free trade agreement at the time to even mention labour and environmental provisions (Kelly, 2000, p. 146). The level of contention surrounding the negotiations was also unprecedented for its time (Wilson, 2002, p.187). The actions of both labour and environmental advocacy coalitions from Canada, the United States, and Mexico played a substantial role in the arena of public debate during the negotiations.

The objective of this major research paper is to critically analyze the supplementary NAFTA labour and environmental side agreements and how key stakeholders impacted the three-year, heated public debate surrounding the talks. Before delving further, this paper raises two important research questions. First, how were labour and environmental groups in Canada, the US, and Mexico able to organize themselves and the use the debate surrounding NAFTA as a site of protest? Second, what were the implications of these cross-border, transnational linkages for labour and environmental groups? This paper will argue that NAFTA's labour and environmental side agreements acted as transnational venues that facilitated cross-border linkages between labour and environmental coalitions. The deficiencies and opportunities found in both of the side

agreements forced labour and environmental coalitions to cooperate with each other and coordinate their strategies accordingly. Moreover, transnational cooperation between labour and environmental groups was fostered indirectly through each side agreements' procedural rules as well as their shortcomings (Compa, 2001). This is because filing a submission or complaint under each respective side agreement can be a difficult and time consuming process and as a result, required labour and environmental coalitions to work with like-minded counterparts in other countries in order to disseminate information and share costs. As a consequence of this, labour and environmental coalitions were forced to choose cases carefully. To put it another way, the side agreements were a catalyst for meaningful cross-border linkages between various kinds of advocacy coalitions (Kay, 2005, p. 717). As a result, this fostered increased transnational political engagement between a plethora of different organizations in North America that had not existed before (Compa, 2001).

The theoretical framework that will serve as a foundation and blueprint for this paper's main argument is based on research conducted by scholar Peter Evans on *transnational networks.* According to Peter Evans, *transnational networks* are essentially cross-border alliances formed by like-minded advocacy coalitions (labour, environmental and human rights groups) with the intent of "fighting marginalization through counter-hegemonic globalization" (Evans, 2000, p. 230). *Transnational networks* are communities with shared values and principled ideas that coalesce and emerge alongside sites of contention pertaining to global finance, trade and investment (Evans, 2000, p. 231). *Transnational networks* are able to effectively transmit information and bolster ties with groups in other countries by taking advantage of the changes that have occurred in

communication and long-distance transportation (Evans, 2000, p. 230). Also, *transnational networks* think locally and act globally; they attempt to solve problems at the local level by "forming transnational linkages and campaigns that rely on outside political leverage to make those local-level improvements possible" (Evans, 2000, p. 231). While Evan's work originally focused on the main body of the NAFTA agreement, I will be adapting Evan's theoretical framework to explain how labour and environmental groups used the supplementary side agreements as a site of protest.

In addition to Peter Evan's work on *Transnational Networks,* this paper will be supplemented with interviews conducted with experts in the field such as pre-eminent Canadian political economist, Stephen Clarkson; senior NAFTA trade negotiator and North American trade policy scholar, Michael Hart, and senior NAFTA negotiator in charge of antidumping/countervailing duties, Terry Collins-Williams. The series of elite interviews conducted were crucial in "filling in the gaps" of information missing in regards to the timeline of the negotiations as well as the underlying motivations and (often competing) interests of various actors and stakeholders. The testimony provided by all three experts offers great insight into the pubic debate surrounding both the main NAFTA agreement and the supplementary side agreements. This paper's historical overview benefited immensely from this testimony.

While the labour and environmental side agreements were the target of much heated criticism and debate during the NAFTA negotiations, interestingly enough, the controversy over the side agreements has not been given adequate attention in the existing scholarship. Furthermore, when they are addressed in the literature, scholars working in the field tend to emphasize the outcomes of singular cases and whether or not

a submission filed on behalf of a labour or environmental group was "successful." Although this approach can make for some interesting insights and observations, the approach taken in this paper will emphasize the entirety of the *process* as opposed to the significance of any one particular outcome or decision. The second problem with the current scholarship is that scholars tend to emphasize the structural limitations and procedural failings of the side agreements at the expense of discussing the unique and novel opportunities both labour and environmental groups have when it comes to airing their grievances and communicating their criticism. In other words, by looking at the side agreements as a venue for the legitimization of various labour and environmental coalitions, scholars can gain greater insight as to how and why different stakeholders used the side agreements to further their cause.

The first section of the paper will provide a brief historical overview of NAFTA and the related labour and environmental side agreements. This section of the paper will provide a contextual background of the negotiation process early on between all three parties, the views of both President Bush Sr. and then-Democratic presidential candidate Bill Clinton in the midst of the 1992 presidential election and finally, President Clinton's efforts to include the side agreements into NAFTA as well as his administration's efforts to fast track the agreement through a congress that was heavily divided by the issue. Section two is dedicated exclusively to discussing the labour side agreement (NAALC). This chapter will give a brief overview of its basic organizational structure and the procedures detailing how claims can be made and investigations can be carried out. In addition to this, the strengths and weaknesses of the NAALC's enforcement and sanctioning capabilities will be thoroughly discussed.

Similar to the layout of section two, section three will deal exclusively with the side agreement's environmental counterpart, the NAAEC. The NAAEC's organizational structure and procedures regarding claims and investigations will also be addressed. Like the NAALC, the NAAEC's strengths and weaknesses in relation to enforcement and sanctioning power will be addressed and critically analyzed. Specific cases about the violation of a signatory's environmental laws will also be highlighted. Finally, section four will conclude the paper by discussing the implications of the transnational linkages made by labour and environmental advocacy coalitions as well as other noteworthy observations.

Historical Overview and Background

The following section will provide a brief historical overview of the major events surrounding the three year, NAFTA negotiations in order to give context to this paper's main argument. Furthermore, the historical overview presented will primarily focus on the American perspective of the three-year negotiation period. With the implementation of the Canada-United States Free Trade Agreement (CUSFTA) already in place by January 1st of 1988, the push towards liberalized trade and a more open climate for investment was already underway in North America (Roberts and Wilson, 1996, p. 293). Freer trade through the gradual removal of tariffs, trade barriers and the creation of rules and institutions that govern trade-related disputes pertaining to foreign treatment of investment and intellectual property was beginning to leave its mark on North America's political economy (Zamora, 1995, p. 401).

According to Karen Roberts and Mark Wilson, the genesis for what would eventually turn into NAFTA had its origins when then-Mexican president Carlos Salinas communicated his desire for a free trade agreement with the United States and for a similar but separate one with Canada in May of 1990 (Roberts and Wilson, 1996, p. 293). According to Stephen Zamora, President Salinas believed that increased access to a 350 million person market would provide a low-wage, export-oriented country like Mexico with the much needed investment and foreign capital necessary to mitigate against some of the economic problems Mexico had experienced since the beginning of the 1980s.

Initially, the free trade agreement proposed by Mexican President Carlos Salinas in the summer of 1990 was originally supposed to be a bilateral one between Mexico and the United States. However, by the end of January of 1991, all three parties agreed that Canada should also be a part of the NAFTA negotiations (Roberts and Wilson, 1996, p. 294). An important facet of the NAFTA negotiations that tends to get overlooked in the scholarship was the importance of the US president's ability to "fast track" a trade agreement. Fast track negotiating authority (pursuant to the 1974 Trade Act) essentially grants the president of the United States authority to negotiate international trade agreements expeditiously with other nations and allows congress to vote up or down on a proposed trade agreement bill within 90 days and without amendment or filibuster. Basically, members of congress either have to vote on a bill as it is or reject it altogether without changing it (Kahane, 1996, p. 35). The rationale for this being that congress cannot undermine an already negotiated trade agreement with frivolous amendments (Rozwood and Walker, 1993, p. 337).

In February of 1991, congress authorized the use of the fast track procedure for the talks surrounding NAFTA (Roberts and Wilson, 1996, p. 294). Later in May of 1991, the House of Representatives voted 231-192 for a two year extension of the fast track procedure and in the same month, the senate also voted in favour of the extension by a vote of 59-36 (Kahane, 1996, pp. 35-36). Not surprisingly, the presidential use of fast track authority was heavily criticized by a large swath of labour and environmental groups. Both groups argued that it granted the executive branch too much power in regulating commerce and that the hasty nature of the 90 day provision did not allow for adequate public debate as well as undermined the legislative branch's ability to influence the bill. The US-based labour union, the AFL-CIO argued that the fast track negotiating procedures were "substantially undemocratic" and demanded that the process be more open in nature (Rupert, 2000, p. 69). According to Steve Charnovitz, the highly rushed nature of the fast track process also had much to do with the fact that international agreements that were eligible for fast track authority would expire on May 31st 1993 (Charnovitz, 1994).

In addition to this, many members of congress (specifically Democratic members of congress) were initially reluctant to grant the president fast track authority because many resided in congressional districts where labour unions held tremendous influence and sway over voters. To lend credence to this statement, Leo Kahane concluded that senators representing congressional districts in northern or "rustbelt" states with both a strong union presence and high levels of unemployment were far less likely to approve the fast track procedure (Kahane, 1996, p. 44). The inclusion of the labour and environmental side agreements would be necessary in order to get reluctant Democratic

members of congress on board. To sum it up, president Bush's use of fast track authority would prove to be highly controversial and it would be the last time an American president would use it as it expired in 2007.

