

BEYOND NAFTA: THE SECURITY AND PROSPERITY PARTNERSHIP

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INTRODUCTION

The Security and Prosperity Partnership of North America (SPP) is an initiative or process of co-operation between the executive powers in Canada, Mexico and the USA with which a privileged advisory body of powerful corporate leaders has been integrated. As the Congressional Research Service (CRS) points out, 'it is not a signed agreement or treaty and, therefore, contains no legally binding commitments or obligations'. 'It is not a trade agreement and is distinct from the existing North American Free Trade Agreement (NAFTA)'.¹ 'It is a unique process in that the negotiations falling under its auspices occur at the bureaucratic level, rather than amongst traditional diplomats, and are informed by active consultation from the private sector'.²

Despite this lack of legislative or treaty quality, the SPP is widely ambitious. It seeks to 'energize' elements of the NAFTA agreement and its working groups are to 'consult with stakeholders; set specific, measurable, and achievable goals and implementation dates; and identify concrete steps the governments can take to achieve these goals'. Given its wide-ranging purview and its operational emphasis and lack of any parliamentary engagement, the Partnership has been typified by many as 'NAFTA Plus', 'NAFTA on steroids' or NAFTA in a post-11 September (2001) world. It is eliciting sharp criticism, particularly in Mexico and Canada.

The Partnership was initiated by the heads of government of Canada, Mexico and the USA at a summit meeting near Waco, Texas, in March, 2005. The objectives of the SPP of North America were: enhanced sectoral co-operation, including energy, transportation, financial services and technology; a reduction in trade costs; and an improvement in environmental standards. This enhanced alliance was presented as an extension of NAFTA, in part a response to the increasing economic threat from Asia. Press coverage of the Waco meeting tended to be understated, and the far-reaching implications and the origins of the agreement were largely unexamined.

The Waco summit established a structure for trilateral collaboration of the three executives. A series of trilateral security working groups were established, convened by the US Secretary of Homeland Security and his Mexican and Canadian counterparts. Similarly, a series of prosperity working groups were co-ordinated by the US Secretary of Commerce and counterparts. These working groups of civil servants were to report regularly to the chief political executives, through the trilateral ministerial committees and a nine-minister follow-up group, in June 2005, September 2006 and most recently in February 2007.

The SPP working groups established by the Waco agreement included issues such as: manufactured goods and sectoral and regional competitiveness; e-commerce and information and communications technology; energy; transportation; food and agriculture; environment; financial services; business facilitation; movement of goods; health; and security. The security agenda included related measures on cargo, maritime and aviation security and bioprotection, as well as the development and implementation of a North American traveller security strategy, enhanced intelligence-sharing and further 'smart border' measures. There was also a comprehensive strategy for combating transnational threats, including terrorism, organized crime, and drugs-, migrant- and contraband-trafficking. A series of border flow enhancement measures were also confirmed. Objectives for the next years were more ambitious: these included the development of a trilateral Regulatory Co-operation Framework, intended to reduce 'redundant testing and certification requirements' by 2007, a co-ordinated strategy on intellectual property protection by

2006, and a third round of liberalization of rules of origin by May of that year. Sectoral initiatives included a North American steel strategy, to be implemented through the North American Steel Trade Committee by 2006, the establishment of an Automotive Partnership Council of North America, and further energy co-operation. The June 2005 report set out the SPP's objective of 'making North America the best place to live': to this end it pledged to develop several clean water and air initiatives, protocols on cross-border health emergencies, and to improve information-sharing and examine possible common standards.

The SPP was further developed at a leadership summit in Cancún, Mexico, in March 2006. The three leaders continued several of the major themes of the Waco summit, including agreeing on the core of the Regulatory Co-operation Framework. They highlighted concern with pandemics and agreed on a Co-ordinating Body on Avian and Human Pandemic Influenza, which has begun work.

The Cancún summit resulted in a prioritization of five initiatives: increasing private sector engagement in the SPP through the North American Competitiveness Council (NACC, see below); advancing co-operation on avian and pandemic influenza management; ensuring a secure and sustainable energy supply through the North American Energy Security Initiative; developing a common approach to emergency management in all three countries; and contributing to smart and secure borders by increasing collaboration on standards and processes.¹

In May 2006 the three countries reached further agreement on liberalization of rules of origin affecting over US \$30,000m. in trilateral trade. A series of other bilateral and trilateral co-operation agreements, particularly relating to security concerns have emerged, including a North American Aviation Trilateral on civil aviation security, a pilot programme on repatriation of Mexican nationals, and the Canada-USA Integrated Border Enforcement Team.

On 7 September 2006 the nine mandated ministers from the three countries conveyed their second SPP report to the three political chief executives. Divided into sections on prosperity and security, the report briefly outlined a series of task force, committee and other initiatives. The three Governments continue to pursue a North American Steel Strategy, although the substantive content of which, apart from consultation and import-monitoring, is not explicit. The formation of a trilateral Automotive Partnership Council has been delayed, but work on compatible standards was proceeding as scheduled.

A number of other initiatives in manufacturing have been completed or are continuing, including facilitation of trade in medical devices, a single Canada-USA notification assessment for introduction of new chemical substances, three bilateral memorandums of understanding regarding exchange of information and public health and safety activities relating to consumer safety, and a possible collaboration on biotechnology, nanotechnology, building materials and an approach to emerging markets. Other themes include e-commerce, financial services, transportation including facilitation of business aviation, border measures, clean air and water initiatives, common food safety standards and laboratory co-ordination.

In February 2007 the Ministerial Committees met in Ottawa, receiving reports from the various working groups and from the business council (NACC). In August the three chief political executives met at the Montebello summit, evaluating progress and meeting with the NACC.

MONTBELLO AND ITS RESULTS

There was a good deal of ambiguity projected about the trilateral summit in Montebello, Québec, in August 2007. The head of the Ganong sweet company in Canada, a member

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of the NACC, declared it had really been about jellybeans, and the issues of labelling and packaging which can bedevil cross-border commerce. Examination of the 30-page report prepared by the NACC and presented to the leaders demonstrates that while there are areas of considerable frustration—such as pre-clearance for cross-border freight—agreements which could have significant effects were advanced. These included the Regulatory Co-operation Framework, the Intellectual Property Rights Strategy, the Agreement for Co-operation in Energy Science and Technology, and the North American Plan for Avian and Pandemic Influenza. As labour analyst Teresa Healy notes, virtually each one of these has implications far beyond its anodyne title.³

Regulatory Co-operation

The Regulatory Co-operation agreement permeates through the governments in diverse ways. The governments commit to co-operate in all phases of the regulatory process, evaluating the processes with the objective of streamlining. They agreed to advance international private sector standards and eliminate 'redundant' public testing and certification. A Regulatory Co-operation Co-ordinating Committee will be created to develop an annual work plan identifying priority areas for review. While no business figures were appointed to the Committee, the business leaders will be asked to help with the work plan.

Healy comments that the business sector gained almost all that it desired in this sector, noting that the NACC in its report to the leaders had recommended that 'regulators of each NAFTA country create simple regulations that make mandatory referenced to private sector international standards.' The implications of the NACC approach were in part spelled out in the Council's report, which touches on such items as a common standard for 'fortified' foods and the ending of 'duplication' in food safety audits. Thomas d'Aquino of the Canadian Council of Chief Executives (CCCE) commented: 'In Montebello, the three leaders—Canada's Stephen Harper, Mexico's Felipe Calderón and the United States' George W. Bush—delivered in full measure. Over the coming year, they committed their officials to achieving closer regulatory co-operation in areas such as the chemical, automotive, transportation, and information and communications sectors.'

