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BOOK REVIEW

NAFTA: What Comes Next? By Sidney Weintraub. Washington: The Center for Strategic and International Studies, 1994.

*Betty Southard Murphy**

Since this book was published in 1994, we have the answer to Dr. Weintraub's question—we know what came next. But Dr. Weintraub's easily readable book, which is now in paperback, still provides valuable information about the background of the North American Free Trade Agreement ("NAFTA" or "the Agreement") and, with foresight, raised questions in 1994 that governments in our hemisphere are debating today. Although the author does not hide the fact that he has an "infatuation with NAFTA," he presents a balanced picture of the pros and cons of what was surely a landmark event.

NAFTA took effect on January 1, 1994 with the stated goals of increasing economic growth and jobs in Mexico, Canada and the United States, eliminating tariff and non-tariff trade barriers, providing preferential treatment for each of the three country's products, and increasing their joint ability to compete against both a unified European Community and an increasingly dynamic Asia.¹ NAFTA created the world's largest and first continent-wide free trade agreement and united a total population of nearly 370,000,000 with a combined production of over \$6.5 trillion.² The Agreement created a unified economic force consisting of the United States and two of its

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¹ North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182 (1993). This statute was signed by President Clinton on December 8, 1993. *See also* North American Free Trade Agreement, Dec. 17, 1992, pmbl. and art. 102, 32 I.L.M. 296, 605.

² Hearings Before the Employment, Housing and Aviation Sub-Committee of the Committee on Government Operations, 93, 146-47 (1993).

biggest trading partners—Canada and Mexico—and enhanced each country's ability to compete globally.

Dr. Weintraub initially points out that NAFTA differs from other trade agreements since it is intended to encompass an array of economic relations beyond trade in goods and services, such as investment, transportation, communications, voter relations, and environmental and labor matters, to name a few.³ He acknowledges that NAFTA has the potential to alter political relations among the three countries in ways not possible for a global organization, provided that the three partners make the correct "macro decisions." He identifies macro decisions as matters of "high" policy which set the overall agenda under which day-to-day "micro decisions" will be made.⁴ The author divides his precise and insightful monograph (as he calls the book in the Acknowledgements) into six sections. The Introduction is followed by Global Trends, Economic Interaction in North America, The Meaning of Deepening, The Widening of NAFTA and a Conclusion which is sub-titled Hope and Pessimism. Let us briefly review his six sections in terms of what is happening *in 1996*.

The Introduction contains an excellent discussion of the reasons why NAFTA came about. It also raises the possibility that other sub-regional economic groupings in Latin America and the Caribbean will join NAFTA as sub-groups. This of course raises sovereignty issues. The author thus distinguishes NAFTA from the debate over the European Community ("EC") in that NAFTA never contemplated developing a single currency or a super-national institution with the power to overturn its member state's laws and to create national laws binding all such members.⁵

After comparing the debate over NAFTA with that over the EC, Dr. Weintraub concludes that the more NAFTA deepens, the more sovereignty issues will arise on such matters as the protection of national industry and the environment and the handling of trade disputes. The author's views in this regard, however, have been somewhat outdated by events which may have occurred after his monograph was published, even in 1994. For example, on April 15, 1994, 124 countries took part in the Uruguay Round meetings held in Marrakesh and adopted the World Trade Organization ("WTO") to re-

³ SIDNEY WEINTRAUB, *NAFTA: WHAT COMES NEXT?* 2 (1994).

⁴ *Id.* at 4.

⁵ For example, recently the European Court of Justice struck down a law in Great Britain which allowed women to receive free prescription drugs at age 60 but which made men wait until 65. The Court, whose decisions must be unanimous, ruled that the law violated EU directives forbidding sex discrimination.

place the 47-year old General Agreement on Tariffs and Trade ("GATT"). The WTO is now the forum where the Western Democracies, the emerging economic powers in the Pacific and in Latin America, as well as developing countries around the world, will arbitrate their differences on a broad range of issues. Unlike other trade pacts and certainly unlike GATT and NAFTA, the WTO's purpose is not only to reduce quotas and tariffs but also to control competition in banking and services, to protect intellectual property and to integrate state-run economies—like China—into the world trading system. Abandoning the position that he took with NAFTA, however, President Clinton did not require that any mention of worker rights be included in the WTO treaty before seeking its passage.⁶

Indeed, as to sovereignty, there are today far greater sovereignty concerns about the WTO and its impact on U.S. laws and economy than NAFTA ever generated. Although neither NAFTA nor the WTO can force a change in U.S. law, WTO has a far more practical impact than NAFTA. It is true that if the WTO ruled that U.S. clean air laws discriminated against European auto manufacturers, the U.S. would not be obligated to change its statutes. But according to former U.S. Trade Representative Mickey Kantor, "Europe could take compensating action to restrict U.S. Imports."⁷ In addition, Argentina has already threatened to appeal to the WTO if the Clinton Administration tries to challenge its implementation of trade-related intellectual property, which was negotiated in the Uruguay Round under the U.S.'s Special 301 procedures. Thus, it is clear that if any country seeks to avoid sanctions under U.S. trade laws, the WTO may provide the escape hatch.