After a year of extensive, behind-the-scenes debate and negotiations, on August 12th 1992, trade representatives from all three parties formally concluded talks and signed on to the NAFTA accord (Raustiala, 1995, p. 36). During this time, the US presidential election was already in full swing and NAFTA would be a substantial talking point for both candidates. While giving a campaign speech in October of 1992, then-Democratic presidential candidate Bill Clinton would his announce his *conditional* support for NAFTA (McFayden, 2013). While Clinton endorsed NAFTA in principle, he did not support it in its then-current form and expressed his desire to revise it to include tougher environmental and labour standards (Roberts and Wilson, 1996, p. 296). The logic behind this was that workers from all three countries could compete on a more even playing field, and so environmental standards could be upheld more uniformly (Okin and Pomeroy, 1995, p. 772). According to Jacqueline McFayden, some of these revisions included a strong mandate for all parties to enforce their own domestic labour and environmental standards, a forum with dispute resolution capabilities and the ability for those dispute resolution bodies to levy sanctions, fines and other monetary penalties. In order to accomplish this, Clinton argued that each side agreement should contain an overarching commission responsible for carrying out these functions (McFayden, 2013).

As alluded to earlier in the paper, Clinton had to address the deficiencies and problems with the original NAFTA framework early on after his qualified endorsement of the agreement in October of 1992. Clinton's demand for the inclusion of the

supplemental side agreements was critical in order to gain the support of key Democratic constituencies such as labour unions and environmental groups. To better illustrate this point, several highly influential Democratic members of congress in March 1993 stated they would not support the agreement unless it contained the appropriate labour and environmental side agreements (DiMento and Doughman, 1998, p. 667). Despite Clinton's concessions to labour and environmental coalitions in exchange for their tacit support of the agreement, the overwhelming majority of labour unions were suspicious of NAFTA and as a result, opposed the agreement (Raustiala, 1995, p. 36). US-based environmental non-government organizations (ENGOs) however were far more polarized; more radical ENGOs like the Sierra Club and Greenpeace opposed the initiative while more moderate and established groups such as the National Resource Defence Council (NRDC) and the National Wildlife Found (NWF) supported it, although not without some reservations (Begley, 1993, p. 16).

Even groups that tacitly supported NAFTA felt that the proposed side agreements should have been incorporated into the main body of the NAFTA agreement as well. According to Barbara Hogenboom, the more moderate US-based ENGOs who were willing to compromise with the Bush administration on the environmental side agreement did so with the expectation that they would be offered a more constructive role in the talks as well as considerable access to government officials and experts (Hogenboom, 1996, p. 999). In short, opposition towards NAFTA from labour groups was far more unanimous while environmental groups were largely split on the issue.

Clinton's decision to voice conditional support for NAFTA was a prudent move *in theory.* According to Steve Charnovitz, Clinton's pragmatic and vote-conscious

positioning should have allowed him to expand his appeal on both sides of the NAFTA divide but instead, it actually ended up alienating key groups on both sides. This is because virtually all labour groups and the more radical environmental groups found the side agreements to be lacking and wholly inadequate, while business groups supportive of NAFTA initially felt that the side agreements were far too stringent and adversarial. For example, many business and industrial groups, such as the US Chamber of Commerce and the National Association of Manufacturers voiced concern over the side agreement's sanctioning capabilities (Charnovitz, 1994; DiMento and Doughman, 1998, p. 670). Moreover, Clinton's greater success in gaining supporters from the environmental community may have had more to do with the fact that his running mate, Al Gore, already had a rapport with many US-based ENGOs given his previous experience as an environmental activist.

On December 17th 1992, Mexican president Carlos Salinas, Canadian Prime Minister Brian Mulroney and outgoing US president George Bush Sr. all signed copies of the NAFTA agreement in each leaders' respective capital (Rozwood and Walker, 1993, p. 333). The signing of the NAFTA accord was unique in that it created the "world's largest free trade zone" at the time (Rozwood and Walker, 1993, p. 333). In May of 1993, the Canadian House of Commons narrowly approved NAFTA by a vote of 140-124 and roughly one month later, the Canadian senate would follow suit and ratify NAFTA with a vote of 47-30 (DiMento and Doughman, 1998, p. 674; Roberts and Wilson, 1996, p. 296). On November 17th 1993, the US House of Representatives approved NAFTA and the supplementary side agreements by a relatively slim margin of 234-200. Two days later on November 17th, the US Senate also voted in favour of ratifying NAFTA and the

labour and environmental side agreements by a vote of 61-38 (Okin and Pomeroy, 1995, pp. 769-770).

Interestingly enough, during the vote on NAFTA in the House of Representatives approximately three-fifths of Democrats voted against the NAFTA agreement, despite the inclusion of the side agreements while a majority of Republicans and the remainder two-fifths of Democrats voted in favour of it (Roberts and Wilson, 1996, p. 297). Finally on November 23rd 1993, the Mexican Senate voted in favour of NAFTA by a substantial measure of 56-2 (Roberts and Wilson, 1996, p. 297). According to Joseph DiMento and Pamela Doughman, NAFTA's gradual phasing out of tariffs over a ten year period would allow over 350 million people in North America to produce in aggregate a total of $6.5 trillion a year in goods and services (DiMento and Doughman, 1998, p. 659).

After his inauguration in January of 1993, President-elect Bill Clinton and his newly incoming administration began preparing for talks with Canada and Mexico on the supplemental labour and environmental side agreements (McFayden, 2013; Okin and Pomeroy, 1996, p. 773). According to A.L.C. de Mestral, one of the reasons for the side agreement negotiations was because Canada and Mexico refused to reopen the main body of the NAFTA agreement (de Mestral, 1998, p. 174). During this time, President-elect Clinton appointed Mickey Kantor as his senior NAFTA negotiation (Okin and Pomeroy, 1996, pp. 773-774). From March to August of 1993, senior trade representatives from each of the three signatory countries met on a monthly basis to discuss the specific workings and details of each respective side agreement (Winham, 1994, p. 31). During this time, there was considerable disagreement between the three parties as to what the side agreements should, and more importantly, should not do. Both Canada and Mexico

(for reasons pertaining to national sovereignty) suggested weaker labour and environmental commissions contained in each of the side agreements (Winham, 1994, p. 32).

Specifically, a point of major contention between Canada and the US during the negotiations was the inclusion of sanctioning capabilities afforded to each side agreements' administrative body. Canadian trade negotiators made it clear to their US counterparts that they did not want sanctions and instead preferred the use of fines or monetary penalties to encourage parties to enforce their labour and environmental laws (DiMento and Doughman, 1998, p. 672). Why was Canada so adamant that trade sanctions not be included in the side agreements? According to Kal Raustiala, senior Canadian trade representatives felt that sanctioning power, while intended to be used against Mexico, might be arbitrarily used against Canada instead (Raustiala, 1995, p. 37). To phrase it another way, Canada wanted to prevent the “Mexicanization" of its bilateral trade relationship with the United States for obvious strategic reasons. Senior trade representatives from the Canadian government also argued that the litigious and adversarial approach taken by the United States through the use of trade sanctions contravened the principles and purpose of NAFTA and of free trade in general (Raustiala, 1995, p. 37). A consequence of Canada's attempt to secure exemption was that it did to a certain extent, upset senior Mexican trade negotiators during the talks.

Ultimately when it came to the debate over trade sanctions, a compromise was reached between all three parties. Canada would only be subject to fines instead of sanctions whereas the other two parties, Mexico and the United States would be subject to only trade sanctions and not fines (DiMento and Doughman, 1998, pp. 672-673).

According to Joseph DiMento and Pamela Doughman, despite her short tenure, then-Canadian Prime Minister Kim Campbell would play an important role during the negotiators in winning Canadian exemption from trade sanctions (DiMento and Doughman, 1998, p. 672). Canadian business groups from a wide array of sectors supported the Campbell government's decision to oppose trade sanctions in the side agreements (Okin and Pomeroy, 1996, p. 776). Moreover, Canada not only succeeded in its desire not to be subject to trade sanctions, but the compromise also granted Canadian domestic courts sole jurisdiction in imposing fines and monetary penalties at the exclusion of the other two signatories (Winham, 1994, p. 35).

According to Jim DiMento, Pamela Doughman, and Kal Raustiala, preliminary negotiations on the environmental side accord between the three NAFTA signatories began on March 17th 1993 (DiMento and Doughman, 1998; Raustiala, 1995). Environmental lobby groups in both Canada and the United States were eager to test their increasing power and influence in a new and unique political arena. Between the implementation of the Canada-US Free Trade Agreement and the negotiations surrounding NAFTA, environmental issues began to achieve far greater attention and policy salience in the media and in the public arena. In an interview with NAFTA negotiator Terry Collins-Williams (personal communication, February 20, 2013) environmental issues achieved little if any policy salience with CUFTA negotiators as environmental lobbies at the time were inexperienced, under-funded and had scant access to both bureaucracy and government officials. Environmental groups were newer and thus less institutionalized compared to their labour counterparts who traditionally have had more extensive ties with other affiliates. In addition this, senior trade representatives

from both Canada and the US for the most part, did not even pay attention to environmental issues during the CUSFTA negotiations. Between 1989 and 1991, environmental groups improved upon their institutional shortcomings and began to effectively coalesce around major focusing events such as the 1989 Exxon Valdez oil tanker disaster to highlight the importance of environmental issues for the public. Terry Collins-Williams' (personal communication, February 20, 2013) explanation partially accounts for why environmental lobbies played a far more integral role in the NAFTA negotiations than they did during the CUSFTA negotiations.

