

NAFTA'S APPROVAL: A STORY OF CONGRESS AT WORK "FROM INTERNATIONAL RELATIONS TO NATIONAL ACCOUNTABILITY"

*Alejandro Posadas**

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I. INTRODUCTION

The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994.¹ Since then, the new General Agreement on Tariffs and Trade (GATT) has been approved; control of the United States Congress has changed from Democrat to Republican; Mexico is going through a financial crisis; and apparently nothing dramatic, for better or for worse, has yet happened to the American economy.

In practice, the viability of NAFTA was resolved on November 17, 1993, when the United States House of Representatives voted to pass the bill of implementation and approval of the international accord.² After weeks of intense political debate, the House approved the agreement by a vote of 234 to 200.³ The margin did not fully reflect the degree of uncertainty before the vote: such a wide margin was considered

* Alejandro Posadas is a fellow law lecturer at Duke University School of Law; J.D., UNAM, Mexico 1992; LL.M. Duke, 1995. He is a founding member of the Mexican International Law Students Association (AMEDI), of which he served as the first national President in 1991.

1. According to its Article 2203, the accord would enter into force "on an exchange of written notifications certifying the completion of necessary legal procedures," which were completed on December 30, 1992. North American Free Trade Agreement, 39 Free Trade L. Rep. (CCH) (Dec. 17, 1992).

2. H.R. 3450, 103d Cong., 1st Sess. (1993).

3. 139 CONG. REC. H10,048 (daily ed. Nov. 17, 1993).

unattainable just a week before.⁴ The Senate approved the agreement, three days later, by a comfortable margin.⁵

This paper is a study of the United States Congress in action, using the passage of NAFTA as an example of the process. Chance did not dictate the choice of NAFTA as the basis of the study. NAFTA is the first serious effort to liberalize the exchange of goods and services, and to adopt transnational rules and principles on aspects ranging from investment and intellectual property to environment and labor, among countries that have unequal economic capacity, diverse legal systems, and different historical and cultural backgrounds. Moreover, Canada, the United States, and Mexico, these "distant neighbors," share borders thousands of miles long.

NAFTA probably had one chance in Congress. This article questions how and why the controversial legislation was approved by the bicameral representative body. In doing so, it raises typical issues Congress faced in its decision-making process. The article focuses on the House of Representatives when the international trade agreement was on the verge of failing.

II. STATING THE ISSUE

A. *One Long Day*

If Representative Robert Dornan, a Republican from California ate a late dinner that night, we might never know. It was to be his fate to vote yes on bill HR 3450 that implemented NAFTA. Apparently, his wife did not share his position and would probably have gone against the bill if she had been voting instead of her husband. On the floor, someone even regretted the representative's wife was unable to take his place.⁶

This split of opinion was mirrored across the United States during the months preceding the approval. The polls reflected similar percentages of people in favor of NAFTA, against NAFTA, and undecided.⁷ The percentages were similar in the House of Representatives, and according to Representative Dornan, probably in his house as well. Other houses were

4. *Congress OKs North American Trade Pact*, XLIX CONG. Q. ALMANAC 171 (1993).

5. The final vote was 61 "ayes" and 38 "nays." 139 CONG. REC. S16,712 (daily ed. Nov. 20, 1993).

6. "Mr. Chairman, no late dinner for me tonight. My wife is against NAFTA. But I have the vote. I rise in support of NAFTA." 139 CONG. REC. H10,037 (daily ed. Nov. 17, 1993) (statement of Representative Dornan (R-CA)). Another member retorted, "Mr. Chairman, I made a suggestion to the gentleman from California that his wife take his place. . . ." *Id.* at H10,039 (statement of Representative Gerald Solomon, R-NY).

7. See Public Support for NAFTA chart *infra* p. 447.

also divided: Democratic representatives in the House and their own leadership.

On November 17, the House was to decide the future of an agreement mainly negotiated by a Republican President, but adopted and presented to Congress by a Democratic President. The agreement had been fiercely attacked by a strange coalition composed of organized labor, environmentalists, the radical right, the protectionist left, and some very specific powerful business groups, such as big sugar firms, citrus growers, and the flat-glass industry.⁸ This coalition was especially favored by the money and participation of former presidential candidate Ross Perot. On the other hand, NAFTA arrived in the House in the wake of a string of congressional approvals of trade liberalizing agreements stretching to the end of World War II.⁹ In addition, Presidents Carter, Ford, and Bush responded to Clinton's request for support.¹⁰ Corporate America and almost all of the state governors were also pro-NAFTA allies.¹¹

The media had a significant role in the process by covering the NAFTA debate extensively.¹² The academic world also participated actively, producing a large body of literature on the subject, and organizing symposiums and conferences all over the nation.¹³ One of the high points of the public dialogue was the November 9, 1993, televised debate between Vice-President Al Gore and Ross Perot.¹⁴ Unlike the Free

8. *NAFTA: The Showdown*, ECONOMIST, Nov. 13, 1993, at 23 (discussing how torn between populism and sound economics, Congress prepares to vote on NAFTA); *Viva NAFTA*, ECONOMIST, Aug. 21, 1993, at 21 (choosing sides in treaty ratification).

