Implications of NAFTA's Extension to Chile and Other Countries--A U.S. View

M. Jean Anderson

Follow this and additional works at: http://scholarlycommons.law.case.edu/cuslj

Part of the Transnational Law Commons

Recommended Citation
Available at: http://scholarlycommons.law.case.edu/cuslj/vol23/iss/28
IMPLICATIONS OF NAFTA'S EXTENSION TO CHILE AND OTHER COUNTRIES - A U.S. VIEW

M. Jean Anderson*

The topic at hand is the implications of NAFTA's extension with Chile and other countries. Given that, I am put in a little bit of a difficult situation, because probably when that topic was suggested people thought there might have been some progress toward accession of Chile and other countries to NAFTA, and we are not quite in that position. So to see where we are, I want to try to take you back for a minute to December 1994, and then come back to the present.

In December 1994, NAFTA was already in place, U.S.-made exports to Mexico were booming, and we were having and celebrating the first Summit of the Americas in Miami, where there was a commitment of thirty-four Western Hemisphere heads of state to immediately begin to establish a Free Trade Agreement of the Americas (FTAA), with concrete progress by the year 2000 and a commitment to a completed negotiation of the FTAA by the year 2005. There was a U.S. presidential commitment, a national commitment, promptly to negotiate the accession of Chile to NAFTA. Chile was then seen, certainly, as the next in a line of countries that would become NAFTA members.

Well, what happened?

Obviously, to negotiate Chilean accession to NAFTA, for the United States there must be Fast Track negotiating authority. In 1995, following the Miami Summit, there was a Fast Track process which proved to be a debacle. The Republicans on the House Ways and Means Committee and elsewhere in Congress adamantly opposed the inclusion of labor and environmental provisions as a part of trade agreements, and they were spurred on by an equally or more adamant business community who staked out a pretty inflexible position on the issue of labor and environmental provisions that was, again, in my view, probably very counterproductive to their own defined interests in having progress toward Chilean accession to NAFTA and maybe the accession of other coun-

* M. Jean Anderson is a senior partner at the law firm of Weil, Gotshal & Manges in Washington, D.C.
tries, and certainly a Free Trade Agreement of the Americas.

Their defined interests in the end of 1994 looked, for the first time in twenty or thirty years, if not longer, like a coherent U.S. political and economic policy toward Latin America, which could only be good for U.S. business doing business in the hemisphere. But as I say, I think they took a little bit of a counterproductive, perhaps extreme, position on environment and labor. At the same time, the Administration in Washington was equally adamant on the other side of the labor and environment issue, hostage to the views of their traditional Democratic constituencies, mainly labor, and the Democratic House leadership, who were hostage to the traditional Democratic constituencies, mainly labor.

It is just my personal view, but I do not think the Fast Track in 1995 was really ever a priority for Mickey Kantor, who was then our U.S. Trade Representative and whose real interests were always more focused on domestic political issues, and who was personally very attached to the traditional Democratic constituencies. So I think that is where his interests lay, rather than on big-picture, long-term trade and foreign policy issues.

So the short of it was that there was no Fast Track and there was not really any significant progress toward getting Fast Track negotiating authority in 1995. And because there was no Fast Track in 1995, it was pretty clear there could be no Fast Track until 1997 at least, because the Congress and the Administration could not and would not get Fast Track authority through in an election year.

What else happened since December 1994? We had a peso crisis. We had more and more headlines in U.S. newspapers about corruption and drugs and so forth in Mexico. The NAFTA opponents in the United States seized on those kinds of developments to vilify NAFTA. The Administration, in my opinion, was unprepared for that, because they did not muster a strong pro-NAFTA campaign to counter the criticism of Mexico and the criticism of NAFTA that was resulting. I think they were just taken a little bit unawares.

The trade people in the Administration, and more generally in the business community in Washington and elsewhere in the country, certainly knew NAFTA was good for the United States. Business was very happy that NAFTA existed, particularly when the peso crisis hit. But, at a political level, it almost seemed that the Administration did not quite have full confidence that it had been right in going forward with NAFTA because they did not come out strongly in favor of it.

