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IN SEARCH OF AN UNDERSTANDING WITH THE UNITED STATES†

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Ladies and gentlemen:

For Mexicans, the United States has been, historically, dream and nightmare, opportunity and risk. It continues to be so. After the tormented relationships of the Nineteenth Century, many contemporary Mexicans believe that the best there can be between Mexico and the United States is desert, a long and dry distance as barrier against the danger and threat coming from the north. At the same time, Octavio Paz called the United States at mid-century: "that place were men breathed with easiness the rare atmosphere of the future." Reacting to fear or searching for opportunities, Mexico has always sought an understanding with its powerful neighbor. It was quite reasonable to do so. More than that, it has been, and still is, a national imperative.

What do I mean by an understanding between Mexico and the United States? To "understand" is something of a bridge and something of shared code. It is a bridge between past and future. In other words, while both countries should avoid amnesia, both should also refuse to be devoured by prejudice, to be petrified in the past, to be diluted or disintegrated in an image that will not last.

To "understand" each other also means to share a common code of behavior and languages. It means to create rules, practices of behavior and univocal tools to deal with one another. To reach an understanding means to achieve specific commitments and responsibilities for each party in order to accomplish superior objectives, particularly in light of the states' differing interests and idiosyncrasies. Therefore, understanding should leave no place for unilateral impositions or subjugation.

During the second half of the last century there was a fundamental understanding between both nations. Mexico did not confront the United States in its strategic interests and United States did not force the consent of Mexico, when other non-strategic interests were at stake.

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In the nineteen-nineties, the government of Mexico made a decision that was to change this fundamental equation. With the decision to negotiate and to enact a treaty of free trade with the United States and Canada, Mexico decided to leave aside the concept and reality of implicit understandings, and boldly move toward a deliberate agreement. This agreement is built upon mandatory rules in a very wide group of commercial topics, with important consequences in the economic regulation of Mexico. That decision has had many implications, some of which I shall explore in a few minutes.

The logic behind the decision was momentous but simple: Mexico would transform itself to reap the benefits of economic globalization and focus on achieving sustained economic growth. In the era of globalization, Mexico should not stand defenseless and in isolation.

In order to recapture a path of stable growth in the early nineteen-nineties, it was imperative for Mexico to open and deregulate its economy and to insert itself, in a competitive way, in world trade. Therefore, since 1985, Mexico has used bilateral, multilateral, and regional negotiations to improve the conditions for access of its export products.

The entrance to the General Agreement on Tariffs and Trade (GATT) in 1986 was the first important step in Mexico's new strategy of international negotiations.[1] A second step followed with the conclusion of the "Understanding with the US on Consultations as regards Trade and Investment" (Framework Agreement) at the end of 1987.[2] The Framework Agreement established a formal outline of principles and procedures to negotiate reductions in the commercial barriers and to approach disputes regarding trade and investment.

However, soon enough, it was evident that across-the-board reductions of the existent commercial barriers could not be achieved within the General Framework. The process of sector-by-sector negotiation is too cumbersome and exhausting and, at best, only produces marginal results. Indeed, these negotiations did not take into account inter-sector relationships, prevented global balancing of costs and benefits, and gave undue influence to special interest groups. On the other hand, as is well known, GATT requires extending to third countries any tariff reduction granted under specific sector negotiations.

The operation of the United States Generalized System of Preferences (GSP) was another important element for Mexico. Nearly 3.5 billion dollars in Mexican products qualified under the GSP in

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1. MEXICAN OFFICIAL GAZETTE, November 26,1986

2. Understanding on Consultations as regards Trade and Investment, TIAS Edition, 12395, Mexico, 1987.

1991.[3] However, the application of the system by the United States had many discretionary elements. Particularly, the authority to make exclusions of products if their imports surpass the established limits of competitiveness, or if an American producer presents a dissent application for damage caused by foreign imports.[4] These discretionary elements imply that the most competitive products are eliminated eventually creating uncertainty in exporters and hindering investment decisions.

On the other hand, although the average tariff to which Mexican exports were subject when entering the American market was low (three percent),[5] this average blurred a strong dispersion in the obligations and the existence of important tariff picks. Many of Mexico's most competitive products, were subject to tariffs superior to twenty percent, and others paid rates that oscillated between thirty-eight and seventy-seven percent.[6]

The biggest obstacle to free access to the Mexican products came from non-tariff barriers and from the implementation, with protective purposes, of United States legislation concerning the so-called "disloyal practices." This was seen in the cases of Mexican cement, of the quotas established for textiles and steel and of phyto-sanitary norms that constituted important non-tariff barriers for many agricultural products. It was also the time when Mexican avocadoes were forbidden because of the alleged presence worms, which had actually been long eradicated.