9. According to I. M. Dextler from the University of Maryland, Congress has not rejected a trade liberalization proposal in the postwar era. David S. Cloud, *Decisive Vote Brings Down Trade Walls with Mexico*, 51 CONG. Q. WKLY. REP. 3014, 3175 (1993). See also *Waking up to NAFTA*, ECONOMIST, Sept. 18, 1993, at 28 (gathering support for treaty for fight in Congress).

10. Clinton invited the ex-Presidents to the September 14, 1993, signing of the NAFTA side agreements. Their presence was intended to signal NAFTA represented a bipartisan and national interest issue. *Waking up to NAFTA*, *supra* note 9, at 27.

11. See *Businessmen for NAFTA*, ECONOMIST, Oct. 16, 1993, at 27. In the last week of August, all but nine governors supported the adoption of NAFTA. *Viva NAFTA*, *supra* note 8, at 22.

12. On November 21, 1993, 91% of respondents to a poll conducted by Gallup had, at least to a small degree, followed the news about NAFTA; 24% responded they had followed it very closely; 44%, somewhat closely; and 23%, not too closely. Only nine percent responded that they had not followed the news at all or refused to answer. Westlaw Database, POLL, NAFTA (Nov. 19-21, 1993).

13. See Jeffrey R. Jaffe, *A Guide to the NAFTA Literature*, 1 SW. J.L. & TRADE AM. 197 (1994).

14. The debate was held during the CNN *Larry King Show*. Polls done before and after the debate showed support for NAFTA rose from 34% to 57%. David S. Cloud, *As NAFTA*

Trade Agreement with Canada, passed by Congress only five years earlier by a very comfortable margin, the NAFTA process aroused controversy.¹⁵ "Not since the Smoot-Hawley Tariff Act has trade legislation produced such bitter polarization of opinions."¹⁶ Each side predicted dire consequences if NAFTA did pass or if it did not pass. One long day in November, the House debated for more than eleven hours before voting on the bill. The debate had been framed months ago, but the result was unknown until that long day ended.¹⁷

B. The Debate

The two most controversial issues in the NAFTA debate involved the environment and labor; their lobbyists were the most active NAFTA opponents. At the end, however, the fight was fought mainly by the AFL-CIO. Since the Bush presidency, some environmental groups, including the World Wide Fund for Nature, decided to support the agreement, reasoning that it would be easier to monitor abuses in Mexico with an agreement than without it. Other groups followed suit and supported the agreement.¹⁸

The environmental opponents mainly contended that the lower enforcement levels in Mexico would attract American industry, adding

Countdown Begins, Wheeling Dealing Intensifies, 51 CONG. Q. WKLY. REP. 3104, 3106 (1993). Another poll showed 52% of respondents did not change their opinion after the debate, but 35% were more likely to support the agreement, versus 12% who were less likely to support it. Westlaw, *supra* note 12.

15. The United States Senate passed S. 5090, implementing the Free Trade Agreement between Canada and the United States, on September 19, 1988, by a vote of 83 to 9. By a vote of 366 to 40, the House of Representatives passed it on August 9, 1988. Westlaw, Database CR-ABS.

16. Paul Krugman, *The NAFTA Debate-The Uncomfortable Truth about NAFTA: Its Foreign Policy, Stupid*, FOREIGN AFF., Nov.-Dec. 1993, at 13.

17. The debate started at 11:11 a.m. and finished at 10:36 p.m. when the vote was recorded. 139 CONG. REC. H10,078 (daily ed. Nov. 17, 1993).

18. Environmentalists were easier to convince through the creation of domestic incentives and funds to promote infrastructure and environmental clean-up. The division, along with the fact that presently all environmental groups are experiencing a decline in membership and a rise in financial problems, weakened their fight against NAFTA. Organizations mentioned as backing the ratification of the agreement were the National Audubon Society, the World Wildlife Fund, the National Wildlife Foundation, the National Resources Defense Council, and the Environmental Defense Fund. The main environmental groups opposing NAFTA were the Sierra Club and the Friends of the Earth (some charters of the Audubon Society and Greenpeace played a less relevant role). *Land of the Free-For-All*, NEW STATESMAN & SOC'Y, Nov. 19, 1993, at 38; 139 CONG. REC. H9887, H9901 (daily ed. Nov. 17, 1993); see also *Viva NAFTA*, *supra* note 8, at 21.

incentives to damage the already deteriorating Mexican environment.¹⁹ They pushed for reprisals against Mexico, rather than cooperation. Framed in this manner, the environmental issue was closely related to the labor issue. Labor groups also feared that industries were attracted to Mexico by the low wages paid to local workers. The "giant sucking sound," was the phrase used by Ross Perot to describe the catastrophic phenomenon of companies and jobs moving to Mexico as though they were being sucked into a black hole. This metaphor represented the main force binding together this unusual coalition.