Approximately two weeks prior to the start of preliminary negotiations on the environmental side accord, almost two dozen influential US-based environmental lobby groups including Friends of the Earth, The Humane Society and the Sierra Club addressed an open letter to then-senior US trade representative Mickey Kantor, urging him to set up an environmental commission within the side agreement with the ability to levy sanctions and the legitimacy to ensure regulatory compliance (Raustiala, 1995, p. 36). In April of 1993, several of the more moderate-leaning US environmental groups such as the National Wildlife Fund, reluctantly lent their conditional support to the NAFTA agreement, despite much internal debate and discussion (Raustiala, 1995, p. 37). The more moderate groups wanted to support freer trade but at the same time, prevent the rollback of hard fought, environmental regulatory gains that were won during the 1960s and 1970s.

Senior-level trade negotiators from all three parties gathered in Ottawa in May of 1993 to begin what would become the first round of very heated and spirited discussions over the side agreements (Winham, 1994, p. 32). In late May of 1993, senior American

trade representatives formulated a comprehensive position on the environmental side accord. However, Canada and Mexico's response to the US position outlined in May of 1993 suggested they wanted considerably weaker enforcement mechanisms. This was just as true for the labour side accord as it was for the environmental one. According to Jim DiMento and Pamela Doughman, a group of highly prominent Canadian environmental lobby groups in June of 1993 published an open letter to then-International Trade Minister Michael Wilson essentially urging him to push for a stronger environmental side agreement with "sharper teeth" and more stringent environmental standards (DiMento and Doughman, 1998, p. 680). In the same month, coalitions of US-based business groups would also write an open letter to US trade representative Mickey Kantor, stating that the proposed commission under the environmental side accord was *too* stringent, adversarial and lacked accountability (DiMento and Doughman, 1998, p. 672). During this time, the Clinton Administration's negotiating team began to backtrack on its commitment to strong enforcement measures and tougher sanctioning capabilities. Gilbert Winham states that meetings between senior trade representatives from all three countries became more regular as well as more virulent in the months of July and August as negotiations failed to resolve key outstanding issues at the time, most notably trade sanctions (Winham, 1994, p. 33). Despite the highly intense level of debate over both of the side agreements, an agreement between all three signatories was finally achieved on August 13th 1993 (Winham, 1994, p. 33). The environmental side accord was formally titled the North American Agreement on Environmental Cooperation (NAAEC) and the labour side accord was formally called the North American Agreement on Labour Cooperation (NAALC).

Not surprisingly, the negotiations over the labour side accord featured many of the same problems and sticking points as the environmental side accord (specifically, the controversies surrounding the strength of enforcement provisions and trade sanctions). However, the public debate surrounding the negotiations over the labour side agreement centred around issues such as jobs, outsourcing and wages, while the environmental side agreement centred around matters pertaining to environmental health and safety. North American labour groups in general were far more united in their opposition to NAFTA and the labour side agreements. Why were North American labour groups so strongly opposed to NAFTA? There are a number of plausible explanations for this but mainly labour unions (primarily from both Canada and the United States) felt that because Mexico was a low-wage, export-oriented, developing country, they would achieve an unfair comparative advantage at Canada and the United States' expense. In addition to the above mentioned, Stephen Clarkson (personal communication, June 27, 2013) has noted that there is a long history of solidarity and cooperation between US-based labour unions and their smaller, Canadian affiliates. An example of this would be the relationship between the American United Autoworkers' Union (UAW) and the Canadian Autoworkers' Union (CAW).

Naturally, firms would be attracted to Mexico's considerably lower wages and lax enforcement of labour and environmental standards and as a result, would move their factories and businesses south of the border. In order to retain jobs and investment, Canada and the United States would be forced to lower their labour and environmental standards. Scholars refer to this phenomenon as "downward harmonization" but leaders within the labour movement simply refer to this as a "race to the bottom"(Delp et al,

2004, p. 4). Mexican president Carlos Salinas was aware of these criticisms and on October 3rd 1993, announced plans to raise the Mexican minimum wage to assuage Canadian and American concerns over the wage gap (Roberts and Wilson, 1996, p. 297). However, a number of prominent economists at the time pointed out that a sizable portion of Canadian and American workers who worked in the manufacturing industry earned considerably more than minimum wage so Mexico's efforts to close the wage gap would make little if any difference in the long run (Rozwood and Walker, 1993, p. 339).

Moreover, labour leaders argued that NAFTA created incentives for firms to relocate their production and manufacturing facilities in Mexico's duty and tariff free *Maquiladora* zones along the US-Mexico border (Delp et al, 2004). Both labour and environmental groups argued that the relocation of capital and energy intensive production along the US-Mexico border would create a zone of pollution that would negatively affect nearby communities in both countries; the rapid growth in economic activity in this region would add pressure to an already strained ecosystem. In addition to this, labour groups argued that the implementation of NAFTA would result in the decline of high-paying, American manufacturing jobs. Interestingly enough, while Mexico's labour and environmental standards *on paper* are fairly comparable to that of the United States, in reality they are not strictly enforced. This is primarily due to endemic corruption, and a lack of resources and expertise in the Mexican bureaucracy (Rozwood and Walker, 1993, p. 342). During the 1992 US presidential elections, third-party candidate Ross Perot articulated this particular grievance when he famously spoke of a "giant sucking sound" luring jobs and investment south of the border into Mexico (Burfisher et al, 2001, p. 128).

Further complicating matters is the fact that industrial relations and collective bargaining is handled very differently in Mexico than it is in Canada or the United States. Because of Mexico's post-revolutionary, corporatist governance structure, unions have to be registered with the government in order to be officially recognized (Studer, 2010, p. 486). In Canada and the United States, trade union movements are independent of the government. During the negotiations over the labour side agreement, unions officially recognized by the Mexican government supported NAFTA while independent unions largely opposed the implementation of the agreement. In exchange for endorsing government policy on NAFTA, unions officially registered with the Mexican government received greater political clout and resources while independent unions tended to be marginalized or shut down by the Mexican government altogether. This is precisely why independent labour unions in Mexico used the debate over the side agreements to foster ties with their Canadian and American counterparts. This theme will be discussed later in the paper.

During the final months of 1993, the public debate surrounding the negotiations of both the labour and environmental side agreements reached a boiling point. While a tentative agreement was reached on the labour and environmental side deals in August of 1993, it was not until a month later in September that President Clinton signed both the NAALC and the NAAEC (Okin and Pomeroy, 1996, p. 773). In December of 1993, Canada would eventually end its last remaining opposition to NAFTA and the side agreements by officially signing on to the accord after being granted concessions by the United States (Wilson and Roberts, 1996, p. 297). In the end, neither side fully got what it wanted, and the Clinton administration's rhetoric about a stringent enforcement

mechanism with "teeth" was exaggerated, overblown and never fully realized. Furthermore, the Clinton administration's failure to guarantee stringent enforcement provisions in the end would be a common criticism among many actors and stakeholders (Okin and Pomeroy, 1996, p. 773). Finally, the hasty and rushed nature of the negotiations would account for a number of problems encountered later on.

For Canadian political economist John McDougall and economists Richard G. Lipsey, Daniel Schwanen and Ronald J. Wonnacott, the main NAFTA agreement can be best described as a "large and complex document" that is far more comprehensive in nature compared to the original Canada-US Free Trade Agreement of 1988 (McDougall, 2006, p. 163). First and foremost, NAFTA institutionalizes freer trade in goods and services through the gradual phasing out of tariffs (taxes levied on imports and exports) and other kinds of barriers to trade over a period of a decade. Related to this, NAFTA also significantly liberalizes trade in the area of services and government procurement among the three parties (McDougall, 2006, p. 163). For example, a Canadian or Mexican firm can now freely bid on a US government contract and vice-versa. NAFTA also offers considerable protections for investors against any of the three parties that attempt to engage in discriminatory practices.

An example of some of the protections offered to investors through NAFTA is the now-infamous "tantamount to expropriation" clause outlined in chapter eleven of the main agreement (Clarkson, 2003, p. 33). According to political economist Stephen Clarkson, the chapter eleven clause is highly controversial because if a firm feels that its future earnings could be expropriated in some way, NAFTA's tribunals give firms the power to challenge almost every regulatory action taken by federal, regional or municipal

governments in court (Clarkson, 2003, pp.33-34). Because the phrase "expropriation" is defined very loosely, critics argue that chapter eleven grants firms the power to overturn the outcomes of what would be otherwise legitimate national political debates. In addition to the above mentioned, NAFTA also offers investor protection for copyright and intellectual property-related issues

While the NAFTA agreement in principle is committed to liberalized trade and a more open investment climate, it does grant the right of each of the three signatory nations to "adopt any health, safety, environmental, or other standards it requires on its territory" (McDougall, 2006, p. 163). However, the inclusion of the chapter eleven clause can make this provision difficult to realize in practice. Moreover, even under NAFTA, certain economic sectors such as agricultural and cultural industries in Canada are exempt from many of the agreement's provisions. An often underreported fact about NAFTA is that it also serves to clarify rules of origin for goods and services; in fact, a substantial portion of what goes on under the agreement deals with defining and enforcing rules of origin guidelines (McDougall, 2006, p. 165). As McDougall et al point out, "rules of origin essentially define what is, and what is not, a North American good" (McDougall, 2006, p. 165).

Why is this significant? The free trade of goods in North America applies exclusively to products manufactured by any of the three NAFTA signatory states (McDougall, 2006, p. 166). NAFTA is not a customs union; in a customs union, members of a particular trading bloc share a common tariff against non-members and as a result, do not require rules of origins provisions. However in this case, each of the three NAFTA parties retain different duties and tariffs towards non-member states. NAFTA is also

responsible for the creation of various kinds of dispute resolution tribunals tasked with the responsibility to resolve trade and investment-related issues. Interestingly enough, Stephen Clarkson and a host of other scholars have been highly critical of the NAFTA tribunals' closed-door and secretive nature (Clarkson, 2002). The dispute resolution mechanisms found in NAFTA are largely modelled after the ones found in the Canada-US Free Trade Agreement.