It may have been the election year and the Administration’s focus on other things that they simply were not focusing on defending NAFTA; or it may have been it was easier to avoid the issue, given all
the lousy headlines, than to address it. Whatever the reason, there was not a strong defense of NAFTA mounted early on, and the opponents of NAFTA got up some steam.

So here we are in April, 1997, and here I am speaking on the implications of NAFTA extension to Chile and other countries, and there is no real certainty — even though I think the picture in 1997 is better than it was in 1995 — there is really no certainty that there will be an extension of NAFTA, or an extension of NAFTA as such to Chile or other countries. There certainly is no certainty as to when that might happen. There will, of course, be very important developments on these subjects in the next weeks and months and in the next year or two.

With no NAFTA extension implications to discuss, I am going to try to give you a little context for thinking about whatever those future developments are in which you might be involved. I want to note, although my law firm represents and I represent Chile with respect to NAFTA accession, I want to make very clear that nothing I say could be attributed to the government of Chile. I am not speaking for Chile. I am definitely just speaking for me.

I want to focus mostly on the Fast Track question, because that is first and foremost from the U.S. perspective to getting anywhere on this issue, and then I will say a couple of words on what has been going on in Latin American trade relations and why that matters in the Free Trade Agreement of the Americas.

On Fast Track, over glasses of wine before dinner, some of us were joking about whether it should be renamed Slow Track, Back Track, or Off Track. Probably any one of those is better than Fast Track; it is more accurate. Only a few months ago, the business community in the United States really mounted quite an effort to urge the Administration to take very quick action in President Clinton's second term on Fast Track. The U.S. Chamber came out with a strong statement urging action on Fast Track within the first ninety days of the second term.

Within the Administration, I do not think there is any question that the trade officials were very convinced that the Clinton Administration had to get Fast Track for several reasons. From a perspective of somebody who is very committed to a President and the success of a Presidency, those people quickly recognized that the President of the United States is not going to go down in history for his international economic accomplishments, or indeed for his foreign policy if there is no ability to negotiate and play a leadership role in international economic affairs. So for that reason alone, the Clinton Administration obviously needed Fast Track, and needed it badly.

Fast Track expired in December 1993. I think that is the longest, or
close to the longest time a President in recent decades has been without Fast Track authority. And the idea, the very concept that President Clinton might have gone through a second term without any negotiating authority would have so debilitated him as a President on the international stage, that anybody thinking in historical terms about the Presidency, has to say that you have got to have Fast Track. But more in terms of the national interest, it is obviously essential to the United States to have Fast Track in order to play a leadership role in international economic matters.

I think it was also well-recognized in the Administration, at least in 1996, that they really had to get Fast Track in 1997. They needed Fast Track in 1997 because 1997 has been, except for some campaign money, scandals, and things like that which have taken over the headlines, a honeymoon period. It is the first year of the second term after basically a landslide election. So we had a good chance of coming out of the shoe with an affirmative policy and going forward, saying we are going to do these great new things. But if they waited until 1998, they would be into an election year again, and getting Fast Track would be harder. So, at least in 1996, people thought it was important to get it in 1997.

Of course, there is the fact that the United States had committed to Chile and to the rest of the hemisphere that we would negotiate accession to NAFTA of Chile, and the Administration wanted to do that at least by the March, 1998 Second Summit of the Americas, which will be held in Santiago. Once again, how quickly things change. In recent months, the Administration has reiterated over and over again that Fast Track is one of its priorities. The President has given speeches, and a lot of other cabinet officials and other high level officials have given speeches about what a priority Fast Track is. But there is tremendous confusion, at least it appears to me, on how to proceed, and they are having a very hard time coming up with the content of Fast Track. There is still a lot of political jockeying.