The Administration attacked the jobs issue with an equally forceful opposing argument. It promoted NAFTA as a job producing agreement. Thus, the ensuing battle of statistics with respect to prospective job losses or gains caused confusion, radically divided public opinion, and probably overemphasized the issue.²⁰ As a result, relations between the White House and organized labor deteriorated, and the labor groups defined all those not with them as against them. Nevertheless, President Clinton trusted that despite this confrontation, unions were not likely to abandon the rest of his legislative agenda.²¹

The academic world had a mostly positive view of NAFTA. Considering the acute difference between the American and the Mexican economies, the overall impact was expected to be minimal, but positive.²²

19. Krugman, *supra* note 16, at 16 ("The question is whether factories emerging from NAFTA will do more damage than the factories in which Mexican workers would otherwise have been employed."); see also William A. Orme, Jr., *The NAFTA Debate-Myths Versus Facts: The Whole Truth about the Half-Truths*, FOREIGN AFF., Nov.-Dec. 1993, at 2, 8. There were two reasons to think NAFTA would be good for the environment: (a) the United States had made the environment a top priority; and (b) industry was relocated to the North of the country, rather than to the already unhealthy central valley of Mexico City. *Id.*

20. See Public Perception Regarding Jobs and NAFTA chart *infra* p. 448 which provides an example of the differing results from one inquiry to another.

21. On November 7, 1993, President Clinton accused American labor unions of using "roughshod muscle-bound tactics" to intimidate legislators such as threatening to retire support for their re-election if they voted for NAFTA. *NAFTA: The Showdown*, *supra* note 8; *Viva NAFTA*, *supra* note 8; CONG. Q. WKLY. REP. 3014, 3017 (1993); *Congress OKs North American Trade Pact*, *supra* note 4, at 173. Unions still contribute an average of one third of the campaign funds for Democratic congressmen. At the root of the NAFTA debate "was a battle about sovereign democratic lines [T]he lines were drawn between progressive coalitions anchored in labor, against the Fortune 500 represented by the White House." *Land of the Free-For-All*, *supra* note 18, at 39.

22. The Mexican Gross National Product represents less than 4% of the United States GDP. Other numbers, used to further this argument, view Mexico as the new addition to the existing free trade agreement between Canada and the United States, but Mexico's economy is just five percent of those of Canada and the United States combined. NAFTA could hardly add much more than 0.1% to the real income of the United States. Regarding job losses, the overall figures were hardly above the 200,000 monthly average displacement rate of the United States

The liberalization and closer relationship between the two countries could help specific areas of concern, such as those regarding the Mexican environment, wages, democracy, and immigration. At least, the agreement would not make these issues worse. One interesting approach promoted enactment of NAFTA as a matter of foreign policy rather than of economics.²³ A congressional member, advancing this trend, even compared the opportunity to approve NAFTA with the historic opportunity to purchase Louisiana or Alaska.²⁴

In the midst of the debate, many other topics were addressed, such as human rights, drug dealing in Mexico, United States' sovereignty, supranational bureaucracies, the uneven playing field in trade, immigration, and the deficit increase. Many specific examples of midsize companies threatened by the unfair competition, with Mexico, or highly benefited by the already opening Mexican market, were offered. The final debate was between two groups that, according to some analysts, possessed competing domestic agendas and irreconcilable world views.²⁵ Nevertheless, the debate was to be resolved by a third group of undecided voters. Pushed by the Administration, this undecided group found itself trapped in a war of extremist assertions. Its decision required a leap of faith and personal sensitivity. Many of those who were undecided were

economy. According to union sponsored research, only 96,000 jobs had shifted to Mexico over the last 15 years. Considering the average level of tariffs of the United States towards Mexico were already at four percent, no dramatic change was expected in that area. On the other hand, the benefits of the accord would flow out from the principle of free trade, scale economies, and globalization. As a result, in the three countries, employment would increase in some industries and would fall in others; but, the final result would be positive. Krugman, *supra* note 16, at 13; Orme, *supra* note 19, at 2; Glasmeir et al., *Tequila Sunset? NAFTA and the US Apparel Industry*, CHALLENGE, Nov.-Dec. 1993, at 36; *NAFTA: The Showdown*, *supra* note 8, at 23; *Eat Your NAFTA*, ECONOMIST, Nov. 13, 1993, at 15-16. For an approach questioning the globalization-free trade view, see Thomas I. Palley, *The Free Trade Debate: A Left Keynesian Gaze*, 61 SOC. RES. 379 (1994).

23. The accord was viewed as tying up the Mexican economic reform, and as an indubitable signal from the so-called "Latin American emerging markets" whose main partner, if market reforms continued, was to be found in the United States. In the post-cold war, multi-polar, multi-level international society, the United States faced the strengthening of the European Union and the Pacific rim. It thus was sensible for the United States to take the first steps in securing Latin America as a market area. Furthermore, considering the United States efforts to push forward the world's multilateral liberalization trend through GATT's Uruguay Round, approval of NAFTA was a congruent example of its commitment. See Krugman, *supra* note 16; Orme, *supra* note 19, at 8; Abraham F. Lowenthal, *Latin America: Ready for Partnership?*, FOREIGN AFF., Nov.-Dec. 1993, at 74.