The regulatory 'reform' approach in the SPP links with other regulatory regime negotiations, particularly in the World Trade Organization and the General Agreement on Trade in Services, exciting considerable concern among environmental trade unions and education groups. It also links with the overall thrust to fast track energy integration. Canadian Natural Resources Minister Gary Lunn is on record advocating review of the 'entire regulatory process', including mining, hydroelectric generation, transmission lines, oil and gas projects. In particular, he highlighted his intention to accelerate review of pipeline projects.

The effect of the regulatory review became contentious in the Trade Committee hearings on the SPP in the Canadian House of Commons in 2007. Canadian regulations on pesticide residue levels on foods had been lowered to harmonize with US standards, provoking opposition outrage. Foreign affairs officials were unable to cite a case in the process where the USA and Mexico had revised their regulations to the higher Canadian level.

The significance of regulatory reform should not be ignored. Carleton University Prof. Bruce Doern estimates that regulation represents one-third of federal government activity.

Intellectual Property

Issues around intellectual-property guarantees illustrate perhaps most clearly the narrow telescope through which public policy is viewed when the predominant influence is corporate. The Intellectual Property Action Strategy confirmed at the Montebello summit focused on piracy and counterfeit goods. The response to industry concerns was to commit a variety of law enforcement agencies to fighting infringement of intellectual property, involving 'new innovative border enforcement techniques.' Having the three leaders prioritize this corporate concern and commit the security apparatus at their disposal to its satisfaction, when an open debate, for example, over the impact of current intellectual property protections on such areas as access to medicines and health care costs might be of

greater public benefit, demonstrates a tendency to tunnel vision in the SPP process.

Borders and Emergencies

Perhaps the marked frustration of the summit was in one of the key priority areas for business, that of simplification and speeding of border transit for goods.

The USA and Canada, over two years, were negotiating a 'pilot' project in pre-clearance of truck traffic, under the USA-Canada Shared Border Accord and the SPP. The proposal was that US Customs authorities would move inside Canada at Ontario's Peace Bridge over the Niagara River with a related proposal of 'reverse inspections' where the cross border presence would be reciprocal. The bridge is the second busiest passenger crossing and the third busiest commercial crossing along the binational border, carrying an estimated US \$20,000m. per year in trade, with nearly 6,000 trucks a day. The project was a high priority for the NACC and many manufacturers on both sides of the border.

In late April 2007 the US Department of Homeland Security announced that the USA was pulling out of the talks. Canada had objected to US finger-printing on Canadian soil, which would conflict with the Canadian Charter of Rights. A US government source explained the US refusal to accept Canadian assurances that it would investigate any suspicious person thus: 'The Attorney-General's office really just wants to grab as much biometric information as it can.' In a letter to the Department, the US Chamber of Commerce joined many other business organizations expressing its 'disappointment' and urging both parties to renew the negotiations. 'It is,' the letter concluded, 'imperative that the heightened focus on security not impede the economic efficiencies created by the NAFTA.'⁴

What Montebello did consider were proposals for emergency or disaster response, in which the NACC sought commitments regarding critical infrastructure, the protection of property and the resumption of trade in emergency management, as well as a pecking order as to who would first gain mobility rights after an emergency. The North American Plan for Avian and Pandemic Influenza was the title of the emergency response agreed at the summit. The leaders noted that the plan 'extends beyond the health sector to include a co-ordinated approach to infrastructure protection, including the importance of business continuity planning and recognition of interdependencies among sectors.' Meanwhile, the SPP continues with a number of working groups dealing with border-facilitation issues, including a new USA-Mexico group on border facilitation, a new Canada-USA agreement on transport of dangerous goods, wireless communications, liberalized air-cargo transport, etc. Ministries are asked to move to 'interoperable law enforcement models that promote seamless operations at the border'.

There are two concepts related to border facilitation worth noting: 'risk-based' and 'pushing out the border'. 'Risk-based' management means defining people and goods as 'legitimate' or 'illegitimate'. It has led to 'no-fly' lists, now implemented by Canada as well as the USA. The Canadian 'passenger protect' list was instituted in June 2007 with no reference to Parliament. The privacy commissioners at the federal, provincial and territorial jurisdictions have called for its suspension, charging that the '...secretive use of personal information in a way that will profoundly impact privacy and other related human rights such as freedom of association and expression and the right to mobility.' Sharing of extensive police databases, including many related to political activism and union activity, has already been initiated. 'Pushing out the border' refers to the desire to vet and clear incoming people and goods prior to their reaching continental shores. This has already had clear implications for Mexico, particularly as in addition to the construction of the wall along the US southern frontier. Mexican security forces have been pressed into action against transit across the country's southern frontier with Guatemala and Belize. According to Mexican analyst Miguel Picard, 'Gross violations of human rights occur daily' on this border. Stepping back from the details of arguments over travel documents, lists and clearances, a pattern emerges of a class- and commerce-

based distribution of privileges at frontiers, in which the poor Guatemalan on the Chiapas border is at the bottom of the pyramid and the élite corporate manager with a special pass is at the top.

ENERGY: THE HEART OF THE MATTER

One of the most important side-effects of the ongoing US-led war in Iraq and of increased insecurity in the region has been the re-orientation of US energy policy in a more continental direction, increasing the strategic priority of Canadian and Mexican petroleum, and including electricity as well.

In the context, the election in 2006 of an oil patch-centred Conservative Government in Canada, and the emergence of Alberta-based tar sands reserves as one of the most important strategic reserves, has been prioritized since shortly after the US terrorist attacks of September 2001. Prime Minister Harper repeatedly portrays Canada as an 'energy superpower'. The intention to complete NAFTA by drawing Mexico more thoroughly into US energy security strategies and finding ways to privatize Mexican petroleum has also gained priority.

The anchor of this new orientation was an article published in the *US Oil and Gas Journal* in December, 2004, vaulting their estimates of Canadian reserves from 4,900m. barrels to 179,000m. barrels. These estimates were incorporated into those of the US Department of Energy. The significance of Canada's reserve estimates in the context of post-11 September US energy security concerns can hardly be overestimated.

Canadian oil sands production stood at approximately 1m. barrels per day (b/d) in 2007. However, the USA's appetite is insatiable. In January 2006 one of the nine 'prosperity' working groups of the SPP, the North American Energy Working Group's (NAEWG) Oil Sands Expert Group, held a workshop in Houston, Texas. The meeting of 60 government and private industry representatives focused on the steps necessary to expand production to 5m. or 5.5m. b/d by 2025.

The NAEWG emerged from an announcement early in the Bush presidency, on 28 January 2001, of the formation of an Energy Policy Development Group under Vice-President Dick Cheney. Shortly thereafter, on 8 March, US Energy Secretary Spencer Abraham met his Canadian and Mexican counterparts in Mexico City and announced the formation of the NAEWG. The Group published its first report in June 2002. It pre-dated the SPP and was simply incorporated into it after 2005. The NAEWG has spawned a series of subsidiary expert groups, whose members 'convene regularly,' according to the official website, 'to build work plans and develop mutually beneficial deliverables, continuously identifying and implementing areas of co-operation within the continental energy market.'⁵

The extent to which an integrated energy strategy is in motion was summarized by current US Energy Secretary, Samuel Bodman, in a September 2005 address to the CCCE. 'Since taking office in 2001, the Bush Administration has worked to achieve a fully integrated single North American market, one that will... ensure a secure and reliable supply of energy... Today, there are 35 cross-border natural gas pipelines, 22 oil and petroleum product pipelines, and 51 cross-border electric transmission lines that bind us together and increase the energy security of both our countries.' Bodman cited the NAEWG and the SPP as key elements of partnership, indicating that his Department was in constant communication at all levels with Natural Resources Canada, 'exploring ways to expand cross-border infrastructure development and trade, and to ensuring the continued security of our integrated systems.' Further, he had met with five key provincial and territorial premiers.⁶

This agenda has been challenged from several quarters. Alberta-based Parklands Institute Director Gordon Laxer testified in April 2007 at the Canadian Parliamentary Standing Committee on International Trade that while the whole strategy was dedicated to ensuring US energy security, and keeping the US strategic reserves intact, Canada lacked an energy security policy and that enquiries to the National Energy Board soliciting elicited nothing. While Canada exports more than 60% of its natural gas production and

70% of its oil to the USA, eastern Canada is dependent on imports from Algeria, Saudi Arabia and Iraq.