The Administration seems to have concluded that it cannot go for a Fast Track bill that would have very strong language or negotiating objectives, including labor and environmental provisions in trade agreements; but at the same time, if they leave that out, they fear they will be antagonizing the Democratic leadership in the House and other Democrats who are on the other side of that issue. My guess and most of the reported speculation is that they will probably eventually come up with a Fast Track proposal that does not have any negotiating objectives in it at first, in an effort to avoid that issue. That will be seen by the left wing of the Democrats as a sellout to the Republicans, and we will see how it ends up.
There is also great confusion on timing. February came and went with some of us hoping something, some proposal would come out of the Administration. March came and went. The Republicans in the Congress, especially in the Ways and Means Committee, were urging the Administration to propose a bill, waiting for one. The business community was urging the Administration to move faster. The Administration has been saying to the business community, that they have got to make clear that they support Fast Track. The business community is saying, we support Fast Track, but we cannot get behind you 150% until you show us a proposal; we have got to know what we are supporting.

Here it is, April, and we still do not have a Fast Track proposal before Congress. Indeed, there are very ominous, in my view, rumbles about the Administration deciding to delay putting forward a Fast Track bill until after the budget process is over. As a practical matter, I think what that would mean, if they do that, is that there would not be any vote on Fast Track until at least late 1997, and maybe it would be early 1998. I think once you get into early 1998, the further out, the more things change, and the more risky it becomes.

Some of this confusion is because people are spooked by anti-NAFTA sentiment that has built up in some quarters in the United States. And there is a review of NAFTA coming up this summer in Congress, and there is a real risk — it is not just a risk, it is in part a reality — where people sort of throw into one bag what they perceive as Mexico's problems, which are, therefore, NAFTA's problems, and therefore Fast Track, and it is all sort of treated together, which is a danger.

And then, overhanging all of that, you have Mr. Gore's problem, which is that he wants to be President in the year 2000. In order to be President he has to be the Democratic nominee, and his likely opponent in the primaries is Rich Gephardt, who has staked out for a long time pro-labor and environmental provisions in trade agreements, if indeed he is even for trade agreements, which sometimes he is, but usually only on his own terms. I would like to think that the Vice President could stake out a position that was quite clearly distinguished from Mr. Gephardt's position, but it appears that Mr. Gore still fears losing those traditional Democratic constituents enough that he has so far been contributing to the confusion by his unwillingness to say, what is right for the country is Fast Track and let us go forward with negotiation. It is further complicated by the fact that the AFL-CIO has formally come out, which is no surprise, adamantly opposed to having any trade agreement subject to Fast Track unless there are labor and environmental provisions as core provisions of the trade agreement.
That is sort of the mess I see going on in Washington. In the discussion period maybe we will get some other views from some of you in the audience, and maybe some will disagree with me, but I think it is kind of a mess right now and I am quite worried about it.

It is an easy issue, in a sense. Everybody ought to be for Fast Track and for getting it fast. It is in the national interest; I think that case can be made pretty strongly. Obviously, it is necessary to have Fast Track before there can be any negotiation with Chile, otherwise Congress can basically rewrite the deal. And Chile certainly will not put itself in that position, no country will. The Administration probably thinks it needs more than Chile to hold out as a reason for getting Fast Track. It is easy to say Chile is the first in line to negotiate with, but then whose next? Unfortunately, Chile is the first in line, but there is no line, there is nobody behind Chile. There is not really a prospect that is palatable politically, or even likely, that there is some other list of countries that would follow Chile.

People used to say it will be Chile and then it will be Argentina. When Argentina is suggested, the agriculture community in the United States gets pretty worried about a NAFTA negotiation with Argentina, or with MERCOSUR more generally.

So they struggled over how to present why Fast Track is important, but even that is not a very hard issue. On this, I think the Administration has finally got its talking points together. Its talking points basically say, we have got to have it for Chile; we have got to have it for the Free Trade Area of the Americas; and we have got to have it globally. That is pretty simple. We all could have figured that out. But they finally are saying that, and hopefully, that will be enough for the Congress and the public that they can get it done. That is what I view as a rather worrisome scenario on Fast Track.

Having said all that, though, I will say I think there will probably be Fast Track and there will be Fast Track maybe in 1997 or early 1998. I say that not because I have confidence in the process that I have watched play out, but because the Clinton Administration is quite amazing in sort of watching things royally and then pulling it out at the last minute. At the last minute they decide, we really have to work on this, and so suddenly they pull out all the stops and they really go to work and they make something happen that they just had not quite done up to that. They may do that on Fast Track. So I am hopeful.