24. 139 CONG. REC. H9890 (daily ed. Nov. 17, 1993).

25. Orme, *supra* note 19, at 2.

torn by the congressional dilemma, balancing local concerns with national interests.²⁶

III. THE ROAD TO CONGRESS

In 1990, the government of Mexico approached the government of the United States with the idea of negotiating a free trade agreement. Since 1985, with its accession to the GATT system, Mexico began to liberalize and to open its economy. The process proved profitable to states such as Texas, which in turn encouraged then President George Bush to initiate talks.²⁷ By 1991, opposition to the agreement was already organized as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and several environmental groups focused on achieving the defeat of a congressional revival of the "fast-track authority." Nevertheless, Congress approved it in May 1991.²⁸ In November 1992, Bill Clinton defeated President Bush in the presidential election. Although NAFTA negotiations were completed before the 1992 election,²⁹ then candidate Clinton had endorsed the accord by promising to pursue supplemental agreements to address the deficiencies in the negotiated text in the areas of the environment, labor, and safeguards.³⁰ Clinton was apparently trying to appease two major interest groups which supported his campaign: labor and environmentalists. The carefully negotiated side agreements, however, proved to be unappealing.

On August 13, 1993, marking the completion of negotiation of the supplemental side agreements, House Majority Leader Gephardt announced he could not support the accord as it stood.³¹ Previously, Gephardt had suggested that Clinton should not support the Bush text because it contained no protections for the enforcement of Mexican workers rights, nor any mechanism that assured wages in Mexico rise

26. For a detailed analysis of the concept of two Congresses, see ROGER H. DAVIDSON & WALTER J. OLESZEK, *CONGRESS AND ITS MEMBERS* (1994).

27. Cloud, *supra* note 9, at 3180.

28. *'Fast Track' Trade Procedures Extended*, XLVII CONG. Q. ALMANAC 118 (1991).

29. President Bush initialed the pact on August 12 of that year. Initialing the pact was a formal requirement under the "fast-track authority." With that act, Bush expressed his intent to sign the accord. *Congress OKs North American Trade Pact*, *supra* note 4, at 173.

30. Then Governor Clinton defined his position in an address at the Student Center of the North Carolina State University campus in Raleigh on October 4, 1992. Luis Miguel Diaz, *The NAFTA Tri-Lateral Commissions on the Environment and Labor*, 2 U.S.-MEXICAN L.J. 13 (1994).

31. Gephardt is a leader of the labor cause in the House. See *Viva NAFTA*, *supra* note 8, at 21.

along with productivity.³² On September 21, in a speech at the National Press Club, Gephardt confirmed that he would vote against the pact. With this news, the formerly unified Democrat leadership was divided on the passage of NAFTA. Aside from Representative Gephardt, the second highest ranked Democrat in the House, Majority Whip David Bonior,³³ also opposed the pact. One month before, Bonior collected 100 commitments from Democrat Representatives to demand NAFTA be delayed until healthcare reform was passed.³⁴ Despite widespread support, this action did not prosper. However, Representative Bonior continued to work hard for the defeat of the pact. In October, he announced he was only nine votes away from the 218 needed to kill the agreement.³⁵ Thus, the leadership role of the pro-NAFTA Democrats fell to House Speaker Thomas S. Foley.³⁶ The split in the leadership showed the vote was not going to be based on loyalty, but on conscience. Partisan affiliation, therefore, was not a reliable variable for predicting the result. President Clinton had not yet begun working strongly for NAFTA passage when his opponents, especially Ross Perot, took advantage of the White House Administration's slow start to try to capture the public conscience.³⁷

32. *Congress OKs North American Trade Pact*, *supra* note 4, at 177.

33. Representative Bonior is an interesting case of the representative-constituency relationship. Bonior represents a district in Michigan that encompasses the city of Macomb. His opposition to NAFTA was greeted enthusiastically there; even his last Republican challenger opposed the pact. A large part of his constituents still remember the 1981-82 recession, when the Big Three (Ford, Chrysler, and GM) reduced the Macomb workforce by half. Furthermore, the small and midsize business community believes the future lies in productivity associated with nearby markets. The community does not understand why the government would tempt the car industry to move to Mexico. Representative Bonior also has personal reasons to oppose the pact. Representative Bonior believes the pact to be an extension of the United States colonialist policy toward Latin America, furthered by a conspiracy of corporate and academic elitists. Representative Bonior has voted for higher taxes, higher spending, and lifting of the Cuban embargo. He voted against the Gulf War. Any of the items on that list would probably have been sufficient to eject any other member from Congress, but Representative Bonior's relation to his constituents is symbiotic. Representative Bonior worked for the Detroit car plants and shares Polish-American roots with a large part of his supporters. His Catholic sense of justice and his ability to outspend his opponents five to one have also been key elements contributing to his permanence in the House. *Free Trade, the Vast Middle and David Bonior*, *ECONOMIST*, Sept. 18, 1993, at 36.