Union opposition is also extensive. A meeting of representatives of 19 unions from the energy sectors in the USA, Mexico and Canada in August 2007 produced a joint declaration questioning the whole strategy. The Communications, Energy and Paperworkers Union of Canada (CEP) has raised the issue of infrastructure and its impact on the economy and on jobs in detailed challenges at the National Energy Board and in the courts. The CEP argues that current pipeline projects, including the Keystone Pipeline which would transport raw bitumen to Illinois for processing, are not in the public interest because inadequate environmental impact scans have been undertaken, and because the project essentially transports processing jobs from Alberta to refineries in the USA.

Further, even if the significant expansion of exports continues, it is argued that Canada has failed to secure adequate revenues in the form of royalties, taxes and other income. It is noted, for example, that while Norway has garnered over US \$200,000m. for its reserve fund from petroleum, Alberta's Heritage Fund stands at a little over \$12,000m. As nationalist cultural critic Prof. Robin Matthews exclaims, 'Canada is peculiar in the respect that it has a large class persistently determined to deny the Canadian right to Canadian wealth.'

A practical contrast to the Alberta approach was demonstrated in August 2007 when the Province of Newfoundland and Labrador, following a lengthy struggle with corporate investors, confirmed a deal for the development of the Hebron offshore field. The agreement moves the publicly owned Newfoundland and Labrador Hydro into an 4.9% equity share in a partnership with transnational oil firms, with enhanced revenues.

Critics in Canada base part of their opposition to the policy in Chapter Six of NAFTA, which carried over the bilateral free trade agreement (FTA) proportional sharing clause, from which Mexico remained exempt. According to John Dillon of the Ecumenical KAIROS coalition, if Canada should run short of petroleum, or decide to cut exploitation for environmental reasons, it could find itself trapped in this commitment to continue the same percentage of exports as established over the previous three years. Commentators from the Canadian Association of Petroleum Producers say the clause merely respects existing commercial contracts.

A further criticism of the extent to which Canada's policy is simply five-fold expansion of tar sands exploitation arises from its rapacious environmental effects. Essentially strip-mining the tar sands for bitumen consumes up to five barrels of fresh water to produce one barrel of synthetic crude. It also consumes immense quantities of natural gas and has affected almost 40,000 sq km of land.

The energy implications that run through the SPP are diverse and massive. The proposals are as much or more from industry as from government. 'Among the dozens of recommendations from business (the NACC) to the three governments,' comments Fred Wilson, a Canadian union analyst, 'there are two pages of proposals on energy, including these recommendations dealing with Mexico:

A 'Mexican domestic policy reform', which by 2010 would allow Mexican corporations to buy electricity directly from US producers.

Also by 2010, to break up Mexico's national oil company, *Petróleos de México (PEMEX)*, with its natural gas division to become a new corporation to be called *GASMEX*.

By 2008, to put out 'a benchmark analysis that illustrates *PEMEX*'s operating and financial performance gaps.'

Wilson claimed these recommendations, among others, 'are aimed at dismantling Mexico's publicly owned and managed energy sector.'⁷

The trilateral energy union meeting of 18 August 2007, which included significant participation of non-governmental, environmental, women's, church and development organizations, issued a joint solidarity statement in support of democratic, national development of North America's energy resources. The statement sums up the preoccupation of many of those who question the current agenda, and reads in part:

‘Through the SPP and the North American Energy Working Group, the governments of Mexico, United States and Canada have formed an unprecedented collaboration with energy corporations to promote the continental integration of our energy industries and infrastructures. Nine working groups have been working intensively to integrate oil, natural gas, electricity, nuclear power, hydrocarbons, science and technology and regulatory agencies. While these working groups bring together government, regulators and corporations at the highest level, they have excluded labour, environmentalists and civil society movements and circumvented the oversight of our elected legislatures. The SPP-corporate agenda of substituting continental corporate rule at the expense of national and local plans of development includes:

The complete integration of electricity grids between our countries and the continuing deregulation of electricity in each country to promote electricity generation for export.

The promotion of a continental integrated natural gas system and imports of liquefied natural gas to meet a continental shortage of natural gas which is expected within a short period of time.

The ‘streamlining’ of regulatory processes and deregulation in each country for cross-border oil pipelines, including a five-fold increase in Canadian tar sands production, and continuing privatization of energy industries.

The direct intervention of the US to guarantee the security of energy installations.

These and other elements of the SPP-corporate energy agenda are unsustainable and sacrifice the needs of workers and communities in each country to the profits of energy corporations. This is an agenda that fails to address the need for each country to reduce greenhouse gas emissions, including a new round of far reaching goals after 2012. Nor does this corporate continental model of energy development respond to the needs of national economic development or recognize the primary role of energy industries for community economic development.’

SECURITY

A separate chapter could be written examining the dynamics of the security elements of the SPP and in the overall relations of the three countries. Some elements, such as the Safe Third Country Agreement of 2002, which has limited refugee claimants’ access to Canada, were reactions to the events of 11 September 2001, as was the Canada-USA ‘Smart Border Declaration’ of December 2001. Fundamental principles are at stake in these agreements, points out security analyst, lawyer and author Maureen Webb, ‘things like due process, presumption of innocence, the right to know the evidence against you and to respond, the right against unreasonable search and seizure, rights under data protection laws, rights of mobility and asylum rights.’

The key is a risk assessment and pre-emption approach. An illustrative example is the Automated Targeting System. In this, according to Webb, ‘the State compiles a secret dossier on every individual and sorts the population according to secret criteria, assigning each person a ‘risk score’. The individual has no recourse to challenge his risk rating, and he has no way of correcting any false or incomplete information about him. In fact, he will never know what information is being used against him, or even the criteria on which he has been judged a risk to the State.’

Webb points out that the implications are global: ‘This is mass surveillance, and it’s global in scope. Domestic systems feed into global ones and global systems—like biometric passports, the sharing of airline reservation system information, the interception of international banking records, and the interception of global communications, to name a few—feed into the domestic.’⁸

A related example is the provision in the 2001 Canadian Anti-Terrorism Act of the power to detain people without charges using ‘preventive arrests’. This extends the more traditional provision to arrest before an offence if there is a reasonable belief that the person is about to commit an offence.

The Montebello summit might have been an opportunity to remove at least some of the outstanding irritants on the security agenda. Prime Minister Harper was under pressure at home to raise outstanding bilateral security issues with President Bush; however, no progress appeared to have been made.

THE REACTION TO MONTEBELLO

Opposition activities around the Montebello summit were lively, including a demonstration of several thousand people in front of the Canadian Parliament, a number of well-attended educational meetings and 2,000–3,000 protestors at the security cordon around the summit site in the small Québec riverside town. The protests were downplayed by the national leaders, although they enjoyed massive media attention. There were allegations, some later proven, that some demonstrators were actually *agents provocateurs*, which, in turn, raised a question about whether the immense security deployment surrounding the summit was necessary, and whether the attempt to portray the protesters as violent was approved at the highest level. Overall, there was an official attempt to play down the event, trying to defuse suspicions of serious decision-making behind a well-armed security cordon. A number of journalists, perhaps expecting a ‘big bang’, agreed that the summit had resulted in little. US continental union advocate Prof. Robert Pastor was extremely critical of the summit’s failure to deal with important issues, as he commented about the process as a whole ‘It’s not trying to do too much: it’s trying to do too little. What we need is something more bold.’¹⁰ Commentators on the failure of the pre-clearance negotiations prior to Montebello laid the blame at the door of the US Department of Homeland Security, arguing that an appeal to presidential-level authority was the only way to proceed.