Meanwhile, in the last few years things have, of course, not been standing still in Latin America. A few years ago I used to hear people say MERCOSUR was not real. MERCOSUR was one of those fuzzy agreements and did not have real obligations. It was not really meaning-
ful. Brazil was never going to stick to an agreement. People really dis-
paraged MERCOSUR as something to take seriously. That, I believe, is
a big mistake, and I think that it is no longer viewed that way in very
many quarters.

I think MERCOSUR is a very real agreement. It is a very different
kind of agreement than NAFTA is; it is a much more of the European
style of the approach to an integration agreement, whereas NAFTA is
more legalistic and obligation-focused. MERCOSUR is surely having
some hiccups, some of them big ones. Lately, Brazil has imposed con-
straints on import financing that has caused its trading partners, in
MERCOSUR as well as the rest of the world, big problems. But none-
theless, MERCOSUR in the area is seen as a very real agreement. In
my experience talking to businesses in North America, they are organiz-
ing their activities with MERCOSUR very much in mind. They are lo-
cating in MERCOSUR countries to take advantage of the MERCOSUR
market. So MERCOSUR is not just a figment of somebody’s imagina-
tion. It is a real agreement.

Chile, of course, has become an associate member of MERCOSUR,
which alters Chile’s situation. After all, Chile is next door to the
MERCOSUR countries, and it is very natural geographically and in
terms of culture and history, and so on, that they would be integrated
with MERCOSUR countries. It is inevitable that they would be. But that
has happened in advance of any negotiation for their accession in
NAFTA and that changes the equation some.

Chile, of course, has also negotiated with Canada. Chile, and
MERCOSUR more generally, are negotiating with the European Union,
which is only too eager to expand its trade relations with Latin America
while the United States sits on the sidelines, and there are a lot of other
trade agreements being negotiated in Latin America. So, from a Chilean
perspective, they certainly have a lot of diverse options that they did not
have two or three years ago. All of Latin America, I think, has more
diverse options than they did a few years ago. So the world has
changed while the United States has been on the sidelines, and I think
that is unfortunate from a U.S. perspective, and I hope it changes quick-
ly with the passage of Fast Track.

I have one last word on the Free Trade Agreement in the Americas,
because I think this is relevant to the topic of the implications of acces-
sion to NAFTA. Once upon a time, I think a lot of people thought that
the United States, Canada, and Mexico would then go one-by-one with
other countries having an accede to NAFTA and eventually there would
be a kind of bloc-to-bloc negotiation. Either NAFTA would take over
the hemisphere or, if MERCOSUR was real, then there would be a
negotiation between NAFTA and MERCOSUR. I do not think any of that is going to happen. I am not sure it was ever a very likely scenario, but I think now it is much easier to see that that will not be the route to hemispheric free trade.

The United States has publicly said that, if and when the Free Trade Agreement of the Americas negotiations really get going, we are not going to negotiate as a NAFTA bloc, but as the United States. They are not alone in saying that. That does not take anything away from NAFTA. The United States is probably saying that partly because NAFTA is a bad word politically in the United States these days, having nothing to do with Canada, only Mexico. They are probably also saying it because they do not want to give the impression that MERCOSUR is somehow an equal to NAFTA. There is a real aversion, I think, to the idea that what comes out in a Free Trade Agreement for the Americas might be a compromise between NAFTA and MERCOSUR, because NAFTA, to the United States, is going to be the standard that an agreement ought to meet in terms of legal commitments and obligations, and enforceability of those commitments and obligations.

I think also that when those negotiations are really going, there will be a huge amount of coordination and cooperation and solidarity among the NAFTA countries in those negotiations. So I want to make clear, I do not think this takes away from NAFTA, but it will not be, in my view, a bloc-to-bloc negotiation.

If and when that negotiation occurs, as I think it will occur sometime between now and 2005, hopefully that coordination and cooperation and solidarity would also be with some countries in Latin America, notably starting with Chile. That would have quite potentially some considerable impact on how those Free Trade Agreement of the Americas negotiations would go. For that reason, on top of its own independent value, I think Chilean accession to NAFTA remains key, and we just have to hope that it happens.