Labour Side Agreement: Shortcomings and Opportunities

This section of the paper will be exclusively devoted to critically analyzing NAFTA's labour side agreement. This chapter will outline its basic structure as well as discuss its shortcomings, limitations and potential as a catalyst for building cross-border alliances between North American labour groups. While the labour side agreement is not without its problems, it does however "create new space for advocates to build coalitions and take concrete action to articulate challenges to the status quo and advance workers' interests through cooperation, consultation and collaboration" (Compa, 2001). In addition to this, labour groups have also used the institution as a venue to "name and shame" governments who fail to adhere to their own labour standards (Studer, 2010, p. 479). The existence of the labour side accord inadvertently created new alliances between labour groups that hitherto did not exist. In short, it is an arena not only of new challenges but also of new opportunities.

Officially referred to as the North American Agreement on Labour Cooperation (NAALC), the NAALC's overarching mandate is to "promote the improvement of labour conditions in North America" (Compa, 2001). It is a way for all three parties to ensure

the effective enforcement of existing and future domestic labour standards by providing a mechanism for mediating worker-related issues and disputes (McFayden, 1998). The eleven core labour principles outlined in the NAALC are: freedom of association and the right to organize; the right to bargain collectively; the right to strike; protection from both forced labour and child labour; minimum wage; non-discrimination; equal pay for equal work; occupational health and safety; workers' compensation and migrant worker protection (Compa, 2001).

Before delving further, it should be made clear that the NAALC is not a supranational institution; the agreement seeks to ensure non-interference in the sovereign functioning of all three of the different domestic labour systems (Kay, 2005, p. 747). The NAALC seeks to ensure that all three signatories are upholding each of their own national labour standards. The NAALC is composed of several different organs or branches. Within the NAALC, the main organ responsible for oversight is the Commission for Labour Cooperation or CLC (Kelly, 2000, p. 144). According to David P. Kelly, the CLC is intended to be a neutral and impartial administrative body (Kelly, 2000, p. 145). The CLC is composed of the *Secretariat*, the *Ministerial Council* and the *National Administrative Office* (Kay, 2005, p. 748). The Ministerial Council is an executive-level organization that is responsible for the overall implementation of the NAALC and emphasizes "compliance and cooperation" (Kelly, 2000, p. 144). Each of the three NAFTA signatories is responsible for appointing members to the council. According to Barry Appleton, the Ministerial Council is the governing body of the NAALC that is responsible for setting the budget and administering programs carried out by the commission (Appleton, 1994, p. 180).

The Secretariat is responsible for more mundane, day-to-day activities such as preparing investigations and conducting research on each party's domestic labour practices (Kelly, 2000, p. 145). Furthermore, the Secretariat (along with various other organs of CLC) is responsible for carrying out measures that are designed to facilitate the improvement of labour conditions. Such capacity building measures include joint workshops, exchanges in information and technical assistance as well as conferences, presentations and seminars (McFayden, 1998). The Secretariat is made up of a research staff of fifteen and an Executive Director who is appointed by the Ministerial Council (Kelly, 2000, p. 144). It also publishes several studies and trade publications that assess and analyze various regional labour markets, labour standards and labour laws (Kay, 2005, p. 751; McFayden, 2000). In recent years, the Secretariat has been more preoccupied with worker rights, job training as well as occupational health and safety matters (McFayden, 1998). The Secretariat is not responsible for investigating labour enforcement violations or resolving disputes (Appleton, 1994, p. 183).

The National Administrative Office (NAO) is the dispute resolution branch of the CLC and each of three NAFTA signatories has a NAO office located within its respective labour ministry or department (McFayden, 2000). Essentially, the NAO is the "first point of contact" between civil society, domestic government agencies and the Secretariat (Banks, 1994, p. 196; McFayden, 2000). They are the branch of the CLC tasked to respond to civil society requests pertaining to labour law violations. In addition to the above mentioned, the NAO also assists the CLC in its capacity building activities. According to a publication by the NAALC, "Individuals, unions, employers, non-governmental organizations and other private parties may file submissions seeking NAO

reviews in accordance with the domestic procedures established by the country's NAO" (Kay, 2005, p. 750). A unique aspect of the NAO is that it requires a complaint or submission to be filed in a country other than the one that the labour violation in question occurred. Procedural rules such as these inadvertently force labour groups submitting a complaint to work with and share information with like-minded foreign counterparts. While it is not impossible to file a submission without a foreign union's assistance, in practice it is extremely difficult to do so successfully.

The dispute resolution mechanism under the NAALC is composed of a four-step process. Before any kind of investigation can be initiated, the submission has to go through a preliminary review by the NAO. It is the NAO's responsibility to determine if the submission warrants further attention (Kay, 2005, pp. 749-750). The submission will then reach the level of ministerial consultations after the NAO has established that there has been a "persistent pattern of failure" of a party to enforce its own labour standards (McFayden, 1998). According to Tamara Kay, once a submission reaches the stage of ministerial consultations, representatives from all three signatory states become involved and the process becomes trilateral in nature (Kay, 2005, p. 751). If the labour violation contained in the submission relates to at least one of the *eight* core labour principles (excluded at this level are freedom of association, right to collective bargaining and right to strike), then the evaluation committee of experts (ECE) is summoned to gather and review relevant information and to make an assessment. The committee of experts employed by the CLC are chosen by consensus by each of the three NAFTA signatory countries (Kay, 2005, p. 751). They are typically individuals who have expertise in such fields as economics, trade policy and industrial/labour relations.

If the ECE determines that a NAFTA signatory is not enforcing its own domestic labour standards, consultations and hearings between all concerned parties will commence. If consultations are unable to resolve the issue after sixty days, a concerned party could decide to establish a special meeting involving the Ministerial Council (Appleton, 1994, p. 184). If the issue has not been resolved within sixty days of the council's first session, a dispute resolution panel can be created by a two-thirds vote by the Ministerial Council if it deems it appropriate. Once the dispute resolution panel is established by the council, five appointed individuals with expertise in international trade policy will convene to write a report based on their findings. This panel of five is expected to submit a report to all concerned parties within 180 days (Appleton, 1994, p. 185). After that, each concerned party has approximately one month to provide a written response to the findings contained in the original report. The panel of five must submit their final report within sixty days of presenting the initial report. If the five-person panel concludes that a party demonstrated a "persistent pattern of failure" to enforce its own domestic labour standards, the concerned parties must agree to a plan of action that is acceptable to all parties. If a mutually agreeable plan of action is not reached, the five-person panel can choose to restart consultations or levy fines (Appleton, 1994, p. 185). Interestingly enough, Stephen Clarkson has concluded that reaching the mutually satisfactory plan of action stage in practice is extremely unlikely; in fact, the first two dozen submissions filed with the CLC have yet to reach this stage in the dispute resolution process (Clarkson, 2008, p. 105).

After this, a submission can only reach the final arbitration stage if the labour violation committed pertains to only *three* of the eleven core labour principles (protection

for child workers, occupational health and safety and minimum wage provisions) outlined under the NAALC. It is only at the arbitration stage that trade sanctions and other monetary penalties can be assessed. In general, a sizable portion of total NAO submissions tend to reach ministerial consultations. For example, out of approximately two dozen complaints submitted to the NAO between 1994 and 2001, eighteen bypassed the preliminary review and another thirteen reached the ministerial consultation stage (Kay, 2005, p. 751). However, as a submission travels through each subsequent stage in the four stage process, the labour violation threshold becomes higher and higher and as a result, many submissions become rejected by the time they reach the arbitration stage. In practice, *few* submissions reach the arbitration stage.

The NAALC's procedural rules and institutional layout are not without their problems. More generally, a multitude of North American labour groups have routinely criticized the NAALC for being "toothless" as it fails to discourage and punish parties for not complying with the agreed upon framework (Evans, 2000, p.235). Furthermore, these labour groups argue that it is also weak in its enforcement and dispute settlement provisions (Kelly, 2000, p. 142). The NAALC's lofty rhetoric is incredibly deceptive in contrast to its real-world limitations. In addition to this, a number of critics such as Stephen Clarkson (personal communication, June 27, 2013) contend that the NAALC was in fact "designed to fail" from the outset; the agreement is written primarily in convoluted legal jargon and its dispute resolution mechanisms are too complex, bureaucratic and cumbersome to implement in practice. Also, there are major problems with the agreement's normative labour principles. While the NAALC specifies eleven core labour principles that ought to be enforced, the phrase "labour law and regulations"

is only applicable to *five* of those eleven core labour principles (right to organize, right to bargain collectively, right to strike, protection against forced labour and protection for child workers) (Appleton, 1994, p. 180). Related to this, a hard law approach involving sanctions, fines and other penalties can only be applied if a party violates just *three* of the eleven core labour principles (Compa, 2001; Kay, 2005, p. 747).

Furthermore, it is incredibly difficult in practice for the CLC to determine if a party demonstrated a "persistent pattern of failure" in enforcing its own labour laws. Several scholars have argued that the phrase "persistent pattern of failure" is too vague and ill-defined to be used as a benchmark in deciding if a signatory country has violated the agreement (Kelly, 2000, p. 139). As mentioned earlier in the paper, the NAALC is not a supranational agreement and as a result, does little to encourage the upward harmonization of labour regulations in all three member countries. According to Isabel Studer, the agreement only commits each of the three parties to promote "adequate enforcement" of its own national labour standards (Studer, 2010, p. 471). For example, any of the three signatory countries at any time might decide to deregulate their labour markets or lower their labour standards but as long as they are adequately enforcing those new (and less stringent) labour standards, they are in accordance with the agreement. Related to this, Annex 1 of the labour side agreement outlines the NAALC's mandate and overarching principles, but does not specifically mention any intent to establish minimum standards for all three parties (Okin and Pomeroy, 1996, p. 778). Related to this, Lance Compa has suggested that the NAALC creates "false illusions of relief through bureaucratic legal mechanisms instead of workers' own power" (Compa, 2001). This is

because the NAALC in and of itself is unable to overturn legitimate decisions made by federal courts or order firms to carry out action plans.