In a joint evaluation, Christopher Sands of the Hudson Institute in Washington, DC, and Greg Anderson of the University of Alberta, agree that with the uneven follow-up to NAFTA, some sort of new arrangement was necessary to energize cross-border negotiations—thus the SPP. ‘With limited political capital to invest, Bush wanted negotiations to remain within the limits of executive branch authority for law enforcement, rule making, and regulation so that he did not need to secure congressional approval for a treaty or new implementing legislation.’

The problem Sands and Anderson outline is chiefly that of transparency, ‘the technical nature of the talks, conducted with very little transparency, frustrates virtually all attempts to find out what is going on.’ Critics on the Canadian left and US right are correct in their complaints, they conclude, because ‘the structural flaws of the SPP are serious’. US leadership in correcting flaws is essential, but the Administration has done little, according to them. As James Travers of the *Toronto Star* concluded about such summits: ‘It’s a hazardous dynamic. Without the legitimacy or political checks and balances of formal structures, decisions are made behind closed doors that many outside consider too arbitrary and narrowly based to be democratic.’¹⁰ Nevertheless, d’Aquino of the CCCE, asked if Montebello was ‘too much or not enough?’ concluded that it was ‘about just right’. As Robert Pastor pointed out, however, the Montebello meeting was a gathering of three leaders with limited political capital, ‘in essence, all three are running minority governments so there is little to expect in the way of progress.’

A CORPORATE COUP D’ÉTAT?

A Montebello-eve joint statement issued by the four nationally based civil society coalitions opposing the SPP called the government/corporate collaboration a corporate *coup d’état*.¹¹ The Waco agreement and the SPP embodied a recovery of elite commercial and governmental momentum for deep integration that had been sidelined by the focus of attention on counter-terrorism. The events of 11 September 2001 prevented what appeared to be a conscious attempt by both the Mexican and US heads of state to bring about greater convergence in Mexican-US policies in areas such as migration and energy. In the case of Canada, the post-11 September emphasis was on bilateral relations, leading to changes in border policy, the

hurried introduction of far-reaching security legislation and significant alterations in Canadian federal cabinet responsibilities. Previously launched proposals on deeper integration were, in part, pre-empted by harmonizing policy shifts, but, in general, were relaunched with greater vigour, taking into account preoccupation with security.

The CCCE announced its approach in a January 2003 publication, *Security and Prosperity: Toward a New Canada-United States Partnership in North America*. This prefigured not only the title, but much of the orientation of the inter-governmental SPP. Then, in April 2004 the CCCE published a comprehensive strategy for an overall bargain with the USA, *New Frontiers: Building a 21st Century Canada-United States Partnership in North America*. The CCCE sought to engage the US Government and congressional leadership in its vision, its representatives visiting Washington, DC, in 2004 and undertaking a speaking tour of the USA. Many of its principal ideas were taken on by a so-called Independent Task Force on North America, sponsored by the US Council on Foreign Relations in association with the Consejo Mexicano de Asuntos Internacionales and the CCCE, which also provided a significant portion of the funding. For example, the Task Force recommended annual summit meetings, minister-led working groups, and the establishment of a North American Advisory Council to explore new ideas for the region and provide a 'public voice for North America'. The initiative for 'deep integration', sponsored by the Canadian (largely, if not entirely, transnational in composition) business leadership and its academic and political allies at home and abroad, recaptured a measure of elite political consciousness and the trilateral intergovernmental agenda during 2005.

The idea of a business advisory group given formal access to ministers and leaders was perhaps the most striking of the CCCE's ideas to win support at the Cancún trilateral summit in 2006.

THE NORTH AMERICAN COMPETITIVENESS COUNCIL

In June 2006 the NACC was launched, as agreed in Cancún, providing 'a voice and a formal role for the private sector', with a commitment to regular meetings with ministers and senior officials. It began with a meeting with the three trade ministers. The ministers committed to discussing priorities with NACC prior to the next meeting of the three national leaders in 2007.

The Council includes chief executive officers (CEOs) of leading corporations from each country, including General Motors, Lockheed Martin, Walmart and Merck from the USA and Bell Canada, Suncor, CN Rail, Power Corporation of Canada and Scotiabank from Canada. The CCCE acts as the Secretariat of the Canadian Section of the NACC, the US Section has a Secretariat composed jointly of the Council of the Americas and the US Chamber of Commerce, while the Instituto Mexicano para la Competividad acts as the Secretariat for the Mexican section.

The initial emphasis of the Council appears to be on incremental change, rather than a 'big idea' for deep integration and the SPP is a key vehicle. According to Canada's *Maclean's* magazine, Canadian executives focus on easy border transit irritants, the US representatives on 'regulatory convergence' and the Mexicans on energy integration. The Council reported first to the trade ministers in October 2006, then to the all the ministers in February 2007, and most recently were able to present their views and recommendations to the two Presidents and the Prime Minister at Montebello in August. The SPP sprang essentially from a multinational business proposal, and the integral involvement of corporate leaders in its ongoing governance was made permanent in Cancún and celebrated in Ottawa and Montebello. The NACC is essentially setting the agenda.

However, some argue that the issue of regulatory convergence, for example, is not only one of reducing trade-complicating differences in national regimes, but of putting regulations at the whim of corporations themselves. And business could hardly be more content with the results to date. In his summation of the results of the 2007 Montebello summit,

CCCE head d'Aquino commented, 'allow me to suggest that the SPP is achieving exactly what it is meant to achieve.'¹²

However, Jean-Yves LeFort, trade campaigner with the Council of Canadians, complains that 'While the SPP has formalized the power of large corporations by creating the North American Competitiveness Council (NACC), the Canadian public and civil society have been left out of these negotiations... Even our members of parliament have been excluded.' The NACC advised the ministers on their priorities for the 2006 and 2007 summits and was the only sectoral group to have a full formal meeting with them. While the Governments pledge meetings with 'other stakeholders' nothing remotely comparable to the business access is apparent.

THE SPP IN CONTEXT

The SPP, as indicated above, is a process not a treaty. It exists alongside and as an operational extension of elements of NAFTA, as well as other bilateral agreements, particularly in the areas of military co-operation and foreign policy alliances which shape North American relations. The SPP represents a tactical shift on the part of business elements energizing an integration agenda, away from the so-called 'big bang' approach, to regulatory and operational executive co-ordination which goes as far as possible without engaging legislative necessity.

Military Dimensions

While the SPP comprises a significant range of arrangements affecting security, intelligence, policing, customs and military matters, and is one of a series of arrangements which align Mexico and Canada with US interests, foreign, commercial and refugee policies, there are separate, but nevertheless significant, military arrangements. Perhaps the most obvious is the membership of Canada and the USA in the North Atlantic Treaty Organization (NATO), and their bilateral North American Defense Organization (NORAD) agreement, from both of which Mexico is absent.

The Bi-National Planning Group on Canada and the United States (CANUS) Enhanced Military Co-operation was one of the key agencies of aligning Canadian and US policy, reporting in March 2006. The preferred option was full integration of the armed forces of the two countries, with Canadian forces as part of a kind of expanded NORAD with an umbrella command in which ultimate control rested with the US military. Some initial steps have been taken towards this, including the expansion of NORAD to include shared maritime surveillance including of the Northwest Passage.