34. *Viva NAFTA*, *supra* note 8, at 22.

35. *Congress OKs North American Trade Pact*, *supra* note 4, at 178.

36. Representative Bill Richardson functioned as the Democrats' Whip for passage of NAFTA, and together with Representative Matsui coordinated the party. *The Flying Arkansan*, *ECONOMIST*, Nov. 20, 1993, at 25; Cloud, *supra* note 9, at 3014.

37. President Clinton had been immersed in budget battles and, to avoid offending anti-NAFTA Democrats, he had been careful not to raise the issue throughout the negotiations on the side agreements. *Marketing NAFTA*, *ECONOMIST*, Aug. 21, 1993, at 14 (noting that the treaty faced a fight in Congress).

September 14, 1993, with the signing of the Environment and Labor Side Agreements, was the date chosen by the President to launch a campaign for approval of NAFTA. He designated lawyer William W. Daley as special advocate for the NAFTA cause.³⁸ President Clinton delivered a speech that made George Bush comment, “[n]ow I know why I am outside looking in and he is inside looking out.”³⁹ Soon after, corporate America got on the road through an alliance of 2700 companies, including most of the Fortune 500, to lobby for the agreement. The alliance, under the name of USA NAFTA, chose Lee Iacocca as its champion. The business community prepared for a short, fierce fight.⁴⁰

On September 24, 1993, the United States Court of Appeals for the District of Columbia reversed a lower court decision that required NAFTA to be submitted to an environmental impact study, thus clearing the last obstacle to a congressional vote.⁴¹ Finally, on November 3, the President sent the implementing NAFTA bill to Congress.

IV. THE HOUSE, THE COMMITTEES, AND THE DEALS

According to a media specialist, “NAFTA is a tough challenge for the art of congressional arm twisting. Proponents are trying to sell a policy with global economic implications to lawmakers for whom all politics are local.”⁴²

Before the President sent the implementing bill to Congress, a peculiar practice had already occurred, the drafting of mock implementation bills. This practice was a response to the nature of the agreement. Negotiated under fast-track authority, the NAFTA bill could not be modified once submitted to Congress. Neither the bill of implementation, nor the text negotiated by the countries, which was included in the former, were subject to modification. The mock bills were

38. Daley, brother of the Mayor of Chicago, was named campaign coordinator for NAFTA, and was given the privileged “War Room” in the Old Executive Office Building next door to the White House. He was responsible for heading the White House lobbying efforts in Congress. *Waking up to NAFTA*, *supra* note 9, at 27.

39. *Id.* In his speech, President Clinton called on Americans to embrace change and to “create the jobs of tomorrow,” rather than seeking to preserve “the economic structures of yesterday.” *Id.* at 27.

40. USA NAFTA sponsored 60-second televised advertisements which began airing on October 10, 1993, tailored to combat Perot’s anti-NAFTA propaganda. *Businessmen for NAFTA*, *supra* note 11, at 27.

41. The court of appeals held that the President’s actions are not agency action, and therefore are not reviewable under the Administrative Procedure Act. *Public Citizen v. United States Trade Representative*, 5 F.3d 549, 553 (D.C. Cir. 1993).

42. CONG. Q. WKLY. REP., *supra* note 21, at 3014.

drafts prepared by congressional committees working on the implementing bill. The President had absolute discretion in deciding whether or not to consider the mock bills in preparing his own bill. Nevertheless, if he wanted a positive result he could not simply disregard them. The mock draft exercise was a first step in the Congress-White House negotiating and lobbying process.⁴³

Once in Congress, the bill went through committee consideration. Adhering to the rationale of the mock drafts, this consideration was pro forma only.⁴⁴ Before voting on NAFTA, Congress had conducted eighty-eight hearings beginning in June 19 1990, issued six reports beginning in September 1992, and conducted three NAFTA debates.⁴⁵ Because of the thoroughness of the process, it would be difficult to imagine that a member casted an uninformed vote.

One of the most criticized aspects of the approval process were the deals the Administration made to win over undecided members. NAFTA contains additional side agreements other than the well-known agreements covering environmental and labor issues. These concessions presented an interesting international political compromise among Mexico, Canada, and the White House to fulfill some congressional members' expectations and conditions. Thus, the Administration extracted a commitment from Mexico not to export sugar indefinitely, and to begin negotiations after NAFTA's passage for the acceleration of the phasing out tariffs in for flat glass, wine, appliances, and bedding.⁴⁶ In exchange, the White House agreed to reinstate tariffs for oranges and tomatoes in case they overflowed the American market, to finalize last minute deals protecting peanut growers and wine producers in California, and to extract concessions from

43. The House Ways and Means Committee and the Senate Finance Committee were responsible for conducting the mock or shadow markups of the NAFTA. For example, on September 30, the Ways and Means Trade Subcommittee approved a draft version of the bill. CONG. Q. WKLY. REP., Oct. 2, 1993, at 2620, 2621; see also *Congress OKs North American Trade Pact*, *supra* note 4, at 171.