Lastly, it is necessary to remember that the "Omnibus Trade Act" of 1988 which, by introducing the concept of "unfair trade," opened the door to new forms of unilateral protectionism.[7] In turn, a climate of harmful uncertainty to the interests of Mexico resulted.

NAFTA is the most suitable mechanism to solve these and other problems. It allows business deals and investment flows among the three member countries to have a clear and permanent legal framework and to have swift dispute settlement mechanisms. Additionally, NAFTA has a long-term reach, allowing for differentiated adjusting periods appropriate to the necessities of the most sensitive sectors, something that is indispensable to minimize the costs of structural change.

The political decision to promote NAFTA, in February of 1990,

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3. United States International Trade Commission, *available at* http//www.dataweb.usitc.gov.

4. *Id.*

5. *Id.*

6. *Id.*

7. Ronald A. Cass, *Velvet Fist in an Iron Glove: The Omnibus Trade and Competitiveness Act of 1988*, REGULATION , Vol. 14, no. 1, Winter 1991.

considered the impact on our country of the increasing resources needed for structural change in Central and Eastern Europe.[8] The decision was to stop linking domestic growth to more foreign debt, but to link it instead to direct investment strategy and to take advantage of an additional instrument to accelerate the growth of the Mexican economy.

What were, and are, the objectives of NAFTA? Of course, the three NAFTA partners share some objectives: that of eliminating, or at least minimizing, sudden changes in the commercial policies of a country that may affect the interests of their commercial partners or impose new barriers to trade among those countries. But, within this great common purpose, different particular objectives contribute to explain the architecture of the agreement.

For Mexico: the fundamental objectives were to reduce the vulnerability and uncertainty for its exporters in order to promote external sales, to increase investment flows, and to elevate job creation. At the same time, NAFTA, together with other international commitments such as the GATT and the Organisation for Economic Cooperation and Development to (OECD), assured, for potential investors, the sustainability and permanency of the market policies undertaken in the late nineteen-eighties and early nineteen-nineties.

For the United States: the treaty represents an opportunity for its companies and workers to recover competitiveness and participate more efficiently in the world markets. In that sense, its high-priority objective was to assure access to wider and surer investment opportunities, and also to participate in the services markets, traditionally much more closed than the markets of goods. Therefore, with Mexico as the United States' third commercial partner, the growth potential of United States exports was significant. That belief was fully justified as has been proven by the three-fold increase in bilateral trade since NAFTA negotiations began.[9]

For Canada: the main objective was to protect its free trade agreement with the United States, and to get access to the Mexican market at least in the same terms as the United States. Particularly, Canada was interested in safeguarding its position reached in the free trade agreement, in sectors such as auto-parts and energy. Lastly, Canada is one of the four important actors in international commercial negotiations (next to the European Economic Community, Japan and

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8. OECD experts estimated a diversion of investment from traditional countries towards Central European nations. As a matter of fact, the Bank for Reconstruction and Development was created to channel public and private resources towards that area of the world. Mexico is a founding member of the Bank. OECD, ECONOMIC OUTLOOK, 1990.

9. In 1992, total trade between Mexico and the U.S. was 82,869 million. By year 2000 total trade jumped to 275,660 million. 2001, despite resetion in both counries, trade amounted to 254,071 million. Banco de Mexico ANNUAL REPORT 2001.

the United States) and in and of itself, it could not allow, for strategic and historical reasons, to remain outside of NAFTA. A preservation of status seems then to have been another important element to assure a place at the NAFTA table of negotiations.

Having said all of this, it is crucial to understand NAFTA in its double relevance: it is only a trade treaty (much less than a custom union or a common market, and nothing near much broader projects, such as the "Maastricht Treaty" in Europe). But it is also, by its influence, more than a simple trade treaty.

Until recently, Mexico and the United States lived and maintained problems perceived as "intractable" in their daily contacts. The most significant ones are the migration of Mexicans to the US, the problems of violence and infrastructure at the border, the fight against drug trafficking and organized international crime, the environmental dilemmas, and some regional and multilateral matters. In spite of their importance, these topics were not fully recognized as a daily part of the bilateral agenda. Dealt with in a discrete and unsystematic way, the silence was occasionally broken by partial agreements, political storms and, by periods of sour publicity in the media.