The author's section on Global Trends is so well reasoned that it actually could stand by itself as a separate essay. It gives us exactly what it promises—global trends along with trade and economic relations between countries.

In discussing economic integration in North America, Dr. Weintraub focuses on an issue that is widely being debated today both in Congress and the press: immigration. He points out that in 1993, of the 483 million *legal* admissions into the United States reported by the

⁶ As Dr. Weintraub points out in his introduction, the labor standards and the environmental provisions in the body of the NAFTA text were not strong enough either for the new President or for the U.S. Congress. As a result, NAFTA's passage was conditioned upon the two side agreements becoming a part of NAFTA.

⁷ Peter Behr, *Treaty Signing Heralds World Trade Group with an Ambitious Mission*, WASH. POST, Apr. 15, 1994 at A20. Mr. Kantor did not explain what Europe's "compensating action" would do to U.S. exports or to the U.S. economy.

Immigration and Naturalization Service, more than 269 million entered by land from Mexico and another 132 million by land from Canada. Thus, these two borders alone accounted for 83% of all *legal admissions*—leaving aside the several million illegal aliens who are apprehended and sent out of the U.S. and the estimated several million illegal aliens who are not intercepted at the borders.

Dr. Weintraub criticizes NAFTA's failure to address the issue of immigration because of U.S. sensitivity over legalizing the unlimited entry of Mexicans into this nation. Unlike the European countries, Mexico and the U.S. negotiated a free trade agreement, not a common market agreement, which would include the access across borders of both capital *and labor*. NAFTA addresses only the free movement of capital—not the free movement of labor.

Although Dr. Weintraub states the oft-repeated hope that by increasing economic advantages in Mexico, Mexicans and other Latin Americans will stay home, this reviewer believes that Mexico simply cannot—at least to date—create enough jobs for its citizens to enter and stay in the domestic labor market each year. Legal and illegal immigration is either the solution to Mexico's job creation problem or the result of its failure to deal with its economic problems—depending on the view of the beholder. The author correctly foresaw the current debate on immigration on Capitol Hill concerning the passage of new and more stringent immigration laws and the increasing debate on this subject in certain states and in the press.

In discussing the widening of NAFTA, Dr. Weintraub states as an objective the achievement of a Western Hemisphere Free Trade Association ("WHFTA"). Although that name has not caught on, the author was headed in the right direction. On December 11, 1994, the NAFTA countries disclosed that accession to NAFTA negotiations would begin with Chile.⁸ After the discussions with Chile were disclosed, the thirty-three countries who attended the Summit of the Americas announced their joint plan to create a Free Trade Area of the Americas ("FTAA") by the year 2005.⁹ FTAA would extend from Tierra del Fuego at the tip of Argentina to the top of Alaska.¹⁰

But before FTAA comes into being, if it does, the European Union ("EU") would like to complete a formal free trade agreement

⁸ *Joint Statement on Chile Negotiations at the Summit of the Americas*, reprinted in *INSIDE NAFTA*, Dec. 14, 1994, at 13-14.

⁹ *Clinton, U.S. Advisors Praise Brazilian Role in Achieving Hemispheric Pact*, *INSIDE NAFTA*, Dec. 14, 1994, at 2.

¹⁰ *Id.* at 13.

with the United States. The EU announced last year that it is serious about entering into a U.S.-Europe free trade agreement, tentatively called TAFTA: the Trans-Atlantic Free Trade Agreement. The EU is pursuing discussions on TAFTA at its inter-governmental conference.¹¹ Although FTAA and TAFTA may not have been in the picture in 1994 when Dr. Weintraub's was published, the author's preferences—some of which I share—should be mentioned here. First, he would consolidate NAFTA and delay any expansion until it has developed further than it had in 1994. Further, he favors the accession of Chile. As mentioned, discussions regarding that prospect are currently underway. Additionally, Dr. Weintraub would include negotiating with other sub-regional groups as a unit—such as with MERCOSUR, which is the Southern Cone Common Market, consisting of Argentina, Brazil, Paraguay and Uruguay.¹² That organization itself also has goals for 1996. It is seeking to include the Latin American Integration Association ("ALADI") in the Tripartite Committee of regional organizations that has been providing technical studies to the groups preparing for negotiation of FTAA.¹³

Although Dr. Weintraub covers a great deal of territory in his monograph, this reviewer would have preferred to have seen more than a page devoted to the North American Agreement on Environmental Cooperation ("NAAEC") and the North American Agreement on Labor Cooperation ("NAALC"). Both of these side agreements merited greater consideration from the author than they received.