44. In the House, the Ways and Means Committee approved NAFTA on November 9, 1993, by a vote of 29 to 12; the Energy and Commerce Committee sent it to the floor without recommendation; and the same day, the Banking Committee sent the bill to the floor accompanied with an unfavorable recommendation. *Land of the Free-For-All*, *supra* note 18.

45. Of the 88 hearings, 64 were conducted by House committees. The hearings ranged from issues such as environment, labor, and settlement of disputes to human rights, democracy, elections, and the peso devaluation in Mexico. Congress also conducted fourteen related hearings and issued seven related reports. Congressional Information Services, 93-P.L. 103-182.

46. The sugar deal was made to assure the support of Louisiana lawmakers. Sugar producers feared that Mexico would substitute corn sweeteners in products for its local markets and export its sugar surplus. *Congress OKs North American Trade Pact*, *supra* note 4, at 178.

Canada regarding American wheat farmers near the Canadian border.⁴⁷ Representative Clay Shaw Jr., a Republican from Florida, saw an opportunity to condition his vote on a promise from Mexico to extradite an alleged rapist.⁴⁸

Even non-NAFTA countries were affected by the deals. For example, the White House reinstated the phasing out of textile tariffs from ten to fifteen years, which applied to the Philippines and other developing countries.⁴⁹ The Hispanic caucus, led by Representative Esteban E. Torres, a Democrat from California, pushed for the allocation of one billion dollars to public works projects for communities that would lose jobs to Mexico.⁵⁰ Other members of Congress worked out their own deals. For example, Representative Floyd H. Flake, a Democrat from New York, after announcing his support for NAFTA, received a call from President Clinton informing him of a Small Business Administration pilot program that had been allocated to his district in Queens, New York.⁵¹

Many of the deals were formalized through letters of understanding, but others were the product of unwritten political compromises.⁵² Anti-NAFTA groups attacked this give-away procedure vociferously. Regardless of what position they took on the deals, the defenders of the deal-making process explained that the deals were substitutes for the amendment process which was foreclosed because of the fast-track rules for the adoption of NAFTA. The White House also was restricted as to the extent of the concessions which were granted. For example, the Administration rejected a tax cut on cigarettes sought by

47. The Administration designed a mechanism for re-imposing tariffs on Mexico if the price of orange juice concentrate as tracked on the New York Commodities Exchange dropped down to a certain level. With the agreement on oranges and tomatoes, the Administration won the votes of the nine representatives from Florida. Cloud, *supra* note 9, at 3179; *Congress OKs North American Trade Pact*, *supra* note 4, at 178; *The Flying Arkansan*, *supra* note 36, at 25.

48. The accused was charged of having raped a five-year-old girl. Mexico's practice regarding extradition is not to extradite Mexican nationals but to judge them under its own laws. Clay wanted the accused to be judged in the United States, where the act was committed. CONG. Q. WKLY REP., Oct. 2, 1993, at 2620; CONG. Q. WKLY REP., Nov. 13, 1993, at 3106.

49. This decision included 10 votes of House members from textile producing districts. Cloud, *supra* note 9, at 3175.

50. The North American Development Bank (NAD Bank) addressed this concern; only Representative Torres from the Hispanic caucus voted for NAFTA. Although the NAD Bank was not the only one to tackle this concern, some critics sarcastically adopted the phrase: "one bank, one vote." Cloud, *supra* note 9, at 3175; David S. Cloud, *Clinton Turns Up Volume on NAFTA Sales Pitch*, 51 CONG. Q. WKLY REP. 2863, 2863 (1993); *The Great NAFTA Bazaar*, ECONOMIST, Nov. 13, 1993, at 27.

51. *Congress OKs North American Trade Pact*, *supra* note 4, at 179.

52. See 139 CONG. REC. H9883 (letters of understanding).

representatives from North Carolina.⁵³ Furthermore, the active participation of Mexico and Canada in lobbying the United States Congress evidenced a concerted effort to stay within the well marked boundaries of the political process.⁵⁴

V. THE VOTE

The process of gaining votes for passage of NAFTA resembled climbing a mountain, a race to the top against the clock.⁵⁵ Somber, or deeply doubtful, remarks were not uncommon throughout the process. "Being for NAFTA right now is like being for a congressional pay raise," declared Representative Fred Upton, a Republican from Michigan, in early November 1993; Representative Dale E. Kildee, a Democrat from Michigan, pointed out the undecided "want to cast their vote quietly;" and Representative Richard A. Gephardt, the Democrat from Missouri, said he had never seen such intense pressure on members for a positive vote.⁵⁶

On November 9, 1993, Treasury Secretary Lloyd Bentsen, unofficially declared that the Administration was twenty-six members short of the required 218 votes to obtain House approval for NAFTA.⁵⁷ More detailed analysis that week showed 175 members favoring the accord, fourteen were classified as "leaning" towards approval, and thirty-two were undecided.⁵⁸ Many Republicans favored the agreement but were not willing to let the White House rely on them for support. Republican Minority Whip, Newt Gingrich, made it clear that a bipartisan effort was necessary to obtain congressional approval of NAFTA.⁵⁹

53. The tax on cigarettes was a powerful arm of the upcoming healthcare reform effort; the Administration was not willing to endanger it. Cloud, *supra* note 9, at 3179.