What changed and why did it change? To answer this question one must remember that NAFTA produced a major contribution to Mexico's financial stability in the spring of 1995, when the United States administration and the international community committed support to Mexico for almost 50 billion dollars.[10] By January 1997 Mexico repaid all of the United States package and part of International Monetary Fund (IMF) support.[11] Mexico's trade with the United States and Canada soared. The crisis was averted and the path of steady growth reached its peak in the year 2000 at an impressive seven percent.[12] Most of the growth was fueled by the external sector and half of all new jobs were due to exporting businesses.

Also, we now know that NAFTA had unsuspected and somehow paradoxical economic results. Starting from their negotiations, the interest in Mexico of the European Community, Japan and its commercial allies in the Asian Pacific grew enormously. That interest and attention have been translated into a General Agreement and a Free Trade Agreement with the European Union and into exploratory conversations toward the same purpose with Japan.

The economic success was very impressive, but it also held

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10. Banco de Mexico ANNUAL REPORT, 1996.

11. *Id.* Mexico used, out of 20 billion of U.S.support, only 11 billion paid in 1995 and 1996, providing the U.S., with 500 million profits. Out of the 50 billion, Mexico used 27,159 in 1995.

12. Real growth for 2000 was 6.9%, 3.2 points better than 1999. Banco de Mexico ANNUAL REPORT 2001.

important lessons beyond economics. Three elements were important in overall terms: the high level attention this process implied; the shared value of certainty attached to pre-established rules, and the operation of institutionalized mechanisms. It was only natural for NAFTA partners to look into other areas of their complex relationships with this experience in mind. From 1995 onward Mexico has attempted "treat intractables" with this frame of mind. It moved to give transparency to those difficult issues in the agendas; to create institutional mechanisms to solve them or to administer them; and to endow them with long-term goals that represented an elevation of the political dialogue and the creation of more favorable conditions to solve them in the future.

Considering the inescapable fact that Mexico and the United States weigh considerably in the life of the "other," both have finally come to terms with the importance of a shared framework appropriate for the dynamics of daily interaction; one that surpasses, by far, the vertical decisions of politics, of bureaucracies and of their personalities.

Of course, "between the idea and the reality, between the movement and the act, falls the shade," said T.S. Elliot. In that space lies the laboratory of diplomacy; "plumbing diplomacy," is a diplomacy which is quiet, which is concerned with details, which does not rest in unnecessary political noise, which believes in effectiveness.

As it happened, in five years (1995-2000), a whole network of agreements emerged. This meant qualitative change in relationships. Four approaches guided that change:

1. The creation of bilateral rules in practically all of the areas of the relationship, subtracting uncertainty and offering mechanisms for the administration of cooperation and conflict;
2. The flexibility to grant a differentiated handling of the most conflicting topics regarding the rest of the agenda; without disassociating them from the framework of global conception of the relationship;
3. The adoption of long term visions to generate an agenda for the future; and,
4. To privilege high-level political consultations to avoid surprises and to foresee reactions on each side.

Since 1995, twenty-two treaties and forty-six executive agreements have been signed between Mexico and the United States. [13] Both administrations created nearly thirty-five bilateral mechanisms that

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13. Secretaría de Relaciones Exteriores, INFORME DE LABORES 2001, Mexico D.F., 2001.

duplicated in number the pre-existent ones.[14] But beyond numbers, what is meant is that we moved from general dispositions in many topics to something much closer to what NAFTA made for trade and investment, that is objectives, strategies, mechanisms and task forces. Therefore, Mexico can now deal with crisis without bringing the whole relationship down. What all of this meant was that we began to put perspective in each area, agreeing on the desirable scenarios for the future.

Furthermore, high level encounters outside government structures are now almost part of a binational routine. The members of the Congresses of both nations frequently travel and meet. The federal judicial powers have established contacts and developed exchange programs for judges. Academics, managers, journalists and the Non Governmental Organizations' (NGO) have also knitted a dense network of contacts. Indeed, the high level and increased amount of bilateral dialogue has changed dramatically in the last few years and it promises to continue to do so.