A.L.C. de Mestral has rightfully pointed out that the NAALC's authority and jurisdiction is confined mainly to procedural rules and is "restricted in scope" in regards to carrying out investigations and responding to complaints (de Mestral, 1998, p. 179). A.L.C. de Mestral and a number of other scholars working in the literature have suggested that the ability of the NAALC to respond to complaints filed on behalf of labour unions as well as the public is highly questionable at best, and a failure at worst (de Mestral, 1998, p. 180). While it is possible for *anyone* (be it an organized labour group or a concerned citizen) to submit a complaint or submission to the CLC, in practice there has been a shortage of channels for public participation under the CLC's dispute resolution procedures (Studer, 2010, p.475). Moreover, the NAALC has been, for the most part, too hesitant in responding to submissions made by labour groups (de Mestral, 1998. p. 178). There are several reasons for this. As Isabel Studer points out, it is not in a signatory party's best interest to collect and compile (potentially incriminating) factual information and records on the very government it is tasked to represent (Studer, 2010, p. 478). This potential for self-embarrassment helps to discourage more thorough investigations and consultations. In addition to this, the use of trade sanctions while possible, is highly unlikely as the chance for retaliatory action taken on behalf of a concerned party is extremely probable. To put it simply, a “tit for tat" trade dispute is not in the best interest of any NAFTA party. Also, this kind of adversarial approach ultimately undermines the underlying goal of free trade in general.

According to Lance Compa, the other issue evident with the NAALC is that it is not a full-fledged labour enforcement mechanism. The NAALC is unable to force companies to rehire illegally fired workers, nor can it force companies to engage in collective bargaining with unions and labour groups (Compa, 2001; Okin and Pomeroy, 1996, p. 792). For example, in February of 1995, a submission was filed by the Mexican Telephone Worker's Union against the Sprint Corporation. The Mexican Telephone Worker's Union argued that Sprint violated American labour laws when it decided to terminate 235 Spanish-speaking migrant workers after they attempted to form a union at one of its factories in San Francisco, California (Okin and Pomeroy, 1996, p. 790). The Mexican Telephone Workers' Union petitioned the NAO to make the company reinstate the workers it illegally fired and to reopen the plant. The company countered that they fired the workers and subsequently closed the plant not because their workers were in the process of unionizing, but because the company was losing money. The Mexican NAO concluded in an investigation that eventhough Sprint's actions were "most likely" in violation of US labour laws, they could not punish Sprint because it was not against the law to shut down a plant for economic or financial reasons (Okin and Pomeroy, 1996, p. 791.). Ultimately, the adjudication process failed in providing remedy or compensation to the terminated workers. This example alludes to a much bigger problem found in the labour agreement; when a labour violation complaint is submitted to the CLC, the complaint is directed against a NAFTA member country, and not a private company, group or individual. In other words, the party that committed the wrongdoing does not actually get punished for the violation (Kay, 2005, p. 748).

Despite the numerous procedural hurdles and obstacles that labour unions have had to endure when filing a submission, the NAALC did however act as a catalyst in bringing together a wide assortment of North American labour groups that had little, if any contact with each other prior to the negotiations. While the NAALC was riddled with several procedural shortcomings, labour coalitions eventually learned how to exploit the potential political opportunities (both good and bad) contained within the agreement. Aside from taking advantage of procedural loopholes and opportunities, labour coalitions later used the NAALC as a venue for "naming and shaming" governments and corporations who did not enforce national labour standards or perpetuated unethical labour practices (Banks, 2002, p. 217). To lend credence to this, Kevin Banks has stated that after limited success initially with the NAALC's procedural process, labour groups began to focus on "broader, more systemic problems rather than single plant violations" (Banks, 2002, p. 207). More generally, the very existence of the NAALC created political openings for transnational labour coalitions to target institutionalized power (Kay, 2005, p. 721). To bolster this assertion, Graciela Bensusan points out that the NAALC did in fact create "new spaces for cross-national solidarity networks" (Bensusan, 2002, p. 259).

Even before the implementation of NAFTA and later the NAALC, the public debate surrounding NAFTA forced North American workers and labour groups to recognize the common threat posed by North American free trade and to see their collective fate as interdependent and intertwined for the first time (Kay, 2005, p. 723). Labour coalitions perceived NAFTA as a threat in the form of decreasing job security, declining wages and weakened health and safety standards. As a result, this forced North American labour coalitions to disseminate information, share costs, and pick cases more

carefully. To reinforce this argument, Tamara Kay notes that "labour leaders realized that it would be difficult to combat the forces of global capital as individual and isolated labour unions" (Kay, 2005, p. 728). This kind of change in thinking is dramatic as it illustrates a paradigm shift in approach; historically speaking, labour unions in North America have tended to be protectionist, isolated and more concerned with domestic markets at the expense of fostering relations with likeminded, foreign counterparts. Specifically, American labour unions have at certain times espoused xenophobic or anti-immigrant rhetoric, often targeted at Latinos, who (predominantly white) unions traditionally have viewed as a threat to their workforce (Rupert, 2000, p. 69; Studer, 2010, p. 485). To lend credence to this argument, Graciela Bensusan points out that the US-based labour union, the AFL-CIO officially changed its position on the flow of Mexican migrant workers into the United States after forming alliances with like-minded independent Mexican labour groups during the NAFTA negotiations (Bensusan, 2002, p. 260).

Transnational linkages among North American labour coalitions began to emerge fairly early on during the NAFTA negotiations. The AFL-CIO, the UAW, and an assortment of smaller, independent, Mexican labour unions like FAT (translated into English as the Authentic Labour Front) argued that NAFTA's exploitation of Mexican workers was also harmful in the long run to American and Canadian workers too (Rupert, 2000, pp. 68-69). The AFL-CIO, the UAW and FAT expanded on this argument further in a pamphlet entitled *Exploiting Both Sides* in 1991 (Rupert, 2000, p. 68). According to Mark Rupert, it was necessary that the AFL-CIO, the UAW and FAT work together in order to effectively combat the forces of transnational capitalism threatening the western

hemisphere. During this time, North American labour coalitions would also foster cross-border alliances through activities like joint publications. For example, the Canadian Centre for Policy Alternatives (CCPA) and the US-based International Labor Rights Education and Research Fund (ILRERF) published a critical analysis of the NAFTA agreement in 1993 (Rupert, 2000, p. 73). The piece was written primarily by political scientist Ian Robinson and argued that NAFTA will intensify the already growing trends of increased income inequality and the erosion of worker rights through trade liberalization and other market deregulation measures (Rupert, 2000, pp. 72-73). While Robinson is highly critical of NAFTA and neoliberal-oriented free trade, the publication does make an attempt to promote an alternative vision, namely a "pro-democracy trade policy" that incorporates a social charter stressing labour rights, economic equality and participatory democracy (Rupert, 2000, p. 73). These kinds of cross-border initiatives were novel and unique in comparison to the actions of labour groups years prior.

In addition to protesting the actual NAFTA agreement, North American labour coalitions were also highly critical of the nature of the negotiations itself. Labour coalitions along with environmental activists, human rights and consumer protection groups felt that the NAFTA negotiations were a highly secretive, closed door process and that the international tribunals contained in the agreement were non-transparent, unaccountable and undemocratic in nature (Rupert, 2000, p. 73). Furthermore, opposition groups such as the *Public Citizen* argued that the negotiations provided very little opportunity for grassroots organizations and citizens' groups to air their grievances or express their views publicly. In response to this, another joint publication entitled *US Citizens' Analysis of the North American Free Trade Agreement* was written and

published by a wide array of opposition coalitions such as the Action Canada Network (ACN), the Sierra Club, the UAW, ILRERF, Fair Trade Campaign, and many others (Rupert, 2000, p. 74). Similar to *Exploiting Both Sides, US Citizens' Analysis* was highly critical of the NAFTA negotiations, the side agreements and of neoliberal-oriented free trade in general. Similar to *Exploiting Both Sides*, it also promoted a series of alternative measures grounded in participatory democracy and citizen empowerment (Rupert, 2000, p. 74). Another example of this kind of transnational cooperation was when approximately two dozen labour, environmental and consumer protection groups took out a full-page ad in several major American newspapers including the *Washington Post* and the *New York Times* critiquing NAFTA as an unelected and undemocratic institution used to enrich global capital at the expense of the poor and working classes (Rupert, 2000, p. 74). An interesting facet of the public opposition surrounding the NAFTA debate was not only were labour groups making extensive transnational linkages with other like-minded counterparts but they were also fostering extensive ties with non-labour based groups such as ENGOs, human rights groups and various consumer protection organizations. Prior to the public debate on NAFTA and the side agreements, these linkages were extremely weak or undeveloped altogether.

In Stephen Clarkson's book *Does North America Exist?* he notes that the initial public debate over NAFTA was indirectly responsible for creating ad-hoc alliances between North American labour groups that would eventually develop into more formal and institutionalized agreements over time (Clarkson, 2008, p. 107). Clarkson cites the agreement reached between the Red Mexicana de Accion Frente al Libre Commercio (RMALC), FAT and various other Canadian and Mexican unions in 1991 as an example

of this (Clarkson, 2008, p. 107). The activities of independent, Mexican anti-NAFTA groups such as FAT and the RMALC were heavily funded by several prominent American and Canadian unions. Subsequent to the implementation of NAFTA and the labour side agreement, RMALC, FAT and their Canadian and American benefactors participated in conferences, joint workshops and other kinds of collaborative endeavours. A major goal of this in particular was to draw attention to the plight of exploited workers in the duty and tariff free *Maquiladora* zones (Clarkson, 2008, p.107). The argument being that NAFTA was unique in its exploitation of workers on both sides of the border.