The concern in the United States for worker rights which led to NAALC is not unprecedented. During the Reagan and Bush administrations, a number of U.S. laws—including the Caribbean Basin Initiative, The Generalized System of Preferences, The Overseas Private Investment Corporation Act and the Omnibus Trade and Competitiveness Act of 1988—linked the receipt of U.S. trade benefits to other countries' adherence to basic worker rights in their own coun-

¹¹ See Martin Seiff, *With NAFTA Here, Is TAFTA On Way?*, WASH. TIMES, Apr. 16, 1995 at A1.

¹² The MERCOSUR nations plan a series of free trade agreements and that creating a NAFTA-type South American Free Trade Agreement ("SAFTA"). Chile's apparent choice of NAFTA, rather than MERCOSUR, is based on the fact that Chile would have to raise its average tariff level significantly to meet the MERCOSUR's common external tariff.

¹³ *MERCOSUR to Seek Incorporation of ALADI into FTAA Process*, INSIDE NAFTA, March 6, 1996, at 7-8. The Clinton Administration's push to have Western Hemisphere trade ministers commit to *serious* FTAA negotiations in 1997 could result again in compromises which would continue to weaken the U.S. position where WTO is concerned.

tries.¹⁴ Despite these precedents in U.S. legislation, when President Bush signed NAFTA, it was the first time that a worker rights provision had been included in an international *trade treaty* to which the United States was a party. Thus, NAFTA and NAALC clearly broke new ground.¹⁵

As Dr. Weintraub correctly points out, trade will increase and the U.S. goal should be to make that trade as free of tariff and non-tariff obstacles as possible. However, at the same time, legitimate U.S. concerns about lower costs and minimum labor standards must be addressed while the rights of lower wage countries to control their domestic legislation must be recognized. Although the Clinton administration was unable, as indicated earlier, to include a worker rights provision in the World Trade Organization, various European countries and organizations have realized that the exclusion of a worker rights provision in the WTO was, quite frankly, a mistake. Today, both France and Germany are anxious to develop a “social charter” within the WTO to “guarantee minimum rights for workers.”¹⁶

Sir Leon Brittan, E.U. Commissioner, has recommended that International Labor Organization (“ILO”) standards be used as the common criterion for social policy objectives. The ILO and the WTO would work together to judge compliance with those standards. The Organization for Economic Cooperation and Development (“OECD”) has also called for an international agreement on “basic worker rights” and for an “indirect approach to raising labor standards.”¹⁷ In fact, OECD has acknowledged that the United States pushed for minimum labor standards as fundamental human rights from the Ford Administration in 1974 to the end of the Bush Administration in 1993.

This reviewer further believes that it is important for each low wage country to enforce its own worker rights laws and try to improve the standard of living for its citizens as they join free trade zones in the Western Hemisphere. An agreement linking free trade and *a country's own minimum labor standards for workers* will advance free trade by enabling these workers to earn enough money to buy prod-

¹⁴ Betty Southard Murphy, *NAFTA's North American Agreement on Labor Cooperation: The Present and the Future*, 10 CONN. J. INT'L L. 403, 406 & n.16 (1995).

¹⁵ Although organized labor and some Democrats and some Republicans expressed legitimate concerns about the labor side agreement, it was an important first step toward providing an effective means of providing workers in the United States and abroad in the context of a free trade agreement. *Id.* at 406.

¹⁶ *Id.* at 424.

¹⁷ *Id.* at 424.

ucts at home, as well as products from the United States and other countries.¹⁸

In conclusion, this reviewer hopes that Dr. Weintraub will pick up where he left off and give us another fine analytical assessment of the challenges the United States and other countries face in dealing with the World Trade Organization, the growth of NAFTA and achieving FTAA by 2005. A hemisphere-wide free trade agreement—with the inclusion of worker rights—will increase opportunities for genuine economic growth in the Americas.

¹⁸ See Betty Southard Murphy, *Economic Liberty: An Exploration of the Link between the Constitution of the United States, Materialism and Basic Freedom*, 70 MARQ. L. REV. 443, 472 (1987).