Prof. Michael Byers, formerly of Duke University in North Carolina and now Canadian Research Chair at the University of British Columbia, argues that 'the integration of the Canadian and US military is not officially part of the SPP, but the SPP and the integration of the Canadian and US military are part of a larger project, and we need to address that larger project.' 'There are people', he asserts, 'who want to transform the Canadian Forces into a miniature version of the US Marine Corps and want Canada to only choose missions that involve fighting shoulder-to-shoulder with the United States... The same people will tell you that peace-keeping is dead...'¹³

Corporate Consolidation

Four years ago a leading Canadian business journalist, referring to estimates from the Royal Bank of Canada, pointed out that 62 of the largest companies have vanished through mergers or acquisitions since 2000. He termed it a 'hollowing out' of Canadian business, and also of Toronto, where many of them had formerly established head offices. A further Royal Bank report documented the sale of 455 Canadian firms to foreign companies for a combined price of US \$137,000m. between 2001 and 2006, second in value for the period only to Australia.

Four years later a wave of foreign—largely but not only US originated—takeovers led to a shudder of Canadian concern regarding 'hollowing out'. When aluminium producer Alcan, based in Montréal, was bought by Rio Tinto in July 2007, a former Québec industry minister stated 'when Alcan is sold to foreign interests, a part of Québec is also sold off to foreign interests.' The head office may remain in Montréal but most

'vital decisions' are likely to be transferred, 'leaving behind an empty shell'. The Alcan case was but one of a series of significant Canadian flagship enterprises that were sold in 2006–07, including Inco, Falconbridge, Algoma Steel, Stelco and Four Seasons Hotels.

Many in the business-funded 'think tanks', academic centres and business press were at pains to play down public concern, generally noting that Canadian businesses were active in buying firms overseas. The C. D. Howe Institute in Toronto argued, for example, that Canada should in fact take steps to be more open to foreign investment, integrating more thoroughly with global capital markets. However, this argument essentially misses the point. While the head of the Investment Industry Association of Canada dismissed concern as 'paranoia', the head of the Royal Bank of Canada referred to the 'dramatic impact' of the buy-outs and stated that Canada needed policies which would develop 'Canadian champions or Canadian industries'. As the Québec former minister concluded about Alcan, 'even though such a sale is bound to enrich a few individuals and many international speculators, it surely appears to be contrary to Canada's best interests.'

Economic Climate

The US economic prospects looked bleaker in 2007, particularly with the threat of the collapse of the sub-prime mortgage industry. US deficits, the ongoing expense of military expenditures and the national debt continued to worry analysts. In Canada, a significant shift continued, with more than 150,000 manufacturing jobs lost, largely in central Canada, during the mid-decade, while unemployment across the country was relatively low, and the demand for labour in the resource industries, largely in the west, increased. The relative weakness of the US dollar and the threat that the Canadian dollar might reach par increased the challenges for Canadian manufacturing exporters.

WATER

Parallel to the issue of energy was the ongoing debate over water, particularly for Canada. This topic gained momentum as adverse global climate changes occurred rather more rapidly than anticipated. The ever-increasing appetite for water, together with droughts in the US south and mid-west, and increased pollution throughout the continent, fed proposals to secure sources. It was forecast that the USA would increasingly press for large-scale water diversions from Canada.

Many scholars and activists made careful note of previously considered proposals such as the 'Grand' (Great Recycling and Northern Development) Canal, running from James Bay in Canada down to the US state of California, as well as more recent idea for bulk water exports. The plan to export water in bulk from Newfoundland and Labrador to the thirsty US market was a pet project of former provincial Premier Roger Grimes. The plan was abandoned following substantial public opposition, but also because the projected royalty revenues were not as high as previously expected.

The issue of whether water is a 'tradeable' good continues in contention. Neither the bilateral US-Canadian FTA nor NAFTA settled the issue. In a September 2007 assessment prepared by the former co-chair of the International Joint Commission and the former Canadian federal government director of water planning and management, among others, warned: 'Make no mistake, Canada's water, through diversion, sale, trade or all of the above, is on the negotiating table in Canada/US relations. . . The fate of our water resources is now dependent on shadowy discussions taking place under the aegis of the Security and Prosperity Partnership (SPP).... The SPP, never subjected to legislative debate or approval, provides an ideal framework for negotiating away the rights to Canada's water.' Water would become, in the report's words, 'another cheap raw resource give-away much like oil.'

The Canadian report notes that a variety of academics, officials and think-tanks have strongly advocated putting water up for sale. Attention has been focused on the work of the Washington-based Center for Strategic and International Studies (CSIS), which recently held a meeting with high-level officials and business representatives in Calgary, Alberta, to

discuss water consumption, water transfers and artificial diversions of bulk water. The director of its North American Future 2025 project, Armand Peschard-Sverdrup, states: 'it's no secret the US is going to need water. . . it's no secret that Canada is going to have an overabundance of water. At the end of the day there may have to be arrangements.'

As the Canadian report makes clear, the issue is not simply a matter of movement of water, but of the impact of any loss of water resources on manufacturing, resource-extraction and agricultural sectors. It points out that Canada lacks a full inventory of its own water resources, and an adequate assessment of the impact of currently planned tar sands development on water resources. One of the authors points out that Canada and the USA have roughly equivalent amounts of renewable water supplies, and that regional shortages should be dealt with by regional solutions.

The Canadian Government stated that it had 'no intention of entering into negotiations, behind closed doors or otherwise, regarding the issue of bulk water exports.' The Liberal leader, Stéphane Dion, argued that 'the Conservatives have failed to implement any strategy for the protection of our water resources', contrasting that with his party's position that 'opposes bulk water export, diversion or commodification'.¹⁴

A number of Canadian provincial governments have taken action to protect water resources, but a national policy is yet to surface. The authors of the recent Canadian report call for full public scrutiny of the SPP process, and call on the federal Government 'to make it clear to our NAFTA partners—formally informing the USA and Mexico that bulk water removals from Canada's major drainage basins will not be permitted and that topic of water exports will be excluded from all future SPP or related discussions.'¹⁵

SPP IN DEBATE IN THE USA

The SPP, and NAFTA itself, to some extent, also faced some opposition in the USA. To a certain extent, this is part of the overall debate regarding free trade agreements, immigration and the accompanying fixation on security. In the US, protectionist attitudes are front and centre, ranging from the SPP's condemnation by state legislatures to its position as a target for CNN's Lou Dobbs' populist rhetoric, earning the distinction of potentially causing the "end (of) the United States as we know it".²

Concern with lost jobs and 'offshore' subcontracting, long a theme among organized labour, has, in the last few years, been championed by a minority of media figures such as Dobbs. It has tapped into the xenophobia of the far right, and connects with economic and social critiques of the trade regimes on the left. Despite this, US press coverage of the Montebello summit was low key for the most part. Interest in the issue at the US Social Forum in Atlanta, Georgia, in July was similarly limited. However, activity about the SPP and related themes on largely right-wing weblogs (blogs) is extensive.

The election of a Democratic majority in both houses of the US Congress in 2006 makes this more than a debating point, and the pre-primary party debates for the 2008 election are bringing the issue into the centre of public discussion in 2007. Among Democrat hopefuls, Senators Joe Biden, Hillary Clinton and Chris Dodd voted against the proposed Dominican Republic-Central American Free Trade Agreement, while John Edwards claims he wants to close down trade negotiations that have 'devastated America' and Barack Obama wants to rewrite NAFTA. Among Republicans, only John McCain, Mitt Romney and Sam Brownback can be counted on as clear supporters of trade agreements.¹⁶

Notwithstanding this positioning, a Democrat triumph in the 2008 election might not be a turn against trade and investment agreements. While new negotiated trade and investment agreements appear to be endangered, House Minority Whip Roy Blunt notes that the Democrats have virtually unanimously supported extension of the unilateral Andean Trade Promotion and Drug Eradication Act covering countries like Colombia, while opposing a bilateral FTA with the same country. Further, in May 2007 congressional Democrats and the Bush Administration agreed to include a commitment in any FTAs to 'adopt, maintain and enforce' five fundamental

International Labour Organization standards, together with the possibility of using trade sanctions to ensure them.¹⁷ Three agreements—with Peru, Panama and Colombia—were pending in 2007.