In an interview conducted with the author of this paper, Stephen Clarkson (personal communication, June 27, 2013) also notes that the debate over and subsequent implementation of NAFTA and the labour side agreement also fostered important, cross-border ties between independent Mexican labour unions and Canadian labour unions. While it is no secret that a variety of US, Canadian and Mexican labour unions all forged strategic alliances with each other during the public debate over NAFTA, Clarkson notes that Mexican labour unions routinely preferred dealing with Canadian labour unions over their American counterparts. This is because the leaders of Mexican labour unions found their Canadian counterparts to be less domineering and paternalistic than the Americans. Clarkson also points out that relations between Mexican and American trade unions are highly asymmetrical in nature, with Mexico always being the less respected, junior partner. Relations between Canadian and Mexican unions on the other hand take place on a more balanced and symmetrical footing and as a result, Canadian labour unions were more often invited to conferences hosted by their Mexican counterparts. Clarkson's (personal communication, June 27, 2013) insights are significant because this aspect of

Mexican-Canadian labour union relations unfortunately has been largely ignored in the scholarship.

Tamara Kay notes that far from polarizing North American workers and intensifying competition over scarcer and scarcer manufacturing jobs, the implementation of NAFTA and the side agreements facilitated cooperation and collaboration between previously estranged and isolated labour groups all across North America (Kay, 2005, p. 716). An example of this is the highly developed relationship between the Mexican-based Authentic Labor Front (FAT), the US-based United Electrical Workers (UEW) and the Canadian Steelworkers of America (CUWSA). The UEW was established in 1936 and has over 35 000 members while the CUWSA was established in 1942 approximately 190 000 members (Kay, 2005, pp. 725-726). Despite the CUWSA's status as a Canadian affiliate of a much larger American steelworker's union, in practice the CUWSA is highly autonomous. Beginning in 1991, the FAT-UEW-CUWSA labour coalition conducted a series of joint workshops, strategy sessions and conferences throughout the duration of the NAFTA negotiations. The coalition organized an oppositional public forum entitled *Public Opinion and the NAFTA Negotiations: Citizens Alternatives* in Zacatecas Mexico in October of 1991 (Kay, 2005, p. 728). The selection of Zacatecas, Mexico as a site of protest was chosen because trade ministers from each of the three NAFTA signatory nations were meeting to discuss the agreement in an undisclosed location nearby. The FAT-UEW-CUWSFA conference was designed to send a message to the three member countries' senior trade negotiators and to challenge the dominant neoliberal-oriented narrative being presented in the public debate.

The FAT-UEW-CUWSA labour coalition also used the procedural rules contained in the NAALC to its advantage. As mentioned earlier in the piece, the NAO is the first point of contact between the public and the CLC and in order for a complaint to be filed successfully, the concerned party must file it in a country other than the one that the original violation took place. The FAT-UEW-CUWSA alliance routinely participated in joint NAO submissions. This is because in order to successfully file a complaint or grievance, all three unions taking part in the submission process need to exchange highly detailed information on each nation's labour laws and practices (Graubart, 2002, p. 218). The FAT-UEW-CUWSA alliance understood that a NAO submission in a foreign country without the assistance of a foreign union was extremely difficult in practice and that the most successful submissions are ones that are well-organized and involve multiple parties that are connected to established issue networks (Graubart, 2002., p. 215). Oddly enough, the CUWSA sponsored a NAO complaint in April 1998 despite the fact that no Canadian workers were actually involved in the case (Kay, 2005, p. 740).

What are some consequences of this? John Graubart states that this practice has a propensity to sharpen "cross-border awareness even among activists with pre-existing contacts on both sides of the border" (Graubart, 2002, p. 218). The existence of the NAALC stimulated cross-border contacts between North American unions that were previously either weak or did not exist. This example also illustrates a noteworthy paradigm shift that has occurred since approximately 1991; instead of resorting to protectionist, nationalistic or xenophobic tactics, North American unions saw their fate in relation to NAFTA as intertwined which forced them to re-evaluate their interests (Kay,

2005, p. 741). As a result, a new collective interest among unions in North America was formed and new kinds of stakeholders were legitimized.

Environmental Side Agreement: Problems and Polarization

This section of the paper will be exclusively devoted to critically analyzing NAFTA's environmental side agreement. Similar to the previous chapter, this chapter will outline the environmental side agreement's basic organizational structure as well as discuss its procedural problems and limitations. In addition to the above mentioned, this section will provide a critical commentary on the polarized nature of the public debate over the environmental side agreement as well as provide examples where the framework fostered cross-border ties between once disparate and isolated environmental groups. Not surprisingly, the environmental side agreement has many of the same procedural and institutional problems as the labour side agreement however, the environmental side agreement does contain some unique problems and those problems will be addressed appropriately in this section.

Officially referred to as the North American Agreement on Environmental Cooperation (NAAEC), the NAAEC's overarching goals are to "enhance compliance and enforcement of environmental laws and regulations" as well as "prevent regulatory rollback and encourage upward harmonization" (Raustiala, 1995, p. 39). According to Jacqueline McFayden, some additional goals of the NAAEC are to "encourage the improvement of environmental conditions in North America through cooperative initiatives" and "to provide a mechanism for mediating environmental disputes" (McFayden, 1998). Similar to the NAALC, the NAAEC is not a supranational institution;

rather it implores each member country to enforce its own domestic environmental laws and standards. This lofty commitment is contained in the provision stating that "each country shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations" (Charnovitz, 1994, p. 3). Article 1 of the NAAEC codifies ten core environmental principles and these principles are: a commitment to protect and improve the environment of North America for future generations; the promotion of sustainable development through capacity building; increased cooperation on environmental issues concerning flora and fauna; support for the overarching environmental goals of NAFTA; the avoidance of trade barriers and other trade distortions; the creation of newer and better environmental laws, regulations and standards; an emphasis on compliance and enforcement; the promotion of transparency and citizen involvement; encouraging both "efficient and effective" environmental polices and finally, pollution prevention (Kirton, 2006, p. 131).

Unique to the NAAEC is the "spotlight clause" contained in Article 13 of the agreement. Under Article 13, the Secretariat has the power to "investigate independently and report on any matter related to its extensive co-operative work program" (Kirton, 2006, p. 138). Article 13 also makes such reports and investigations available to the public as well. Also unique to the NAAEC is the "interested party" clause contained in Article 14-15. Essentially, Article 14-15 allows "any interested party to initiate direct actions against governments that are felt to be systematically not enforcing their own environmental regulations" (Kirton, 2006, p. 148). The purpose of Article 14-15 is to encourage citizens' submissions from various stakeholders, such as environmental and

conservation groups, on matters related to environmental quality and protection. At face value, Article 14-15 has accomplished this task; the vast majority of the cases that have been submitted for investigation under the NAAEC have been done by concerned ENGOs. Christopher Tollefson has stated that the NAAEC's greater emphasis on the facilitation of citizen interaction distinguishes it from the labour side agreement. Paradoxically however, the NAAEC's overarching objectives, principles and procedures have been both ambitious and modest at the same time. The agreement is ambitious insofar that it attempts to reconcile liberalized trade and investment with ecological concerns but it is also modest in that many of its dispute resolution procedures (including Articles 13,14 and 15) are rather narrow and constrained in scope. This aspect of the NAAEC will be addressed in greater detail later in the chapter.

For the most part, the organizational structure of the NAAEC is remarkably similar to that of the NAALC but there are some minor differences between the two that need to be addressed. Like the NAALC, the NAAEC is composed of several different organs and bureaucracies. The Commission for Environmental Cooperation (CEC) is the impartial and administrative arm of the NAAEC that is primarily responsible for overseeing the implementation of the agreement. According to Christopher Tollefson, the CEC has two main goals: the first is to "foster cooperation and coordination among the parties on hemispheric environmental issues, trade and environment linkages through joint research and regional initiatives" and the second is to perform the role of an "environmental watchdog, mandated to oversee, under the direction of the council of Ministers, the enforcement of environmental law by all three parties" (Tollefson, 2002, p. 155). Jacqueline McFayden states that since 1995, the CEC has emphasized the human

health aspect of environmental matters with specific plans to phase out certain pollutants such as DDT, Mercury, Chlordane and PCBs (McFayden, 1998). The headquarters of the CEC is situated in Montreal, Quebec. In 1997, the CEC had a total operating budget of approximately $10 million, of which roughly $3 million came from each NAFTA member country and the rest coming from other, undisclosed sources (Kirton, 2006, p. 134; McFayden, 1998).

The CEC is composed of the *Council*, the *Secretariat* and the *Joint Panel Advisory Council* or JPAC for short (DiMento and Doughman, 1998, p. 656). The Council is tasked to "strengthen cooperation on the development and continuing improvement of environmental laws and regulations" and has jurisdiction over approximately eighteen separate environmental matters that it can formulate and develop policy recommendations for, such as "the promotion of public awareness regarding the environment" (Charnovitz, 1994, p. 4).). More specifically, the CEC seeks to facilitate capacity building amongst the three NAFTA member countries; to reduce transborder pollution; to encourage each NAFTA signatory to comply with their relevant domestic environmental laws; to enforce trade sanctions, monetary fines and penalties in order to mitigate against the negative effects of environmental law violations; to make appropriate policies in regards to specific pollutants and hazards and to carry out broad policy measures (DiMento and Doughman, 1998, p. 656). The council is the branch of the CEC primarily responsible for the implementation of the NAAEC and the activities of the Secretariat (Appleton, 1994, pp. 174-175. It is scheduled to meet once a year and can decide to hold special meetings at the request of any of the three NAFTA member countries (DiMento and Doughman, 1998, p. 656). The Council is made up of senior or

cabinet- level individuals from each of the three NAFTA signatory states. It is functionally similar to its counterpart in the NAALC.