Clearly, this it is not a story of kindness. Without a doubt, NAFTA partners felt the negative impact of very serious incidents that reminded us what the bilateral relationship should not be. The commercial conflicts, hidden behind environmental concerns, such as the continued embargo against Mexican tuna, the permanency of the annual drug certification, the relative impunity of police violence against Mexican migrants, the permanent pretense of taking the long arm of the law – but only that of United States law – and to apply it to Mexico and to Mexicans, are all examples of old practices and reflect the worst aspects of the bilateral relationship. They are the result of old attitudes and of a blindness that refuses to die.

It is a relationship, inevitably, with lights and shades, but a relationship with a promissory future. Allow me to mention two examples of how NAFTA partially modeled a constructive approach to some difficult topics or, as I have labeled them, the "intractables:" migration and drugs.

When dealing with our migrations problems one has to consider the three thousand kilometers of open border, the police operatives of border control and the concomitant growth of people's trafficking by organized crime, the restrictive terms of the 1996 American migratory law (Illegal Immigration Reform and Immigration Responsibility Act), the income disparities, the local traditions to migrate, the social networks for undocumented people deep in US territory, and the expansion of the communities of Mexican origin in the United States, among other factors. No wonder this phenomenon is one particularly

14. *Id.*

difficult to administer and prone to conflict.

What we wanted in Mexico was to escape from an approach that concentrated solely on the duality "border control/human rights defense." Both are indispensable ingredients of the migratory agenda, however, they are far from the only issues involved. There are also topics of consular access to the migrants, family reunification, secure and orderly repatriations, interstate transfers and repatriation of people, special treatment of prisoners about to be released in the border, the fights against traffickers of people and against the falsification of documents, dealing with serious border incidents and with the use of lethal force at the border, the relative impunity of local and federal agents involved in those incidents, the use of ethnic approaches for detentions and industrial inspections, etc.

What we therefore created was a high level mechanism that created rules for most topics involved in the phenomena of migration and, at a regional level, we incorporated our experiences and ideas in a mechanism where, besides Mexico and the United States, Central American countries and Canada are also represented. As a support of the Bilateral High Level Mechanism, ten Liaison Mechanisms for Border Matters had 160 meetings to solve many violent incidents and abuses, to ensure orderly and safe repatriations, as well as to speed up legal crossings.[15] Also, at the beginning of 1996, twenty-two Consultation Mechanisms were created to assure the permanent communication between Mexican Consuls and district authorities of the Immigration and Naturalization Service (INS).[16]

Is that effort sufficient? Well, it still does not look like a NAFTA deal. Yet it lays the groundwork for a wider agreement or, more realistically, for a set of various agreements in order to deal with this phenomena in a more orderly, rational and humane way. Mexican President Vincent Fox's administration has reiterated its commitment to high-level discussions to explore more far-reaching agreements to deal with the problem. As a matter of fact, in a few weeks cabinet members of both countries will meet for that purpose. The fundamental structures and mechanisms are already there to make those discussions possible and productive. We shall all hope for their success.

In the also difficult topic of drugs, in the last years a simple but fundamental agreement was reached among the key players in the respective government spheres. Mexico looked for, and achieved, the enlargement of the agenda and the institutionalization of the cooperation efforts.

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15. *Id.*

16. Secretaria de Relaciones Exteriores, Informe de Labores 1999-2000, p.19. Mexico D.F., 2000

The High Level Contact Group (HLCG) was created, together with several groups of experts on all topics relevant to this problem, including the demand for drugs and the trafficking of weapons from north to south. The HLCG has elevated the level of political attention to the problem, something which has made it feasible both to set a course to the bilateral relationship in that matter, and to administer delicate situations. A common view of the complexity of the problem, a bilateral strategy, and an agreed upon measure of effectiveness, were the most significant contributions. Also, Mexico proposed an Extraordinary Meeting of the UN General Assembly and moved for the creation of the Multilateral Mechanism of Evaluation including all countries in the hemisphere.

Ladies and gentlemen:

What then are the lessons of these past experiences? I believe that, in order to better understand and manage the relationship, it is necessary to discard two harmful concepts: the belief in illusory models and the fatality of conflict. The objective should be to build a modern and functional relationship that allows ongoing progress. Responsibility and objectivity should take the place of prejudice and emotional reactions, as we did for trade through NAFTA.

NAFTA symbolizes, beyond trade, a posture towards the future. It is so because it is an exemplary practical arrangement that is based on common sense, tolerance and respect to work out our differences.

And even though in life nothing should be taken for granted, there is ground for optimism and, above all, there will always be space for imagination to conceive a grown, mature and productive neighborhood.