DEBATE IN MEXICO

While debate in the USA focuses on job losses, border security and immigration, debate in Mexico has different dimensions. Mexican commentators noted that while press coverage of the 2007 trilateral summit was limited in the USA, it was extensive in Mexico.

Perhaps the most profound difference in attitude is the point of view articulated by former diplomat Gustavo Iruegas. His emphasis has been principally on the security dimensions of the pact and implications for the historic orientation of Mexican foreign and security policy. Speaking in Ottawa on the eve of the Montebello meeting, he stated simply 'Mexico has no enemies'. To become entangled in the SPP implicates Mexico as an enemy of US enemies, something which he believed Mexico was best advised to avoid. Further, the SPP has already led to increased militarization of the Mexican state and society. While it has a negative effect on Mexico's freedom of action internationally, the pact also has implications domestically, in terms of US intervention in Mexico's internal affairs, by what Iruegas terms 'Plan Mexico', a northern equivalent of the US anti-narco-trafficking 'Plan Colombia'.¹⁸

Analyst Miguel Picard of the Centro de Investigaciones Económicas y Políticas de Acción Comunitaria agrees with Iruegas that the SPP opens Mexico to greater US intervention, and makes both Canadian and Mexican borders potentially open to incursions by the US armed forces when there is a perceived terrorist threat. Picard notes that the SPP has avoided measures that 'recognize the importance of immigrant labor for the US and Canadian economies', as well as the vulnerability of this extensive labour pool. He comments that its provisions make future enhancement of the rights of first nations to natural resources and their lands more difficult.

However, Picard's most far-reaching criticisms of the SPP are that, first, the pact is, in the words of Mexican professor John Saxe-Fernandez 'a battering ram to push forward 'vertical integration' of Latin America' with the USA.. Second, he states that the SPP is profoundly anti-democratic, avoiding all sectors but big business and bypassing democratic governmental bodies.¹⁹

NAFTA LIVES

The two years of activity through the SPP may supersede some areas of NAFTA that were dormant or low priority, but the trade and investment agreement continues.

Commission

Prior to the Montebello summit the NAFTA Commission, composed of US Trade representative Susan Schwab, Canadian Minister of International Trade David Emerson and Mexican Secretary of the Economy Eduardo Sojo Garza-Aldape, met in Vancouver, British Columbia, in mid-August 2007. The Commission agreed to develop a work plan to assess issues of competitiveness in a global context and to assess other trade agreements that each country had negotiated to identify meaningful differences. It followed up on a 2006 decision to evaluate the mandates of the various NAFTA working groups and committees. The Commission expressed pleasure with work on rules of origin begun in 2003. A first set of changes, affecting US \$20,000m.-worth of trade, had been implemented in 2005, a further set affecting an estimated \$15,000m. was implemented in 2006 and a third set, affecting \$100,000m. in trilateral trade to be implemented in 2008, was agreed in Vancouver.

Chapter 11

Perhaps the single most controversial innovation in NAFTA is contained in Chapter 11 of the Agreement, which deals with investment. This section significantly reduces the ability of governments to condition foreign investment in order to ensure local benefit. It prohibits 'performance requirements' such as

domestic content or purchasing regulations, technology transfer, etc. Chapter 11 seeks to protect the rights of investors against arbitrary state action, assuring compensation for expropriation and providing a process for resolving disputes. The most debated element of the NAFTA investment provisions is the 'investor state' mechanism. This provision allows investors to sue national governments for virtually any action that decreases their expected profits, alleging expropriation or 'measures tantamount to expropriation'. A government can take measures for public purposes, on a non-discriminatory basis, after due process of law, but only if it pays compensation to the foreign investor.

The far-reaching impact of Chapter 11 and its usefulness to corporations interested in reducing regulation, as well as its original procedural secrecy and exclusivity, have stimulated considerable public criticism. Chapter 11 is seen by its critics as perhaps the most revolutionary aspect of the NAFTA trade and investment regime. Environmental policy analysts note that it threatens existing international environmental treaties and that, further, it has led politicians to refrain from implementing new environmental legislation.

An academic review of Chapter 11 concludes that it has altered the power relations between public (state) and private (investors) actors. Measures which theoretically might be taken to assert the public interest in the face of unwelcome decisions by tribunals, are ineffective. 'Rather, states have sanctioned a significant transfer of authority from public to private control. Essentially, a portion of national sovereignty is surrendered, not just to international entities, but to private ones.'²⁰

Nevertheless, in 2007, one of the key cases before a Chapter 11 Tribunal set important limits on what a corporation might seek in terms of operations of the public sector: the ongoing case by United Parcel Service (UPS) against the Canadian postal service, Canada Post. In July 2002 the parties agreed that the dispute would be settled in public rather than through confidential hearings. Third parties, including the Council of Canadians, the Canadian Union of Postal Workers and the US Chamber of Commerce, won amicus standing. As one legal expert commented 'I think a collective sigh of relief is being expressed in all three capitals: Mexico City, Washington and Ottawa.'²¹ The core of the case was a challenge to a Crown corporation, Canada Post, based in the injury alleged from its operation of courier services in competition with UPS. There were also charges arising from the conditions applied to the Canadian Publication Assistance Program, which, according to Canada, fell under the cultural industries exception in NAFTA.

In what ways was the tribunal decision on *UPS v. Canada Post* precedent-setting? One of the amicus lawyers noted: 'It was the first investor-state claim to argue that delivery of public sector services, in this case by Canada Post, represented unfair competition for private companies providing similar services. The case was also the first of its type to target a cultural program...which supports Canadian publishers. It was the first as well to seek damages to a breach of worker rights under an ILO convention—not to the benefit of the workers directly harmed, but rather to compensate UPS for having to respect worker rights when Canada Post was relieved of this obligation. Fortunately, the UPS claims were rejected on all fronts.'

It is important to note that the tribunal decision does not exhaust all options open to UPS, and that it could request a judicial review of the award, or a state-to-state claim.²²

An assessment of the difference in the US official approach to the investor-state issue in the negotiation of the US-Australian bilateral trade agreement notes that the USA retreated from the expected extension of the NAFTA Chapter 11 model. The assessment argues 'that between 2001 and 2004, the Office of the US Trade Representative moved away from a robust embrace of NAFTA-style Chapter 11 investor-state provisions. Part of this movement was a consequence of a generalized concern—which NAFTA government officials will freely admit in private—that those who negotiated NAFTA in the early 1990s did not anticipate that lawyers would...launch the kind of legal actions that generated such opposition in the late 1990s.' It continued, 'in the early 2000s, more 'mainstream'

groups added their voices to... opposition: state legislatures, cities, and mayors, all of whom had deep linkages to congressional delegations, and thus with more pronounced electoral implications.' The authors note that by putting confidence in national legal systems to deal with investment issues, the US-Australian free trade agreement provides a 'potent precedent' and a powerful argument of amendment of the NAFTA Chapter 11. This makes 'it very difficult to justify including NAFTA-style investor-state dispute settlement measures in future free trade agreements.' Incisive as this conclusion may be, pending any revision of NAFTA, the governments and peoples of Mexico, Canada and the USA remain saddled with Chapter 11 as negotiated.²³

Trade, Investment and Labour Mobility Agreement

In Canada there has begun an attempt to extend the sort of investment guarantees embodied in Chapter 11 to provincial and municipal level, through an inter-provincial scheme called the Trade, Investment and Labour Mobility Agreement (TILMA). Begun by British Columbia and Alberta, it has been considered by other provinces. The rationale for TILMA is that it would remove inter-provincial trade barriers, which are sometimes cited as an obstacle to a better business climate in Canada. A study by the Conference Board of Canada estimated, for example, that TILMA would increase Saskatchewan's GDP by US \$291m. A counter-study by the Canadian Centre for Policy Alternatives, however, made a devastating critique of the Conference Board's methodology.