Much like the Secretariat found in the labour side agreement, the Secretariat belonging to the CEC is also responsible for carrying out mundane but essential day-to-day activities. The Secretariat is responsible for carrying out crucial "technical, administrative and operation support" for both the JPAC and the Council (Appleton, 1994, p. 176). It is also tasked with preparing and publishing a major report and budget once each year (Davidson and Mitchell, 2002, p. 278). In addition to what has been already mentioned, the Secretariat is the branch of the CEC responsible for determining if a NAFTA party has violated the "failure to enforce its environmental laws" provision contained in the agreement (Davidson and Mitchell, 2002, p. 279). The Secretariat is also obligated to prepare an assessment on any related matters under the agreement after a two-thirds vote has been taken by members of the Council (Appleton, 1994, p. 177).

While the arbitration stage contained in the NAAEC, is not *exactly* the same as the one contained in the NAALC, for all intents and purposes they are both fairly similar in structure and function. Should the Secretariat decide that a complaint submitted to its offices warrants further attention, it will then forward all relevant documentation to the party accused of perpetrating the environmental violation. The accused party has exactly 30 days to respond and comment on the original submission (Appleton, 1994, p. 177). If the Secretariat feels that the submission in question does not deserve further attention, it will notify all concerned parties and the submission will be promptly terminated (DiMento and Doughman, 1998, p. 658). However, if the Secretariat feels that the submission in question does deserve further attention, it can decide to inform the Council.

Upon notifying the Council, it may decide to order a fact finding mission pending a two-thirds vote. A first draft of the report must be submitted to the Council upon its completion. After the initial draft of the factual record is submitted to the Council, all concerned parties involved in the dispute must submit comments regarding the accuracy of the report within 45 days. After comments are made by all concerned parties, the Council can make the final draft of the report available to the general public, again pending a two-thirds vote (Appleton, 1994, p. 177). The dispute mechanism stage found in the NAAEC is virtually identical to the one contained in the NAALC and therefore will not be further discussed in this chapter.

The JPAC consists of a fifteen member panel (five from each NAFTA member country) and is responsible for receiving reports on such items as current programs and budgetary information along with the Council (Appleton, 1994, pp. 177-178). All fifteen individuals are appointed by either the President or Prime Minister of their respective countries. In addition to receiving reports on programs and budgetary information, the JPAC is tasked with providing technical advice to both the Council and the Secretariat. Within the JPAC are both the National Advisory Committee (NAC) and the Government Advisory Committee (GAC). The NAC serves to advise each country on how to best implement various elements of the NAAEC while the GAC is composed of individuals from federal, state or provincial governments who are tasked "to provide advice on agreement implementation and elaboration" (DiMento and Doughman, 1998, p. 658). Stephen Clarkson has agued that the creation of the JPAC is rather novel as it encourages civil society groups to play a constructive role in environmental governance at the continental level (Clarkson, 2008, p. 126).

Like the NAALC, the NAAEC also shares many of the same procedural and institutional shortcomings. First and foremost, the NAAEC has been accused by critics of being both "toothless and "designed to fail" from the outset. Just like the NAALC, the NAAEC is also written in complex legal language and its enforcement and dispute resolution mechanisms are too bureaucratic and complicated to implement in a real world setting. For example, John Kirton points out that it can take up to two years from the beginning of an investigation for the CEC to finally release a report on the matter (Kirton, 2006, p. 138). Steve Charnovitz opines that it can take roughly 755 days after the initial submission for a complaint to even reach the level of trade sanctions (Charnovitz, 1994, p. 7). Moreover, Christopher Tollefson states that the administrative process for submissions is so slow and timely that there is a large back log of factual records that still need to be prepared for various cases (Tollefson, 2002, p. 158). Serena Wilson has also criticized the NAAEC's submission and decision making process for their lack of transparency and openness (Wilson, 2002, p. 189).

Much like the NAALC's dispute resolution mechanisms, the NAAEC's are also wholly inadequate. Jim DiMento and Pamela Doughman rightfully conclude that environmental experts are essentially prohibited from sitting on arbitration panels despite the fact that these panels make important rulings on complex environmental matters (DiMento and Doughman, 1998, p. 678). Both ordinary citizens and public interest groups are not permitted to submit evidence to panels; in fact, the general public is not even able to initiates complaints or submissions that may lead to trade sanctions, as those kinds of complaints can only be lodged by any of the NAFTA member countries at the other's consent (Charnovitz, 1994, p.11). Another dispute resolution mechanism-related

problem that the NAAEC shares with the NAALC is that it lacks strong trade sanctions (Davidson and Mitchell, 2002, p. 277). Not only does it lack strong trade sanctions, but the possibility of trade sanctions are restricted to narrowly specified environmental problems (Davidson and Mitchell, 2002, p. 277).

Furthermore, nothing in the NAAEC requires the NAFTA member countries to harmonize their environmental laws and standards in an upward direction (Appleton, 1994, p. 174). In reality, the potential for both high minimum standards and upward harmonization is unlikely given that each of the three NAFTA parties feature vastly divergent levels of "political, fiscal and bureaucratic support" at the national level (Davidson and Mitchell, 2002, p. 275). Davidson and Mitchell argue that in practice, all three NAFTA members' political commitment to the agreement is incredibly fickle in nature and that each country has wildly different bureaucratic capacities in dealing with environmental problems that might arise (Davidson and Mitchell, 2002, p. 280). For example, because Canada has an incredibly decentralized "political-bureaucratic structure" relative to both Mexico and the United States, large swaths of environmental laws, regulations standards are found at the provincial level (Davidson and Mitchell, 2002, p. 280). This is problematic because the agreement is non-binding at the provincial level (Makuch, 1993, p. 34). In other words, much of Canada's domestic environmental laws are outside the scope of the NAAEC.

Upward harmonization, as well as higher minimum standards, are even more unlikely given that the agreement holds each NAFTA member country to a differing set of standards (Charnovitz, 1994, p. 14). For example, Mexico could submit a complaint to the CEC arguing that neither Canada nor the United States is enforcing their own

environmental laws, despite the fact that both Canada and the United States have tougher and more stringent environmental standards than Mexico. Similar to the dilemma encountered in the labour side agreement, a country might decide to lower its domestic environmental laws, regulations and standards but as long as the new (and less onerous) regulations are being adequately enforced, the country is technically not violating the agreement. To phrase it another way, the procedural shortcomings of the agreement allow a NAFTA party to mindlessly enforce their own antiquated and inadequate environmental standards without fear of punishment.

In addition to the above mentioned, the NAAEC is also riddled with definitional shortcomings and deficiencies. Christopher Thomas and Gregory Tereposky state that the agreement's threshold phrase, "a persistent pattern of failure to effectively enforce environmental law" is vague, ambiguous and not adequately defined (Thomas and Tereposky, 1993, p. 27). Specifically, the phrase "a persistent pattern" is the source of much controversy and debate. It suggests a regular or reoccurring phenomena, or course of action, but what if the "persistent pattern" in question happened both before and after the implementation of the agreement? In this case, the "persistent pattern" being discussed would not be considered a violation of the agreement as the agreement cannot be applied retroactively (Thomas and Tereposky, 1993, p. 27). Moreover, the agreement also encounters other definitional issues. Contained in the agreement is the preamble "each country shall ensure that its laws and regulations provide for *high levels* of environmental protection and shall strive to continue those laws" (Charnovitz, 1994, p. 3). However the operational definition for the phrase *high levels of environmental protection* is nowhere to be seen in the agreement. Without an adequate definition, the

phrase *high levels of environmental protection* is incredibly ambiguous and could be described as somewhat arbitrary. While more salient and visible environmental issues such as pollution and waste management are addressed in the agreement, it completely ignores important concerns in relation to natural resource extraction. For example, environmentally sensitive activities such as strip mining, coal extraction, timber harvesting and coastal fishing are beyond the scope of regulation under the NAAEC (Davidson and Mitchell, 2002, p. 281; Charnovitz, 1994, p. 7). Despite being an agreement that aims (rhetorically at least) to investigate and report on environmental violations, the NAAEC has no provisions for an environmental injury test and a concerned party initiating a submission is not required to demonstrate environmental injury caused by another party. (Charnovitz, 1994, p. 3). Finally, despite its lofty mandate and objectives, the CEC has no budget set aside for policy implementation (Kirton, 2006, p. 151).

Like its labour counterpart, the public debate and subsequent implementation of the NAAEC also served as a venue for facilitating transnational linkages and alliances between once isolated and disparate environmental groups, albeit in qualitatively different ways. As alluded to numerous times in the paper, the public debate over the environmental side agreement can best be described as polarizing; there was a major schism between more the moderate and established ENGOs that offered their qualified support to the agreement and the more radical ENGOs who felt the NAAEC's green language was wholly insufficient and inadequate. J. Michael McCloskey, the former chairman of the US-based Sierra Club, stated that the supplementary agreements did not render NAFTA "environmentally acceptable" because of its plethora of loopholes that left

environmental standards susceptible to being overturned by the "tantamount to expropriation" clause contained in chapter eleven of the main agreement (Begley, 1993, p. 7). The public debate over the environmental side agreement caused a major rift in the ENGO community, specifically among US-based ENGOs and there is considerable evidence to suggest that the rift within the community still exists to this day. However despite this, ENGOS from all over Mexico, Canada and the United States were still able to network with a variety of like-minded counterparts. This part of the chapter will elaborate on some of those examples.