54. During the November 17th House debate, a member affirmed according to a study conducted by the Center for Public Integrity, Mexico had spent at least 30 million dollars in lobbying the United States Congress (no confirmation of this data could be found by the author). See 139 CONG. REC. H9900 (statement by Representative Benjamin A. Gilman, R-NY).

55. On August 21, 1993, it was estimated the vote in the Senate was in favor of NAFTA, but in the House the numbers showed only 120 of the 176 Republicans were in favor; only 1/3 of the Democrats were then in favor, 1/3 opposed it, and 1/3 were undecided. Large delegations, such as California and Florida, opposed the agreement. *Viva NAFTA*, *supra* note 8, at 22.

56. Cloud, *supra* note 14, at 3104.

57. This remark was made before the Gore-Perot debate on NAFTA. *The Great NAFTA Bazaar*, *supra* note 50, at 27.

58. According to this analysis, of the 175 favoring the accord: 100 were Republicans and 75 were Democrats, 14 "leaning" members were Democrats, and 15 of the undecided were Republicans, the remaining 17 being Democrats. Cloud, *supra* note 14, at 3107.

59. Representative Gingrich feared too much reliance on Republicans would push Democrats into taking a safe position not to risk any political capital. Some Republicans

Although the Republican Party did not control the House of Representatives, President Clinton owed more to the GOP members for his victory in obtaining approval for NAFTA than to members of his own party: 132 Republicans and 102 Democrats voted "aye." Democratic members who received twenty percent or more of their total campaign contributions from labor Political Action Committees (PACs) generally, but not in all cases, voted against the agreement.⁶⁰ From the thirty House members that identified themselves on November 12, 1993, as being undecided, twenty-one voted in favor of NAFTA.⁶¹

Another element of the victory was the public support for NAFTA. Wisely, it was remarked that if President Clinton won the support of the voters, he was going to win in Congress.⁶² Through the final months preceding the vote, public opposition to NAFTA grew and resulted in a small approval margin.⁶³ The relationship between the voters and the representatives was reflected in the House decision.

Finally, Ross Perot's prediction of a second vote on NAFTA, by those congressional members who were elected in the 1994 general election, proved unfounded.⁶⁴ Of the 234 members who voted for NAFTA, 184 were re-elected, nearly 80%. The surveys regarding this issue, the Republican agenda in the 1994 race, and the nature of mid-term elections, strengthens this assumption.⁶⁵

VI. CONCLUSION

Although NAFTA will achieve the complete liberalization of ninety percent of the actual trade in goods and services among the contracting parties, it is a gradual process planned to be completed, within twenty years. Considering the safeguard measures, the accord can be viewed as an instrument of industrial oriented policy which is close to President Clinton's and other Democrats' economic philosophy. As such,

complained they were being asked to take the risk for the President's policy, while Democrats were running for cover. Cloud, *supra* note 9, at 3179.

60. Jon Healey & Thomas H. Moore, *Clinton Forms New Coalition to Win NAFTA's Approval*, 51 CONG. Q. WKLY REP. 3181, 3182 (1993) (stating that 77% voted no).

61. It is difficult to find a defined pattern. For example, Representative Sangmeister (D-III), who received 40% of total campaign contributions from labor PACs, voted against NAFTA, but Representative Thomas C. Sawyer (D-OH), who received 41%, voted yes.

62. *Marketing NAFTA*, *supra* note 37, at 14.

63. See Public Support for NAFTA chart *infra* p. 447 which provides figures on public support for NAFTA.

64. Ross Perot warned that in case NAFTA was passed by the Congress, it was still going to be subject to two other votes, the electoral responses of 1994 and 1996.

65. See Public Reaction to Congressmen if Voted for NAFTA chart *infra* p. 450.

it not only offers another explanation of why the President enthusiastically adopted it, but it also reflects the nature of determining winner and loser nations under the terms of NAFTA. This feature was exploited by many members to extract concessions for local producers that were not able to make their way into NAFTA at the negotiation table. Although highly criticized, this practice is influenced by the local accountability to which representatives are subjected. When decisions are made, and the affected agents are not able to advance their concerns, social frustration will result. Here, the political process was at work, and although it was not perfect in this case, it was able to advance all interests: the administration had NAFTA, many groups received concessions, and representatives strengthened ties to their constituents. The fight over NAFTA left no scars and has now been forgotten, leaving Congress free to address other issues.