TILMA imposes a complete prohibition on all government measures that 'operate to restrict or impair' trade, investment or labour mobility unless exempted under the agreement. The definition for government includes not only all agencies of the provincial government, but school boards, municipalities and other publicly funded academic, health and social service entities. It offers private bodies who claim injury the opportunity to have it adjudicated by panels (not the courts) with a possible compensation of up to \$5m. per case. As trade lawyer Steven Shrybman puts it, 'TILMA also expands the scope of foreign investor rights that can be asserted under NAFTA. Moreover, these rights are bestowed on US and Mexican investors without any reciprocal gains for BC or Alberta investors in the USA or Mexico.'

In August 2007 the Saskatchewan government announced it would not sign on to TILMA, citing 'the very broad scope of government measures that can be challenged by private interests and the strong enforcement measures in place in the deal.' The Nova Scotia government, among others, continues to have the agreement under review.

Softwood Lumber

A long-term irritant in Canada-USA trade, that of US restrictions on Canadian softwood lumber exports, came to a climax of sorts in 2006. On 27 April 2006 the Harper Government announced that it had reached a 'framework' agreement with the Bush Administration to resolve the dispute. In response to a quite negative reaction among the Canadian industry, further adjustments were made and a legal text approved by the Canadian Minister of International Trade, David Emerson, and the US Trade Representative, Susan Schwab. The Harper Government announced in August that it would introduce implementing legislation in the next session of Parliament and that it would treat it as a matter of confidence. Member of Parliament Peter Julian noted that Canadian taxpayers had invested over US \$100m. in legal costs to win the NAFTA case, but the Government, in conceding, was giving \$1,000m. to US competitors. Dominic Leblanc, a Liberal lawmaker and trade critic, argued that the federal Government should take advantage of legal victories in the dispute and persist through the courts until recovering 100% of the duties the USA had collected on Canadian softwood exports. The decision was also seen as a death knell for NAFTA. Robert Pastor argues that it weakened the overall agreement, hurting US interests in the long-term by making failure to adhere to the agreement more possible for all the parties.

The 2006 agreement, however, began to show severe strains when in August 2007 the USA announced that it was seeking binding arbitration at the London Court of International Arbitration, charging that Canada had broken the agreement

by a 'surge' of low price exports. A further critique of the accord was made by a US trade lawyer, Eliot Feldman, who noted that of the US \$1,000m. of duties imposed on Canadian exports and retained by the USA, approximately \$450m. remained under the control of the federal Government as a potential political 'pork barrel' fund, and \$500m. under the control of the US lumber producers coalition which was fighting Canadian imports. Julian, hearing Feldman's case, commented 'So what you're saying is that we are not only providing money to the coalition to fight further legal victories, for further legal battles—giving half a billion dollars to them—but we're also providing money that may go to political purposes for the re-election of Republicans, many of whom have been the most adamant against allowing free trade in lumber. It is ridiculous.'²⁴

SOCIAL CONSEQUENCES

The long term social consequences of the implementation of the 'NAFTA model' have received relatively little journalistic or political attention. However, concern about growing inequality is surfacing in pre-electoral US debates and has been stressed in the Canadian parliamentary hearings on the SPP. In Mexico, Mexican analyst Michel Picard has documented, 'the Mexican people are the deal's big 'losers'. Mexicans now face greater unemployment, poverty and inequality than before the agreement began in 1994.' Furthermore, Mexico's population was not unique. In the USA, the wealthiest 1% increased their share of total income in the last decade of the 20th century from 12.5% to 17.8%. Recently accessed Canadian figures show that between 1989 and 2005 the lowest quintile of all family units saw their income fall by 11% and the next two quintiles losing 4% and 2%, respectively. Meanwhile, the top quintile share of total Canadian income increased by 16% to 46.9%. In summary, 80% of Canadian families have seen their income stagnate or fall during NAFTA's operation. NAFTA style policies are benefiting those who need it least, and polarizing each of the three societies simultaneously.

Stephanie Golob of Baruch College, New York, confirms that one of the problems with NAFTA is that the agreement dealt solely with business interests, but did not promote a socially integrated system between the three countries that would spread the benefits to everyone.²⁵ Canadian political scientist, Laura MacDonald of Carleton University notes 'the fact that the NAFTA era has been accompanied by ongoing polarization between rich and poor in the United States and Mexico (and, to a lesser extent in Canada) means that North American integration lacks a significant political constituency beyond the ranks of the rich.'

WAYS FORWARD

As is clear from the level of integration and executive collaboration in such areas as regulatory 'reform' and energy market integration, the SPP is a far reaching process which permeates far below the flags of official sovereignty. At the same time, it is clearly not enough for a number of organizations. The business-funded Fraser Institute of Vancouver, for example, looks forward to a customs union, a common security perimeter with pre-clearance of outside goods, harmonized biometric checks on people, common security criteria, a single North American defence arrangement building up from the NORAD model, and a combined air, space, sea and land binational command structure.

Several quiet binational and trinational processes beyond the official SPP are advancing common agendas in 2007, notably the North American Future 2025 Project of the Center for Strategic and International Studies (CSIS) in Washington, DC. It brings together academic, government, industry and other experts in a series of discussions dealing with the future of, *inter alia*: North American labour mobility, energy, the environment, security, competitiveness, border infrastructure and logistics. Organized virtually as a futures planning group for an SPP agenda, the CSIS final report was to be delivered to the three Governments in September 2007.

The Council of Canadians, one of the major opponents of the CSIS agenda, charges that this style of closed-door limited élite policy planning is a fundamental threat to democracy, and

contends that, through the SPP, the USA is attempting to stake a security claim to almost every aspect of Canadian life—'from our food and roads to our pipelines and telecommunications networks. Creating a Fortress North America will not make Canadians safer.'²⁶

THE DEMOCRATIC CHALLENGE

The lack of participation and/or review by legislatures in the three countries is stark. In the Canadian Parliament, Peter Julian secured an initial series of hearings on the SPP in 2007. These were closely fought and it was unclear whether or not they will continue and whether the demand of a number of witnesses for a full parliamentary debate will be met. Julian, US Democratic Congresswoman Marcy Kaptur and Mexican counterparts have organized two rounds of trilateral parliamentary consultations to seek a 'people's' approach to North American integration. However, congressional oversight of the SPP has yet to be asserted in either the USA or Mexico.

The implications of the SPP go beyond what legislative hearings can offer. Teresa Healy comments that evidence is beginning to emerge 'that not only has there been no legislative review of the SPP, ... but the judicial branch of government is being undermined as well. Instead it is the executive level of both government and business which is working with police and security forces to define this next stage in North American integration.' The nature of this approach is quite vulgar. As the Chairman of the US section of the NACC, Ron Covais, told *Maclean's* magazine in 2006: 'The guidance from the ministers was, 'tell us what we need to do and we'll make it happen', and that rather than going through the legislative process in any country, the Security and Prosperity Partnership must be implemented in incremental changes by executive agencies, bureaucrats and regulators. We've decided not to recommend any things that would require legislative changes, because we won't get anywhere.'²⁷

Among those arguing for a much more aggressive approach towards changing the alleged lack of transparency within the SPP is Washington-based academic Robert Pastor. He argues that critics have made the leaders 'timid', refusing to address 'big issues'. He advocates agreement on consolidated efficiencies, such as a single North American drugs-testing and certification agency. He is frustrated by the approach of dealing with issues such as rules of origin and regulation one sector at a time. He favours bringing academics, environmentalists, unions, the media, and state- and provincial-level legislators into the process. After more than decade of NAFTA the context has shifted, and North America needs to address a world in which Chinese and Indian manufacturers and commercial interests in general are major players.⁹

As Anderson and Sands agree, the complaint that many sectors with an interest in the future of North America are closed out of the meetings is 'reasonable, and should be met'. Like Pastor, they advise opening the process up to non-governmental organizations (NGOs) and citizen groups. However, they conclude: 'The leaders have two chances left to fix the SPP. The first best chance was at Montebello, but the leaders took no action to make the SPP more transparent, or to reach out to Congress or the special interests. A second chance may come when the United States hosts next year and Bush may choose this opportunity to repair his North American legacy. Finally, in 2009, a new US President is likely to see the value in the negotiations, but either revamp the SPP or replace it with a new, better designed process.'