Mexico's quazi-authoritarian, corporatist political-economic structure partially explains why Mexican environmental groups not affiliated with the state needed to forge transnational linkages with like-minded ENGOs in both Canada and the United States. As Barbara Hogenboom explains, Mexican corporatism "serves to channel and curb the social demands of major sectors like labour and farmers, demands from other groups, such as non-governmental organizations (NGOs), that have to a large extent been ignored or repressed" (Hogenboom, 1996, p. 989). Put another way, Mexico's semi-autocratic political system may not be able to stamp out all dissenting views, but it does have the ability to weaken environmental groups that dissent from the government's official stance on a given policy. At the time of the NAFTA negotiations, Mexico's then-emerging environmental movement was small, institutionally weak, issue-specific and did not have adequate access to important information about the negotiations' proceedings (Clarkson, 2008, p. 122; Hogenboom, 1996, p. 992). In order to successfully mitigate against this problem, independent Mexican ENGOs had to align themselves with larger and more powerful foreign ENGOs who had more resources and political clout. Between 1991-

1993, extensive contacts were made and information was disseminated between small, independent Mexican ENGOs and larger unions in both Canada and the US.

Interestingly enough, Mexican ENGOs were especially eager to foster relations with Canadian ENGOs in order to gain insight into their experiences in dealing with the Canada-US Free Trade negotiations a few years prior (Hogenboom, 1996, p. 995). This was also more convenient for Mexican ENGOs given the fact that the bulk of Canadian ENGOs overwhelmingly opposed the NAFTA agreement compared to US-based ENGOs who were far more divided on the issue. According to Joe DiMento and Pamela Doughman, virtually every major Canadian ENGO (with the exception of Pollution Probe) expressed their formal opposition to the agreement early on (DiMento and Doughman, 1998. p. 679). Mexican and Canadian ENGOs who were critical of the NAFTA agreement tended to view environmental issues from a broader perspective that included criticisms levelled against the neoliberal economic model that NAFTA was based upon (Hogenboom, 1996, p. 996). American ENGOs on the other hand tended to concentrate on specific environmental problems at the expense of a broader analysis. Furthermore, relations between Mexican and Canadian ENGOs were far more equitable and symmetrical in comparison to the more paternalistic and asymmetrical dynamic that had existed between American and Mexican ENGOs. In the latter situation, Mexican ENGOs were perceived more as a junior partner rather than an equitable ally. Moreover, while many Mexican ENGOs did work together with like-minded American ENGOs, smaller Mexican ENGOs did have a propensity to view their larger and more well-funded American counterparts with a certain level of distrust, as many of those groups were recipients of funding from both the public and private sector (Hogenboom, 1996, p.996).

During the negotiations over the environmental side accord, critical ENGOs from all over Canada, the United States and Mexico would also form transnational alliances with other like-minded advocacy coalitions through the formulation of workshops and joint alternative proposals (Hogenboom, 1996, p. 1002). For example, a number of radical ENGOs such as the Sierra Club, Greenpeace and Friends of the Earth collaborated with like-minded consumer protection and human rights groups such as Public Citizen, the Alliance for Responsible Trade (ART) and the Citizen Trade Campaign (CTC) just to name a few (Hogenboom, 1996, p. 993). These advocacy coalitions would later be joined by critical Canadian ENGOs such as the Canadian Environmental Law Association (CELA) and the Action Canada Network (ACN). These groups often held meetings, conducted information gathering sessions and published literature. As a result, US ENGOs fostered better relations with smaller, Mexican ENGOs and Mexican ENGOs benefited from the greater expertise and funding bestowed upon them by their American benefactors (Clarkson, 2008, p. 132). Similarly, relations between Mexican and Canadian ENGOs that could once be described as limited and underdeveloped became robust and highly developed.

The kinds of transnational alliances and linkages made among critical environmental groups would spill over into the submission process under the NAAEC as well. In January of 1996, a coalition of critical ENGOs including the US-based National Resources Protection Committee, the Mexican Center Environmental Law and the Grupo de los Cien (Group of One Hundred) filed a submission under the CEC arguing that a pier built primarily for a luxury cruise liner near an endangered coral reef off the coast of the Yucatan Peninsula did not conform to Mexican environmental standards and thus

violated the provisions set out in the NAAEC (DiMento and Doughman, 1998, p. 686). The group alleged that the developers failed to conduct an environmental impact assessment and that the pier would have been built in an ecosystem that was extremely vulnerable to pollution caused by large ships The Mexican government responded by saying that the incident took place before the NAAEC went into effect and therefore the agreement could not be applied retroactively (DiMento and Doughman, 1998, p. 686). Ultimately the case went nowhere, but demonstrates how the very existence of the NAAEC (along with its procedural rules) brought together a variety of ENGOs with no prior relations.

Conclusions

In his first meeting with Canadian Prime Minister Stephen Harper in February of 2009, then-President elect Barack Obama communicated his desire to renegotiate NAFTA and incorporate both the labour and environmental side accords into the main body of the NAFTA agreement (National Union of Public Employees, 2012). The Harper government was relatively silent on the issue, instead choosing to focus on the continued free and uninterrupted flow of goods between the two nations. In an interview conducted with the author, Michael Hart (personal communication, February 20, 2013) concluded that the probability of both Canada and the United States renegotiating NAFTA is extremely unlikely; the amount of time, energy and resources it would cost to reopen the agreement would be tremendous and not worth the aggravation. Hart (personal communication, February 20, 2013) also stated that while the agreement is not perfect, it was negotiated in "good faith" and thus regarded as legitimate. Fellow NAFTA

negotiator Terry Collins-Williams (personal communication, February 20, 2013) also echoed many of his colleague's concerns about President Obama's remarks in Ottawa, stating that the decision to reopen the NAFTA agreement is tantamount to opening "Pandora's Box" due to the legal and political ramifications of attempting to incorporate the supplementary labour and environmental side agreements into the main body of NAFTA. Despite Obama's post-election comments, in practice both the Conservatives and the Liberals are very hesitant to renegotiate NAFTA despite rhetoric to the contrary. The chance that NAFTA will be reopened in the near future is extremely unlikely.

The lack of political will on the part of all three NAFTA members to re-examine the agreement suggests something more interesting is happening. There has been a huge paradigm shift in North American trade relations since the initial negotiations surrounding NAFTA took place; free trade has gone from being an incredibly contentious and controversial policy to being the default economic position taken by a variety of governments in North America, regardless of party ideology or political stripe. This example further illustrates just how institutionally entrenched free trade in North America has become since it went into effect on January 1st 1994. While the more left-leaning elements of the Liberal Party in Canada and the Democratic party in the United States may be uncomfortable with various aspects of NAFTA, any substantive criticisms of the framework are much more symbolic than real. Many scholars and commentators have argued that the implementation of free trade agreements over time produces a "ratchet effect" in which trade agreements become more difficult (if not impossible) to reverse as time goes on. This paper's analysis of NAFTA would seem to confirm this hypothesis.

To conclude, the primary objective of this major research paper was to critically analyze the supplementary NAFTA labour and environmental side agreements and how key stakeholders (primarily labour and environmental groups) impacted the three-year, heated public debate surrounding the negotiations. This paper asked two important research questions: first, how were labour and environmental groups in Canada, the US and Mexico able to organize themselves and use the debate surrounding NAFTA as a site of protest? Second, what were the implications of these cross-border, transnational linkages for labour and environmental groups? This paper attempted to argue that NAFTA's labour and environmental side agreements acted as transnational venues that facilitated cross-border linkages between labour and environmental coalitions. More specifically, labour and environmental coalitions were able to take advantage of both the problems and opportunities found in each of the side agreements through cooperation and collaboration with likeminded foreign counterparts.

The findings contained in this paper are significant for several reasons. First, the cross-border linkages made by both labour and environmental coalitions during negotiations surrounding the side agreements were a stark departure from previous behaviour and represented a major paradigm shift, as it had brought together advocacy coalitions that had previously not had any contact with each other. Second, the debate over NAFTA and the side agreements illustrated how emerging transnational political institutions can become novel sites of protest and how those sites of protest can serve to legitimize new actors and new grievances. Third, far from polarizing or accentuating hostilities between North American workers and labour groups, the debate over NAFTA and the labour side agreement actually *unified* a variety of once-isolated labour groups in

their opposition to the agreement. However, the public debate surrounding the environmental side agreement simultaneously *unified* and *polarized* a variety of North American environmental groups. This had long-lasting implications. Fourth, the transnational linkages created by various advocacy coalitions during the NAFTA negotiations were quite revolutionary for their time. Not surprisingly, these kinds of issue networks would expand and intensify in subsequent debates over free trade. Finally, the historical overview contained in this paper attempted to shine some light on how environmental issues achieved far greater policy salience between 1989 and 1991.

While NAFTA, along with the supplementary labour and environmental side agreements, have been in effect for almost twenty years, there is still plenty of research that needs to be done by scholars working in the field. For example, there is currently an emerging debate in the literature about whether or not NAFTA and the side agreements are better served by an American-style regulatory approach that is adversarial in nature and relies heavily on litigation and penalties or if the agreement could benefit from a more cooperative approach that privileges capacity building and flexibility. While the answer to this question is well beyond the scope of this major essay, it is a question that scholars working within the field should begin to focus on.

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