On the other hand, many of the opponents of NAFTA had radically different views on the philosophy, principles, and commitments which underlie the agreement. Why did their efforts fail to defeat NAFTA? The answer to this question may lie in the economic situation of the country, and in the globalization trend. All of these factors influenced the positions of the voting public and the members of Congress who voted for NAFTA. In the end, after hearing so many arguments, pro and con, can it be denied public opinion guided the outcome? After all, Congress is a mirror image of the American people. The NAFTA approval process shows us politics at work and the influence of public concerns.

Finally, the capacity of the collegiate organization of Congress to assess decisions containing profound foreign policy implications should be questioned. Today, we see Senate Committees addressing the White House response to the Mexican financial crisis. How much of that response can trace its origin to the change that NAFTA represented in United States' foreign policy toward Mexico and the Latin American region? Whatever the answer to these questions may be, in the midst of the human conditions which result because of NAFTA, there will always be the temptation for nations to think that their decisions are better for their interests than the decisions reached through NAFTA, and whatever nation can benefit the most from the agreement will also be motivated into doing less to disturb its terms.

Public Support for NAFTA

September 19, 1993

Do you favor or oppose NAFTA?	
Oppose not so strongly	15%
Favor strongly	16%
Favor not so strongly	17%
No answer	27%
Do not know	1%
Oppose strongly	24%

October 26, 1993

Do you favor or oppose NAFTA?	
Opposition	33%
Not sure	4%
No opinion	34%
In favor	29%

November 11, 1993

Do you favor or oppose NAFTA?	
Opposition	39%
Not sure	20%
In favor	41%

December 14, 1993

Do you think NAFTA is a step in the right/wrong direction?	
Not Sure	14%
Right	53%
Wrong	33%

October 25, 1994

Do you think NAFTA is good/bad?	
No opinion	19%
Good	50%
Bad	31%

Public Perception Regarding Jobs and NAFTA

October 26, 1993

Do you believe some jobs will be lost but more will be created?	
Agree	42%
Not sure	13%
Disagree	45%

November 9, 1993

Do you think NAFTA would result in more or fewer jobs?	
More	50%
Same	3%
Fewer	38%
Don't know	9%

November 11, 1993

Do you think NAFTA is good/bad for American workers?	
Good	38%
Bad	51%
Not sure	11%

November 11, 1993

Do you think NAFTA will cause anyone in your household to lose their job?	
No	77%
Yes	12%
Not sure	8%
No one works	3%

November 16, 1993

Do you think NAFTA will create jobs because Mexico will buy more U.S. imports, or will cause the loss of jobs because low wages attract firms to Mexico?	
Create	32%
No difference	5%
Loss	53%
Do not know	10%

March 21, 1994

Do you think NAFTA will help/hurt the overall job situation?	
Hurt a little	14%
Hurt a lot	18%
Help a little	32%
Help a lot	20%
Do not know	15%
No effect	1%

Public Perception of NAFTA Issues
--

November 11, 1993

Do you think NAFTA will be mostly good or mostly bad for American consumers?*	
Good	52%
Bad	33%
Not Sure	15%

November 15, 1993

If NAFTA is passed, do you think immigration from Mexico into the U.S. would go up, go down, or stay about the same?***	
Go up	26%
Go down	18%
Stay about the same	50%
Not sure	6%

November 11, 1993

Do you think NAFTA will be mostly good or mostly bad for American corporations?*	
Good	69%
Bad	20%
Not sure	11%

November 16, 1993

Do you consider the vote in Congress on NAFTA a crucial test of America's leadership role in the world?****	
Yes	55%
No	37%
Do not know	7%

** Yankelovich

*** Hart and Teeter

**** Gallop

Public Reaction to Congressmen if Voted for NAFTA
--

October 26, 1993

Which candidate for Congress in 1994 elections would you support:

- A) Supported president Clinton's economic program, health care program, and NAFTA;
 B) Opposed all of the latter

Candidate A	52%
Candidate B	39%
Depends on candidate	4%
Not sure	5%

November 15, 1993

If your member of Congress votes against NAFTA, would this opposition make you more/less likely to vote for him in 1994?

No difference	60%
More likely	16%
Less likely	13%
Not sure about vote	4%
Not sure	8%

November 16, 1993

If your member of Congress votes in favor of NAFTA, will that make you more/less likely to vote for him in 1994?

No effect	60%
Less likely	21%
More likely	14%
Do not know	6%

October 10, 1994

If your candidate supported NAFTA, will that make you more/less likely to support him?

More likely	19%
Somewhat more likely	29%
Much less likely	18%
Somewhat less likely	19%
Not much difference	6%
Not sure	9%

The President, Congress and NAFTA
--

December 26, 1993

How would you rate President Clinton's job in handling NAFTA?	
Excellent	20%
Good	40%
Fair	22%
Poor	13%
Not sure	14%

December 26, 1993

How would you rate Congress' job in handling NAFTA?	
Excellent	6%
Good	38%
Fair	36%
Poor	16%
Not sure	5%