The fundamental democratic challenge represented by the SPP structure and process, i.e. executive fiat advised by corporate leadership, is not really comprehended in Pastor's or Anderson and Sands' proposals for process reform. In one sense, the process is already transparent, as the three heads of state listen to corporate CEOs and mandate a goodly portion of the advised initiatives. The broad range of citizens' interest is hardly to be typified as 'special interests'. The marginalization of democratic legislatures in all three countries is not adequately dealt with by briefings or 'consultations'. So far communication strategies which pillory the opposition or minimize far-reaching processes of change may have succeeded. However, the heavy-handed intervention of police *agents provoca-*

teurs at the Montbello summit publicized the SPP in a way that few blogs have succeeded in doing, and raised fundamental challenges about the securitization and well-guarded 'closed doors' of high-level negotiation, as well as the marginalization of democratic processes.

The opposition is diverse and has quite a different profile in each of the three countries, although the four-member alliance of opposition coalitions (the Réseau Québécois sur l'Intégration Continentale, the Red Mexicana de Acción Frente al Comercio Libre, the Alliance for Responsible Trade and Common Frontiers) has been re-energized by the challenge of the SPP. Attention in the US press and public has been marginal to date, but has been stimulated by pre-election political debates around NAFTA. The coalitions have had experience with 'broader' strategies, first with initiatives on labour and environmental side-agreements in the 1990s, which split the initial NAFTA opposition forces, at least in the USA, then with 'insider' strategies utilized by the Summit of the Americas processes around the proposed Free Trade Area of the Americas (FTAA). In the latter case the official attempts to divide the opposition failed and the FTAA failed.

The opposition has the challenge of alternatives beyond the issue of negotiating process. Demands for transparency and/or access do not a programme make. Should, for example, a US presidential pre-candidate, candidate or victor establish a clear commitment to revise or rescind NAFTA? And what proposals would opposition forces bring forward to inform the reform or post-NAFTA road forward? What vision of the North American community, in the context of a rapidly changing hemisphere, would motivate them? The seeds of a vision and programme may be extant among social forums, trade unions, church networks and environmental advocates, but the debate has hardly begun.

ENDNOTES

- ¹ Villareal, M. A., and Lake, J. 'Security and Prosperity Partnership of North America: An Overview and Selected Issues', in *CRS Report for Congress*, No. RS22701, 2 August 2007, Washington, DC.
- ² Cooper, A. F., and Jackson, K. 'Montebello was More than a Slumber Party'. www.embassymag.ca. Ottawa, ON, 22 August 2007.
- ³ Healy, T. 'North American Competitiveness Council and the SPP: Les Agents Provocateurs at the Montebello Summit.' Ottawa, ON, Canadian Labour Congress. September. 2007.
- ⁴ Josten, R. B., Chertoff, M., Day, S., Martinez-Fonts, Jr, A. 4 June 2007. www.uschamber.com/issues/comments/2007/070604dhs_sbm.htm.
- ⁵ *North America: The Energy Picture II*, Appendix 2. The North American Energy Working Group, Natural Resources Canada, 2006. www2.nrcan.gc.ca/es/es/NA-enrgpic2006/p09-e.htm.
- ⁶ Remarks Prepared for Energy Secretary Samuel Bodman, 12 September 2005. US Department of Energy, Office of Public Affairs, and Canadian Council of Chief Executives.
- ⁷ Wilson, F. 'Mexican Jellybeans', Communications, Energy and Paperworkers Union of Canada blog, 29 August 2007. blogs-cep.ca/en/node/50.
- ⁸ Webb, M. 'Risk Scoring and the National Insecurity State' in *Counterpunch*. Petrolia, CA, 7 December 2006.
- ⁹ Butler, D. 'Broaden debate on North American integration: Expert', in *The Ottawa Citizen*. Ottawa, ON, 5 June 2007.
- ¹⁰ 'Summits fall short on problem solving'. *Toronto Star*, Toronto, ON, 23 August 2007.
- ¹¹ 'A coup d'état lies behind the 'Three Amigos' SPP Summit'. Common Frontiers et al. Ottawa, ON, Montréal, QC, Mexico City and Washington, DC, 17 August 2007.
- ¹² d'Aquino, T. 'Too much, or not enough? The Montebello Summit in perspective'. The Canadian Council of Chief Executives, Ottawa, ON, 29 August 2007.
- ¹³ Byers, M. 'SPP is built around secrecy and US military command-law expert', in *The Harper Index*. 20 August 2007. www.harper-index.ca/ViewArticle.cfm?Ref=0081.
- ¹⁴ 'Strong and Free: The Liberal Blueprint for the North American Leaders Summit at Montebello'. Liberal Party of Canada, Ottawa, ON, 17 August 2007.
- ¹⁵ Nikiforuk, A., Hurley A., and Pentland, R. 'Sold Down the River', in *Ottawa Citizen*, Ottawa, ON, 10 September 2007. Mittelstaedt, M. 'Canada's water 'on the negotiating table', report says', in *The Globe and Mail*, Toronto, ON, 10 September 2007.

- ¹⁶ Reynolds, N. 'US protectionists, 14; free traders, three', in *The Globe and Mail: Report on Business*. Toronto, ON, 29 August 2007.
- ¹⁷ 'A dubious deal', in *The Economist*. London, 17 May 2007.
- ¹⁸ Iruegas, G. 'Integración por sometimiento', in *La Jornada*, Mexico, DF, 7 September 2007.
- ¹⁹ Picard, M. 'Ten Easy Questions and Ten Tougher Ones Regarding the SPPAN (Security and Prosperity Partnership of North America)', in *Bulletins of the Centro de Investigaciones Económicas y Política de Acción Comunitaria*, No 541, 17 August 2007.
- ²⁰ McBride, S. 'Reconfiguring Sovereignty: NAFTA Chapter 11 Dispute Settlement Procedures and the Issue of Public-Private Authority', in *Canadian Journal of Political Science*, 39:4. Ottawa, ON, December 2006.
- ²¹ Chase, S. 'Canada Post NAFTA win sets precedent', in *The Globe and Mail*. Toronto, ON, 14 June 2007.
- ²² Shrybman, S. Memorandum re: United Parcel Service (UPS) v. Canada. Sack, Goldblatt, Mitchell LLP. Ottawa, ON, 27 June 2007.
- ²³ Capling, A., and Richard Nossal, K. *The Rise and Fall of Chapter 11: Investor-State Dispute Mechanisms in the North American Free Trade Agreement and the Australian-United States Free Trade Agreement*. Paper prepared for the Oceanic Conference on International Studies, Australian National University, Canberra, 14–16 July, 2004.
- ²⁴ Feldman, E. J. 'Turning trade deal into Republican ammo? Softwood deal pours \$450 million straight into White House, says US lawyer.' *TheTyee.ca*, 29 August 2006.
- ²⁵ Berthiaume, L. 'There's Nothing Quick or Easy About NAFTA'. www.embassymag.ca. Ottawa, ON, 13 June 2007.
- ²⁶ *Backgrounder: The North American Future 2025 Project*. Council of Canadians, Ottawa, ON, 2007.
- ²⁷ *Backgrounder: the North American Competitiveness Council*. Council of Canadians, Ottawa, ON, February 2007.